DISTRICT OF COLUMBIA COURT OF APPEALS
BOARD ON PROFESSIONAL RESPONSIBILITY
HEARING COMMITTEE NUMBER TWELVE

In the Matter of:	:	
	:	
DORRANCE D. DICKENS,	:	Board Docket No. 13-BD-094
	:	Bar Docket Nos. 2011-D271, 2012-D010
Respondent,	:	& 2012-D011
	:	
An Administratively Suspended Member of the Bar of the District of Columbia Court of Appeals (Bar Registration No. 450751)	:	
	:	
DEBORAH Y. LUXENBERG,	:	Board Docket No. 13-BD-094
	:	Bar Docket No. 2011-D272
Respondent,	:	
	:	
A Member of the Bar of the District of Columbia Court of Appeals (Bar Registration No. 215657)	:	

REPORT AND RECOMMENDATION
OF HEARING COMMITTEE NUMBER TWELVE

I. INTRODUCTION

Bar Counsel filed three separate specifications of charges against Respondent Dorrance D. Dickens alleging misappropriation, dishonesty, crimes and other misconduct involving his representations of clients in three probate and estate matters: Vernon J. Harris, Jr., William Garrity, and Michelle S. Seltzer. The Specification of Charges in the Seltzer matter also included allegations against Respondent Deborah Y. Luxenberg, Dickens' law partner, that focused primarily on Luxenberg's responsibility for Dickens' misconduct in the Seltzer matter.

The Harris Matter: Bar Docket No. 2012-D010

This matter relates to Dickens' representation of Vernon J. Harris, Jr., in probating the Estate of Gladys Eloise Harris (the "Harris Estate"). Bar Counsel alleges that Dickens deposited

more than $34,000 worth of checks made payable to the Harris Estate into his personal bank account and withdrew the proceeds for his personal use. It further alleges that Dickens' client, Mr. Harris, did not know that Dickens deposited estate funds into his personal account and did not authorize the withdrawals.

Bar Counsel charged Dickens with violations of the following Rules of Professional Conduct ("Rules"):

- Rules 1.4(a) and 1.4(b) (failure to keep Mr. Harris reasonably informed about the status of the probate matter and the estate funds, and to explain matters sufficiently to permit the client to make informed of decisions regarding the representation);
- Rules 1.15(a) and 1.15(c) (failure to promptly notify Mr. Harris of receipt of estate funds, promptly deliver the funds to Mr. Harris, commingling of estate funds with his personal funds, and intentional or reckless misappropriation of the Estate funds);
- Rule 8.1(b) (failure to respond to Bar Counsel's lawful demand for information regarding the matter);
- Rule 8.4(b) (commission of criminal acts (theft in violation of D.C. § 22-3211 and/or Virginia Code § 18.2-95) reflecting adversely on Dickens' honesty, trustworthiness, and/or fitness as a lawyer);
- Rule 8.4(c) (dishonesty, fraud, deceit, or misrepresentation); and
- Rule 8.4(d) (conduct seriously interfering with the administration of justice).

Luxenberg is not charged with any violations in the Harris matter.

The O'Brien Matter: Bar Docket No. 2012-D011

This matter relates to Dickens' representation of William Garrity, who was appointed to serve as personal representative for the Estate of JoAnne S. O'Brien (the "O'Brien Estate"). Bar Counsel alleges that Dickens charged a fee of $30,000, which Mr. Garrity authorized be withdrawn from estate funds, but did not provide a writing setting forth the basis for his fee or the scope of his representation. Bar Counsel also alleges that Dickens deposited over $900,000 into the

O'Brien trust bank account and then withdrew (without Mr. Garrity's authorization) more than $600,000 for himself and $20,500 for his law firm, and gave more than $20,000 to third-parties for Dickens' benefit.

Bar Counsel charged Dickens with violations of the following Rules:

- Rules 1.4(a) and 1.4(b) (failure to keep Mr. Garrity reasonably informed about the status of the probate matter and the estate funds, and to explain matters sufficiently to permit the client to make informed of decisions regarding the representation);
- Rule 1.5(b) (failure to provide Mr. Garrity with a writing communicating the basis or rate of his fee and the scope of representation);
- Rules 1.15(a) and 1.15(c) (failure to promptly notify Mr. Garrity of receipt of estate funds, promptly deliver the funds to Mr. Harris, commingling of estate funds with his personal funds, and intentional or reckless misappropriation of the Estate funds);
- Rule 8.1(b) (failure to respond to Bar Counsel's lawful demand for information regarding the matter;
- Rule 8.4(b) commission of criminal acts (theft in violation of D.C. § 22-3211 and/or Virginia Code § 18.2-95) reflecting adversely on his honesty, trustworthiness, and/or fitness as a lawyer);
- Rule 8.4(c) (dishonesty, fraud, deceit, or misrepresentation); and
- Rule 8.4(d) (conduct seriously interfering with the administration of justice).

Luxenberg is not charged with any violations in the O'Brien matter.

The Seltzer Matter: Bar Docket Nos. 2011-D271 & 2011-D272

This matter relates to both Respondents' representations of Michelle S. Seltzer. Luxenberg served as successor trustee in the Amended Michelle S. Seltzer Revocable Trust established in 1990 (the "1990 Trust"), which was amended in 2004. Dickens served as the trustee of the Michelle S. Seltzer Family Trust established in 2009 (the "2009 Trust") and as the personal representative of Ms. Seltzer's Estate beginning in 2010.

Bar Counsel alleges that Dickens used his position as the trustee of the 2009 Trust to steal approximately $700,000. Bar Counsel further alleges that as part of his scheme to steal from the Seltzer Estate, Dickens created a fraudulent demand note that purported to show that Ms. Seltzer agreed to pay him $685,000 for a 1% interest in each of two Virginia companies that Dickens created. There is no evidence that either company ever conducted any business or that there were any other investors. When the beneficiaries of the Seltzer trust engaged counsel, they insisted on an accounting. Dickens then falsely claimed that $600,000 was taken from the estate for payments on the demand note.

There is no allegation that Luxenberg herself engaged in theft or misappropriation. Rather, Bar Counsel alleges that by her knowing failure to adequately supervise Dickens, she assisted Dickens in violating the Rules and stealing from the Seltzer Estate; that she failed to take reasonable measures to ensure that Dickens would follow the Rules; and that she knew or should have known of Dickens' misconduct and failed to take reasonable remedial action. Bar Counsel further alleges that Luxenberg was present and served as a witness to Ms. Seltzer's signing of a "Letter of Instruction," which allowed Dickens to liquidate Ms. Seltzer's certificates of deposit and take the proceeds.

Bar Counsel charged Dickens with violations of the following Rules:

- Rules 1.1(a) and 1.1(b) (failure to provide competent representation and serve Ms. Seltzer with the skill and care commensurate with that generally afforded to clients by other lawyers in similar matters);
- Rule 1.3(b)(1) (intentionally failing to seek the client's lawful objectives through reasonably available means);
- Rule 1.3(b)(2) (intentionally prejudicing and damaging his client during the course of the professional relationship);
- Rules 1.4(a) and 1.4(b) (failure to keep Ms. Seltzer reasonably informed about the status of the probate matter and the Estate funds, and to explain matters sufficiently to permit the client to make informed of decisions regarding the representation);

- Rule 1.7(b)(4) (representing Ms. Seltzer in a matter in which his professional judgment on her behalf would be or reasonably could be affected by his own financial, business, property or personal interests, without obtaining her informed consent);

- Rules 1.15(a) and 1.15(c) (commingling trust and estate funds with his own funds, and intentionally misappropriating trust and estate funds);

- Rule 5.5(a) (engaging in the practice of law in Maryland without a license to do so, in violation of regulation of the legal profession in that jurisdiction);

- Rule 8.1(b) (failure to respond to Bar Counsel's lawful demand for information regarding the matter);

- Rule 8.4(b) (commission of criminal acts (theft in violation of D.C. §§ 22-3211 and 22-3221 and/or Virginia Code §§ 18.2-95 and 18.2-178 and/or Maryland Criminal Law Code Ann. § 7-104) reflecting adversely on his honesty, trustworthiness, and/or fitness as a lawyer);

- Rule 8.4(c) (dishonesty, fraud, deceit, or misrepresentation);

- Rule 8.4(d) (conduct seriously interfering with the administration of justice); and

- D.C. Bar R. XI, § 2(b)(3) (failing to comply with a Board order).

Bar Counsel charged Luxenberg with violations of the following Rules:

- Rule 1.3(a) (failing to represent Ms. Seltzer zealously and diligently within the bounds of law);

- Rule 1.3(b)(1) (intentionally failing to seek the client's lawful objectives through reasonably available means);

- Rule 1.3(b)(2) (intentionally prejudicing and damaging Ms. Seltzer during the course of the professional relationship);

- Rule 1.7(b)(4) (representing Ms. Seltzer in a matter in which her professional judgment on her behalf would be or reasonably could be affected by her own financial, business, property or personal interests without obtaining Ms. Seltzer's informed consent);

- Rule 5.1(a) (failing to make reasonable efforts to ensure that the firm had in effect measures giving reasonable assurance that all lawyers in the firm conformed to the Rules of Professional Conduct);

- Rule 5.1(c)(2) (Luxenberg knew or reasonably should have known about Dickens' conduct at the time when its consequences could have been avoided or mitigated, but failed to take reasonable remedial action);

- Rule 8.4(a) (Luxenberg knowingly assisted Dickens in violating disciplinary rules).[1]

II. PROCEDURAL BACKGROUND

By agreement, Bar Counsel served Luxenberg, through her counsel, with its Petition and Specification of Charges in the Seltzer matter on October 15, 2013. *See* BX 3.[2]

Bar Counsel also attempted to serve Dickens with the Specification of Charges in the Seltzer, Harris and O'Brien matters by personal service and certified mail. On October 18, 2013, Bar Counsel filed a motion with the Court of Appeals for an order directing service on Dickens by alternate means. The motion set forth the steps that Bar Counsel had taken to attempt to serve Dickens and determine his whereabouts. On November 6, 2013, the Court granted Bar Counsel's motion and entered an order pursuant to D.C. Bar R. XI, § 19(e) and D.C. Code § 11-2503(b) directing Bar Counsel to serve Dickens by regular and certified mail, e-mail, and by publication.

Luxenberg filed an answer on November 18, 2013. Dickens did not file an answer.

On November 27, 2013, the Board granted Bar Counsel's motion to consolidate all of the matters against Dickens and Luxenberg, which neither Respondent opposed, and assigned all

[1] On January 29, 2014, Bar Counsel filed an amendment to the Rule 8.4(a) charge against Luxenberg, specifying that she is alleged to have knowingly assisted Dickens in violating Rules 1.1(a), 1.1(b), 1.3(b)(1), 1.3(b)(2), 1.15(a) and (c), and 5.5(a).

[2] "BX _" refers to the exhibits Bar Counsel and Respondent Luxenberg offered relating to the Seltzer matter; "BX H_" refers to the exhibits Bar Counsel offered relating primarily to the Harris matter; and "BX O_" refers to the exhibits Bar Counsel offered relating primarily to the O'Brien matter. "RX _" refers to the exhibits offered by Respondent Luxenberg. The page citations are to the Bates numbers on the exhibits. "FF _" refers to numbered Findings of Fact as set forth herein. "Tr. _" refers to the consecutively paginated transcript of the five-day hearing conducted on March 31-April 4, 2014. Where appropriate, cites to the transcript will be followed by a parenthetical comment identifying the witness and summarizing the witness' relevant testimony. For purposes of brevity and clarity, after fully identifying a witness/party, we shall refer to him or her herein by last name only.

matters to Hearing Committee Number Twelve, composed of Robert A. Salerno, Esquire, Chair, Ms. Jean S. Kapp, and William J. O'Malley, Esquire. *See* Order, *In re Dickens & Luxenberg*, Board Docket No. 13-BD-094 (BPR Nov. 27, 2013).

Pre-Hearing Conference

A pre-hearing conference was held before the Hearing Committee Chair on January 27, 2014. Dickens did not attend the hearing.

At the conference, Bar Counsel explained the efforts taken to locate Dickens, who Bar Counsel believed to be in St. Kitts. Transcript of Pre-Hearing Conf. at 4-10. Bar Counsel also indicated that it was aware of an additional email address that Dickens had used at one time. *Id.* at 9-10. The Chair directed Bar Counsel to also serve Dickens at the additional email address. *Id.* at 10-11.[3]

The Chair asked Bar Counsel to consider use of the default procedures set forth in Board Rule 7.8 in the two matters in which Mr. Dickens was the sole respondent. *Id.* at 11-13. Bar Counsel subsequently filed a notice on January 29, 2014, declining to use the default procedures.[4]

The parties discussed the effect of the Board's consolidation of these matters on the presentation of evidence at the hearing and the Committee's consideration of the evidence against the Respondents. *Id.* at 18-21. Subsequently, in a February 14, 2014 order, the Chair advised Luxenberg that the Committee would consider evidence presented in the Harris and O'Brien matters in considering the charges against her in the Seltzer matter, so that the Committee could

[3] Bar Counsel subsequently filed a statement on January 28, 2014, advising that e-mails sent to the second e-mail address for Dickens were returned as undeliverable, but that Bar Counsel would continue in an attempt to serve Dickens at the D.C. Bar address and the first email address.

[4] We understand that Bar Counsel has *never* utilized the default procedures set forth in Board Rule 7.8. This proceeding provided a particularly appropriate opportunity to do so. Unfortunately, as we read the Board Rules, the Hearing Committee does not have the authority to compel Bar Counsel to proceed by default. If we believed that we had such authority, we would have used it here, as it would have streamlined this proceeding for all involved, obviated the need for many witnesses to appear at the hearing, and saved several hearing days.

assess the "entire mosaic" of their conduct. The Chair again reminded Luxenberg and her counsel of this during the evidentiary hearing. *See, e.g.*, Tr. 899-900.

The Chair requested that Bar Counsel identify and provide the relevant criminal code provisions of the District of Columbia, Virginia and Maryland relating to its charges that Dickens violated Rule 8.4(b) in each of the three matters pending against him. Bar Counsel subsequently filed copies of the relevant criminal codes on January 29, 2014.

The Hearing

The hearing was held March 31 through April 4, 2014, before Hearing Committee Number Twelve. Bar Counsel was represented by Assistant Bar Counsel, Julia L. Porter, Esquire, and Bar Counsel Investigative Attorney Azadeh Matinpour, Esquire. Luxenberg was present and represented by Edward Hutchinson, Esquire, and Richard J. Berwanger, Jr., Esquire. Dickens was not present and no counsel appeared on his behalf.

Bar Counsel called the following witnesses:

- Jerri Seltzer Falk, the daughter of Michelle Seltzer;
- Kevin O'Connell, a forensic investigator for the Office of Bar Counsel;
- Carolyn Hohlfeld, a work colleague of Michelle Seltzer;
- Nicholas Gleichman, a nonlawyer employee of the Luxenberg law firm;
- Respondent Luxenberg;
- Carole Gelfeld, a trusts and estates lawyer who represented Jerri Seltzer Falk, and who testified as an expert as to the allegations against Dickens;
- Eric Seltzer, the son of Michelle Seltzer;
- Azadeh Matinpour, an Investigative Attorney for the Office of Bar Counsel;
- Gary Altman, a trusts and estates lawyer who acted as trustee for and represented Eric Seltzer, and who testified as an expert as to the allegations against Dickens;
- Peg Shaw, a lawyer who prepared accountings for the Seltzer Estate and trusts;

- Stephen Johnson, Luxenberg's husband and law partner;
- Joseph Ghanem, a friend of Dickens who worked for him on various matters;
- Karen Blank, a lawyer employed with the Virginia Tech Foundation; and
- Vernon Harris, the personal representative of the Gladys Harris Estate.

Bar Counsel also offered the testimony of Angela Thornton, a Bar Counsel employee, by affidavit.

Luxenberg took the stand and testified again in her case, and called four character witnesses:

- Dwight D. Murray, Esquire;
- Joan H. Strand, Esquire;
- Hon. Diane M. Brenneman; and
- Hon. Bruce S. Mencher.

The Committee admitted all the parties' documentary evidence, BX 1-300, which included the affidavit of Angela Thornton. BX 300.

III. FINDINGS OF FACT

A. Background Information about Luxenberg Firm, Its Relationship with Dickens, and Its Policies and Procedures

1. Deborah Luxenberg became a member of the District of Columbia Bar in 1975. BX 2.

2. In 1994, Luxenberg practiced law under the firm name "Law Offices of Deborah Luxenberg," in the District of Columbia. BX 6. The only other lawyer associated with the Luxenberg firm in 1994 was Stephen Johnson, her husband. *Id.;* Tr. 286 (Luxenberg).

3. In October 1995, Luxenberg and Johnson hired Dickens to work as a part-time law clerk and paid him on an hourly basis. Tr. 288, 379 (Luxenberg); Tr. 1032 (Johnson). At that time, Dickens was a 37-year old law student attending Mississippi College, but completing his final semester at American University. BX 1; Tr. 288-89 (Luxenberg); Tr. 1032-33 (Johnson); BX 297 at 11 (District of Columbia Bar admission application). Dickens claimed during his interview with the Luxenberg firm that he had "some expertise in computers" – a skill the Luxenberg firm needed. Tr. 1032-33 (Johnson); Tr. 288-91 (Luxenberg).

4. In October 1996, after he graduated from Mississippi College and passed the bar examination in the District of Columbia, Dickens applied for and was admitted to the District of Columbia Bar. BX 1; BX 297; Tr. 295 (Luxenberg). Luxenberg was one of Dickens' references on his application for membership in the District of Columbia Bar. BX 297 at 33-34. Dickens claimed in his application for admission that he received a Ph.D. from the "College of Life Science" in Austin, Texas, in March 1988 – two months *before* he claimed to have received his B.A. from a school in Albany, New York, which he allegedly attended between January 1986 and May 1988. *Id.* at 12; *see also* Tr. 884-85 (Matinpour). In 1986, the Texas Higher Education Coordinating Board enjoined the College in Austin from presenting itself as a college and issued

warnings that it was not accredited, had no degree-granting authority, and its degrees were fraudulent. Tr. 885 (Matinpour). Dickens claimed that he had attended 10 other colleges and universities in seven other states, many at the same time. BX 297 at 12; *see also* Tr. 1091 (Ghanem). None of these colleges and universities issued Dickens a degree, with the exception of Mississippi Gulf Coast Junior College, which allegedly issued him an Associate of Arts (AA) degree in 1977. BX 297 at 11; Tr. 884 (Matinpour).

5. After Dickens became a member of the District of Columbia Bar in October 1996, the Luxenberg firm promoted him from law clerk to associate. BX 1; Tr. 288, 296, 344 (Luxenberg).

6. In 1998, Luxenberg and Johnson filed articles of incorporation in Maryland for the firm "Luxenberg & Johnson, P.C." BX 299. Luxenberg had a controlling interest of 52% in the firm, and Johnson had the minority interest of 48%. Tr. 1011, 1031 (Johnson). In 2003, Dorrance Dickens became a named partner or member of the firm of Luxenberg, Johnson & Dickens and received a 16% interest, reducing Johnson's share from 48% to 32%. Tr. 296, 345, 504-05 (Luxenberg); Tr. 1029-30 (Johnson). After Dickens left the firm (and the country) in May 2011, the firm reverted to a two-partner firm of Luxenberg & Johnson, P.C. BX 299; Tr. 287, 296 (Luxenberg).

7. There is no indication in the record that Dickens was ever licensed to practice law anywhere other than in the District of Columbia. Tr. 299, 301 (Luxenberg); Tr. 210 (Gleichman). This includes the State of Maryland and the Commonwealth of Virginia, despite the fact that beginning in and after 2007, he worked out of the Luxenberg firm's office in Virginia, and would occasionally work out of the firm's office in Maryland. Tr. 299-301 (Luxenberg); Tr. 1039 (Johnson); Tr. 209, 218 (Gleichman).

8. At no time did the law firm have a partnership agreement or any writing that set forth the rights and responsibilities of its partners. Tr. 1029 (Johnson). The salaries or compensation the firm paid to its partners had no relationship to their ownership interests, the business they generated, or the work they did. Tr. 1051-53 (Johnson). Luxenberg, however, always got the largest salary because she brought in most of the business. Tr. 1053 (Johnson). While Dickens was a partner, he and Johnson received the same salary. *Id.*

Nature of Luxenberg's and Dickens' Practices

9. Luxenberg focused her law practice on family law matters. Tr. 213, 217-18 (Gleichman); Tr. 347, 497-98 (Luxenberg). Johnson also practiced family law and, while he was still actively representing clients, engaged in alternative dispute resolution, real estate transactions, business issues, and other civil practice and by late 2007 handled very few client matters. Tr. 348 (Luxenberg); Tr. 213-14; Tr. 1058 (Johnson).

10. Dickens spent his entire legal career working for the Luxenberg firm, Tr. 295-96 (Luxenberg); Tr. 1033-34 (Johnson); but there is no reliable record of Dickens' work once he was principally working from the Virginia office. He worked with Luxenberg on some Maryland family law cases, in which she sponsored his admission *pro hac vice*. Tr. 299 (Luxenberg). Johnson stated that he also worked with Dickens on half a dozen Virginia cases, but did not say when or what they involved. Tr. 299 (Luxenberg); Tr. 1045-46 (Johnson).

11. Ms. Luxenberg did not have the title of "managing partner" of the Luxenberg firm at any time relevant to this matter. Tr. 443 (Luxenberg); Tr. 1036, 1059 (Johnson).

12. Luxenberg was the partner in the firm who generally determined what new client matters the firm would accept and who would work on them. Tr. 345-46, 349 (Luxenberg); Tr. 1058 (Johnson). Beginning in 2007, Nicholas Gleichman, a non-lawyer employee, assisted

Luxenberg by screening calls and obtaining information to pass on to Luxenberg regarding potential new clients or matters. Tr. 206, 214-15, 216-18, 222, 272-73, 276-77 (Gleichman); Tr. 349-50 (Luxenberg); Tr. 1058 (Johnson). Sometime after 2007, Luxenberg declined to assign any new client matters to Dickens and referred them outside the firm. Tr. 215, 222, 277-79 (Gleichman).[5]

13. Dickens did not generally work for Luxenberg on her matters, and in that sense Luxenberg was not generally Dickens' supervisor. Tr. 519 (Luxenberg). There were matters handled by Dickens on which he worked on his own with no supervision or involvement by either of the firm's two partners, even when he was an associate. For example, in May 2000, while a firm associate, Dickens undertook to represent Vernon Harris in probating the estate of his sister, Gladys Eloise Harris. Tr. 348 (Luxenberg: did not know how the Harris case was assigned to Dickens in 2000; neither she nor Johnson supervised Dickens). Dickens filed a petition for probate that did not disclose most of the decedent's assets or list all her heirs, failed to marshal the assets of the estate, did not provide his client with information or an accounting of the estate assets, did not prepare or send any bills or statements explaining the services he was providing and the fees he was charging (and money he was taking from estate assets), took more than five years to sell the decedent's three real properties, and began misappropriating funds a month after opening an estate account on which he was the sole signatory – an account for which he and the firm failed to keep any records other than for a six-month period. *See* FF 53-54, 61-63, 69, 76, 79, 93, 95, *infra*.

14. Dickens subsequently represented other firm clients on trusts and estates matters. Tr. 346-47, 353 (Luxenberg). Neither Luxenberg nor Johnson practiced in the area of trusts and

[5] *See also* Tr. 350 (Luxenberg: if potential client in criminal matter contacted firm, she would ask Dickens if he were interested); *but see* Tr. 221-22, 272-73 (Gleichman: he referred potential clients seeking representation in criminal matters to outside lawyers).

estates and the only experience Dickens claimed in that area was as a non-lawyer handling his own family's trust – a claim the Luxenberg firm never verified, Tr. 351 (Luxenberg); Tr. 1036 (Johnson) – and Mr. Tolar's family's trust. Tr. 351 (Luxenberg).

15. Dickens maintained accounts holding entrusted funds, including for estate matters, and including funds for Michelle Seltzer's Estate and trusts. Tr. 355-56 (Luxenberg). Luxenberg and her firm had no policies or procedures to ensure that Dickens kept complete records of the entrusted funds he handled, or that he handled them in accordance with the requirements of the ethical rules. Tr. 355-58 (Luxenberg).[6] Dickens was never a signatory on the firm's IOLTA account, even when a partner. Tr. 354 (Luxenberg). Dickens also had no managerial responsibilities. Tr. 1058-59 (Johnson).

The Luxenberg Firm Moves to Maryland, and Dickens Begins to Work in Virginia

16. By 2007, Johnson was handling very few client matters and spent his time focusing on the administration of the firm. Tr. 213-14 (Gleichman); Tr. 499-500 (Luxenberg); Tr. 1058 (Johnson). It was around this time that Luxenberg and Johnson decided to move the firm's office from the District of Columbia to Maryland. Tr. 296, 298-99 (Luxenberg); Tr. 1038-39 (Johnson); *see also* Tr. 206-08 (Gleichman).[7]

17. By February 2007, Luxenberg, Johnson, and the firm's administrative staff worked in offices in Bethesda, Maryland, and Dickens worked in an office the firm leased in Sterling,

[6] Luxenberg contended that the only trust accounts she maintained were those to hold the proceeds of home sales (Tr. 357) – a contention belied by Shaw who testified that she prepared accountings for Luxenberg in seven to eight probate cases. *See* FF 299, *infra*. However, the Committee believes that this inaccuracy is the result of confusion or faulty recollection, not an attempt to deceive.

[7] In 2007, the firm had three lawyers – Luxenberg, Johnson, and Dickens. Sometime in or after 2007, the firm hired an associate, Kimberly Hibsch. Tr. 210, 248 (Gleichman).

Virginia, near his home (which also was in Sterling). Tr. 296-99, 303-04 (Luxenberg); Tr. 208-09, 212 (Gleichman); Tr. 1038-39, 1047-48 (Johnson).[8]

18. Luxenberg did not take any steps to determine whether, by practicing in an office located in Virginia, where he was not licensed, Dickens would be violating the unauthorized practice of law (UPL) rules of that jurisdiction. Tr. 302-03 (Luxenberg).

19. The Luxenberg firm entered into a lease agreement with Executive Suites for services and an office at 2 Pidgeon Hill Drive, Suite 340, Sterling, Virginia. BX 21; Tr. 304 (Luxenberg); Tr. 1047-48 (Johnson). As a partner in the firm, Dickens signed the lease for the firm on February 5, 2007, and an addendum to the lease in September 2007. BX 21 at 8, 11; Tr. 304 (Luxenberg). Michelle DeLuca, the President of Executive Suites, provided administrative services to Dickens, including conveying messages from others in the Luxenberg firm. BX 21 at 8; Tr. 477 (Luxenberg); Tr. 104, 209 (Gleichman).

20. The Luxenberg firm paid the deposit and rent for the Virginia office in February 2007, and for some months after that. BX 21 at 10; Tr. 304 (Luxenberg); Tr. 1048 (Johnson). At some point, the Luxenberg firm delegated to Dickens the responsibility for paying the rent. Tr. 304-05 (Luxenberg); Tr. 1049 (Johnson). Luxenberg did not know of any steps her firm took to determine whether and with what funds Dickens paid the rent. Tr. 304-05 (Luxenberg); Tr. 1048-49 (Johnson: firm's records on rent paid for the Virginia office are "incomplete"). On numerous occasions, Dickens used client funds, including those from the O'Brien and Seltzer Estates, to pay the firm's rent for the Virginia office. *See* FF 122, 340, and 336, *infra*. There is

[8] Johnson claimed that Dickens worked out of the firm's office in Virginia because "he was not well enough to commute into Bethesda." Tr. 1049 (Johnson). Yet Dickens' undisclosed medical condition did not interfere with his taking multiple trips to Rome, other parts of Europe, Dubai, Mexico, and traveling around the U.S. *See* Tr. 1092-93, 1095 (Ghanem). Nor is there any indication in the record that after a period of recuperation Dickens' physical condition otherwise impaired his activities.

no evidence in the record that at that time Luxenberg had any knowledge that Mr. Dickens was using client funds to pay the firm's rent in Virginia.

The Luxenberg Firm's Policies and Procedures, and Dickens' Noncompliance

21. The primary method that the Luxenberg firm used to monitor the administration of its practice was to hold staff meetings at which the lawyers reviewed the firm's list of open cases. Tr. 496-98 (Luxenberg); Tr. 1036-37 (Johnson). The partners and other lawyers met periodically, at least every other week. Tr. 498 (Luxenberg); Tr. 1039-40 (Johnson); Tr. 220 (Gleichman: firm had meetings, but on no set schedule).

22. For the first few months after the firm moved to Maryland, Dickens went there for the meetings, but his participation "trailed off." Tr. 1039 (Johnson); Tr. 498 (Luxenberg); *see also* Tr. 218, 220-22, 254 (Gleichman). Thereafter, he participated by telephone, and did so only "sporadically." Tr. 1040 (Johnson).

23. Dickens also interacted less with the other firm employees. Dickens occasionally visited the Maryland office, but over time his visits became few and far between. Tr. 211, 215, 218, 220, 254, 257 (Gleichman); Tr. 1061-62 (Johnson). After the firm moved to Maryland, Dickens was sometimes difficult to reach by telephone and e-mail and often was away from the Virginia office. Tr. 226, 278 (Gleichman); Tr. 498 (Luxenberg). There were many occasions when no one connected with the firm knew where Dickens was or what he was doing. Tr. 226 (Gleichman: Dickens would "fall off the record" for as much as a month at a time); Tr. 384, 471-72 (Luxenberg: Dickens traveling regularly by 2009, she did not know where he went or how long he would be away).

24. By 2009, "[i]t became hard to reach [Dickens]." Tr. 1061 (Johnson). As time went on, he became less and less available until, by 2010, "he was – just wasn't – wasn't there." Tr. 1062

(Johnson); *see also* Tr. 257-58, 271, 278, 285 (Gleichman: Dickens was increasingly difficult to reach, and Dickens eventually stopped responding to Luxenberg); *see, e.g.*, BX 141-42, 158-61, 167 (Luxenberg e-mails to DeLuca asking about Dickens' whereabouts or asking her to convey message).

25. The case list that the Luxenberg firm used to monitor client matters and which lawyer worked on them was generated based on the firm's retainer agreements and "time slips" or the firm's billing records. Tr. 366 (Luxenberg); Tr. 1055 (Johnson). The firm's practice was to provide its clients with a fee or retainer agreement. Tr. 346, 352 (Luxenberg). After the retainer agreement was created, the firm opened a file for the client and added the matter to the firm's billing system and case list. Tr. 1058, 1066-67 (Johnson).

26. The Luxenberg firm represented most clients on an hourly fee basis. Tr. 223-24 (Gleichman); Tr. 358 (Luxenberg). The lawyers in the firm were supposed to keep contemporaneous records of their time. Tr. 225 (Gleichman); Tr. 358-59 (Luxenberg); Tr. 1040 (Johnson). Dickens, however, failed to record time for some of his clients, including Vernon Harris, William Garrity, Samuel Ghanem, Courtney Stadd, and for the most part, Michelle Seltzer. *See* FF 29, 30, 32, 61, 63, 87 & n.17, *infra*; *see also* Tr. 1041 (Johnson: Dickens was employed full-time, but did not bill for full-time work); Tr. 225 (Gleichman: Dickens fell behind in billing time; needed prodding). Luxenberg admitted Dickens did not provide billing records in the Seltzer matter (Tr. 363), notwithstanding that the firm was billing Ms. Seltzer on an hourly basis. BX 19; BX 29; BX 135 at 9-18. There is also evidence that Mr. Harris was to be billed hourly. *See* FF 56, *infra*. The record is unclear with respect to Dickens' other clients.[9]

[9] The firm did not know what its financial arrangements were with those clients. According to Johnson, Dickens claimed that he handled trust and estates matters on a percentage basis and that he did not need to keep time records in his criminal matters. Tr. 1041 (Johnson). However, Johnson did not know how trusts and estates lawyers

27. In 2009, the Luxenberg firm stopped paying Dickens for whatever time he spent working on client matters. Tr. 377-78 (Luxenberg: Dickens would bill for his time for Seltzer, but firm would not pay him for work).[10] The firm's bank records, however, show that the firm made seven direct deposits in Dickens' personal bank accounts in 2009 of $2,462.67 (net pay) each.[11] While Luxenberg was clearly in error in so testifying, the Committee does not believe her testimony represents a conscious effort to mislead.

28. Despite the firm's stated practice, there is no evidence that Dickens prepared retainer or fee agreements for the clients he represented. In and after 2007, Johnson never saw a fee or retainer agreement that Dickens generated for a client. Tr. 1042-43 (Johnson). Johnson also had no recollection of the firm having a retainer agreement for any client that Dickens represented before 2007, and was sure he had never seen a retainer for any trusts and estates client Dickens may have represented. Tr. 1043 (Johnson); *see also* Tr. 214-17 (Gleichman: not aware firm had any "formal system" for providing notice of new clients; not aware of any new client or matter that Dickens had brought to firm after August 2007).

29. The firm did not have a retainer agreement for William Garrity, whom Dickens represented beginning in 2008. Tr. 1014, 1043, 1067 (Johnson). The firm did not have a retainer agreement for Courtney Stadd, whom Dickens represented in criminal matters in the District of

billed, he admittedly never saw any agreement for clients for whom Dickens did trusts and estates work, either before or after 2007, and admittedly never saw the firm's agreement for the Stadd matter. Tr. 1042-45 (Johnson).

[10] What time Dickens recorded in the Seltzer matter had little or no correlation to the time he actually spent on a task and the date he performed it – this was true not only in 2009, but in 2004. *See* FF 146, 170, 172, 184, 194, and n.33, *infra*. In 2010 and 2011, Dickens did not record any time for working on the Seltzer Estate and trust matters. BX 135 at 16-18 (last bills generated in July and August 2010 included time for Luxenberg only).

[11] The firm made five deposits in the Federal Credit Union account that Dickens shared with Billy Tolar between January and July 2009 (BX O15 at 27, 33, 48, 52, 54), and two deposits in his account at United Bank in September and October 2009 (BX 279 at 2, 7). The payments appear to have stopped within a month after Dickens received a $100,000 check from the Stadds.

Columbia and elsewhere beginning in 2009.[12] Tr. 359-60 (Luxenberg); Tr. 1044-45 (Johnson). The same was also true for Samuel Ghanem, whom Dickens represented in a civil case. Tr. 364-65 (Luxenberg: Dickens claimed Ghanem refused to pay entire fee).

30. Although Luxenberg and her firm knew that Dickens represented a few clients after 2007, FF 29, they had no policies and procedures in place to provide any assurance that Dickens was conforming to the ethical rules. In the case of Dickens' representation of Garrity as personal representative of the O'Brien Estate, Luxenberg did not how he became a firm client. Tr. 351 (Luxenberg). Because Dickens did not provide Garrity a retainer agreement or generate any bills, Johnson admitted that he did not know if the matter "made it onto the case list or not" (Tr. 1067) - the firm's method for monitoring client matters. Tr. 1036-37 (Johnson); *see also* Tr. 274-76 (Gleichman: administrative staff instructed to send mail in O'Brien matter to Dickens without scanning it).

31. Luxenberg and her firm knew of Dickens' representation of Garrity at some point because, beginning on June 26, 2008, Dickens provided the Luxenberg & Johnson law firm with checks drawn on the O'Brien Estate account totaling more than $20,000. The firm negotiated these checks without receiving or requiring Dickens to provide any supporting documents, such as a retainer or bill indicating that the firm was entitled to the fee. Tr. 274-76 (Gleichman: Luxenberg aware of matter); Tr. 1014-15 (Johnson); BX O12 at 19, 44, 58; Tr. 1014, 1068 (Johnson); Tr. 371-72 (Luxenberg: would call Dickens before depositing check).

32. Luxenberg and her firm also had little or no understanding of Dickens' work for other clients, including Stadd, whom they believed Dickens represented in a "major criminal case"

[12] It is noteworthy in this regard that both Luxenberg and Johnson cited the Stadd matter as evidence of Dickens' skill and a reason for his lack of attention to other matters.

that occupied much of his time in 2009 (to the extent he spent time on firm matters). Tr. 352, 360, 456 (Luxenberg); BX 207. The firm could not produce a retainer agreement or any billing records for Stadd. Tr. 359-60, 363 (Luxenberg); Tr. 1041, 1044-45 (Johnson). According to Luxenberg, Dickens handled criminal matters "differently," Tr. 359 (Luxenberg), but she had no understanding of the fees that Dickens, a partner in her firm, was charging or receiving for representation of Stadd. *See* Tr. 359-61, 363 (Luxenberg: Stadd may have paid firm $25,000 for the trial; did not know about $100,000 payment Dickens received in September 2009, which he deposited in his personal account (BX 279 at 5)). In May 2011, after Dickens had fled the country, Luxenberg went to the firm's Virginia office and saw Stadd's wife shredding boxes of documents, but did not inquire of her or make any effort to stop her. Tr. 485-88 (Luxenberg).

33. In and after 2007, the principal place of business for the Luxenberg firm was in the Maryland office and most of the firm's client files were maintained there. Tr. 234-36 (Gleichman). However, Luxenberg testified that although Dickens was required to keep complete client files that included e-mails, he was permitted to maintain them in the firm's Virginia office. Tr. 352-54. Dickens was supposed to save electronic documents in the firm's computer server, but failed to do so. As a result, other firm personnel did not have and could not find documents relating to the client matters on which Dickens worked. Tr. 235-37 (Gleichman).

Dickens' Frequent Travel and Stated Intention to Leave the Practice of Law

34. In early 2009, Dickens told Luxenberg that he would be leaving the practice of law because he wanted to pursue other interests. Tr. 371, 380-81 (Luxenberg). According to Luxenberg and Johnson, the firm stopped paying Dickens a salary in 2009 because "money was tight." Tr. 1054 (Johnson); Tr. 306, 377, 412 (Luxenberg: Dickens did not get paid in 2009). However, because Dickens had advised Luxenberg that he could still handle some matters,

Luxenberg assigned Dickens some new matters, most notably including preparing a trust and estate plan for Michelle Seltzer, who had called Luxenberg because she had terminal cancer and wanted to ensure she had a long-term trust in place to care for her son. Tr. 373-75 (Luxenberg); Tr. 1063 (Johnson: talked to Luxenberg about Dickens' unavailability).

35. By 2009, Dickens was traveling frequently and when he did, Luxenberg and the rest of her firm did not know where he was or how long he would be gone. Tr. 384 (Luxenberg).

36. After Dickens told Luxenberg and her firm in 2009 that he would be leaving, he continued to work on only a few matters other than the Seltzer matter, including: (i) the Stadd criminal matters in D.C. and Mississippi; (ii) the Virginia divorce case of Michelle DeLuca, in which Dickens apparently forged an associate's name on a pleading; and (iii) the Maryland domestic relations case of Theodore Gancayco in which Dickens appeared *pro hac vice* after it was transferred to him by Luxenberg. Tr. 214, 234, 238-39, 267-68, 283 (Gleichman); Tr. 301-02, 365 (Luxenberg); Tr. 1045-47 (Johnson).

37. Beginning no later than 2009, Dickens traveled on a regular basis on matters unrelated to the business of the firm or any of its clients. Tr. 231-32, 256 (Gleichman); Tr. 1061-62 (Johnson); *see also,* Tr. 760 (Matinpour: based on debit items in Dickens' personal account, Dickens took at least 10 trips between Sept. 2009 and April 2011). Luxenberg, Johnson, and employees of the firm were aware that Dickens was traveling internationally, including to Mexico, Rome and Dubai (as well as around the U.S.) but apparently had no direct knowledge of the purpose for his travel. Tr. 231-32, 256 (Gleichman); Tr. 381 (Luxenberg: Dickens did research for Vatican and some unspecified "work" for GAVI fund); Tr. 1061-62 (Johnson: knew he took trips to Dubai but did not say why; claimed went to Rome to "conduct[] business for the Vatican").

38. Dickens' trips to Dubai and Europe in 2009 and 2010 were purportedly in pursuit of a satellite telecommunications venture in the Middle East. Tr. 1092-93, 1095 (Ghanem: took several trips with Dickens, including to Dubai and Paris).[13] Dickens did not disclose to his firm the nature of his purported ventures and the parties involved – information that would be necessary for the firm to identify conflicts of interest for current and future clients. Tr. 234 (Gleichman: firm had no policy requiring disclosure of outside activities; only checked for conflicts based on client matters coming through Gleichman); Tr. 382 (Luxenberg: same).

39. Luxenberg knew Dickens traveled to Dubai. She further testified that she did not know anything about his ventures and never heard of JECRAL, LLC, FRW Telecom, LLC, and Quantum3 Ventures. Tr. 381-84 (Luxenberg); *see also* Tr. 233-34 (Gleichman). Each of these companies shared her firm's Sterling, Virginia, office suite, and Dickens created them and used them to pursue his purported ventures while allegedly a full-time employee and partner of the Luxenberg firm. *See* BX 86-87; BX 295; *see also* BX 237-38 (Dickens full-time through April 2011, although on "sick leave" from late October 2010).

Other Irregularities Involving Dickens

40. Sometime after becoming a partner in 2003, Dickens told Luxenberg, Johnson, and others that he had trained as a canon lawyer, and was working for the Vatican. Tr. 294 (Luxenberg); Tr. 1059-60 (Johnson); *see also* Tr. 228, 269 (Gleichman: Dickens hinted that work for Vatican related to the pedophilia scandal in the Roman Catholic Church). It is unclear when Dickens allegedly received this training while purportedly a full-time employee of the Luxenberg

[13] It is unclear whether Dickens was pursing an actual venture or if it was a sham. Joseph Ghanem, his travel companion and interpreter, never witnessed Dickens attend a business meeting while in Dubai. Tr. 1115-19 (Ghanem).

firm. Johnson could not explain it, stating: "I didn't know and didn't think about it at the time." Tr. 1060 (Johnson).

41. On some occasions, Dickens would dress as a priest and claimed to have some official affiliation with the Roman Catholic Church. Tr. 293-94, 446 (Luxenberg); Tr. 1091-92 (Ghanem). Luxenberg was present on a number of these occasions, including at the funeral of their client, Michelle Seltzer. Tr. 293-94, 446 (Luxenberg); Tr. 97 (Falk); *see also* Tr. 765-66 (Matinpour: no evidence that Dickens ordained cleric or had any official affiliation with Catholic Church). Luxenberg, Johnson, and Dickens took two trips to Rome, which Dickens financed without Luxenberg and Johnson knowing the source of his funds. Tr. 1059, 1065-66 (Johnson); Tr. 294-95, 385 (Luxenberg: claimed that the Vatican financed some of the expenses, and Dickens paid the rest).

42. While a partner in the Luxenberg firm, Dickens also claimed to have received specialized training or degrees in other vocations. Among other things, Dickens claimed he was a trained chef, a baker, had completed medical school, had worked for NASA, was a master electrician, a software designer, a nutritionist, and did ice sculptures. Tr. 291-92 (Luxenberg: never verified anything about Dickens; he seemed credible); Tr. 227, 231-33 (Gleichman: skeptical about Dickens' claims); Tr. 1092 (Ghanem). There is no evidence that Dickens had any specialized expertise or training in the fields or vocations he claimed to have mastered. *Compare* BX 297 (Dickens' application for admission to the D.C. Bar) *with* Tr. 295 (Luxenberg: Dickens was full-time employee of firm by 1996); Tr. 765-66 (Matinpour).

43. Dickens claimed to be wealthy, but the bank records introduced at the hearing belie that claim. *See* Tr. 305-06 (Luxenberg); Tr. 1054 (Johnson); *see also* Tr. 232 (Gleichman: skeptical about Dickens' claims of wealth). Dickens' personal account was frequently overdrawn.

Tr. 758 (Matinpour: personal account at United Bank overdrawn at least 16 times between January 2010 and April 2011); BX 279. On numerous occasions when the balance in his account dropped to a few hundred dollars or was overdrawn, Dickens would help himself to funds belonging to the Harris, O'Brien, or the Seltzer estates and trusts and deposit those funds in his personal account. BX 279. He then used those funds to pay his credit card and other personal expenses, which were substantial. *Id.*

44. In 2007 and again in the beginning of 2010, Dickens used a firm-issued credit card to charge personal expenses. The firm sent the credit card company a check for $27,000 in 2007 to pay the balance and attempted to close the account. BX 157 at 5-6; Tr. 368 (Luxenberg: claimed no idea what percentage of those charges were made by Dickens for personal items, but admitted firm closed or attempted to close account in 2007). Dickens, however, continued to use the card to charge personal expenses and, by January 2011, accumulated charges of $25,000 – which Luxenberg knew. Tr. 369-70 (Luxenberg); BX 157 at 1-2; BX 158. Dickens never paid the balance, despite promises to Luxenberg that he would. Tr. 370 (Luxenberg).

B. The Harris Matter

45. In May 2000, while he was an associate in the Luxenberg firm, Dickens agreed to represent Vernon Harris in probating the estate of his sister, Gladys Eloise Harris. A year earlier, in June 1999, Gladys Harris had paid the Luxenberg firm $250 for a "consultation" with Dickens. BX H2; Tr. 1021 (Johnson). Dickens claimed to have represented Gladys Harris, a D.C. resident, for years (BX H10 at 3, ¶ 8), but it is unclear what, if any, legal work Dickens actually did for her during her lifetime.

46. Ms. Harris died on May 12, 2000. BX H3 at 2; Tr. 1170 (Harris). At the time of her death, she did not have a final or signed will. BX H13 at 2. She had never married and had

no children, and was survived by her brother, Vernon Harris, and two half-sisters, Jean and Diane. *Id.* at 2; Tr. 1169, 1208, 1210 (Harris).

47. Ms. Harris had substantial assets when she died, including: (i) more than $90,000 in cash or liquid assets that, after her death, were deposited in an account for her estate; (ii) stocks in a number of companies, including The Southern Company, Pepco, Green Equity Investors, and Liberty Mutual; (iii) a safe deposit box and its contents; (iv) furniture and other personal items in her home; and (v) three real properties in the District of Columbia – 143 T Street, NW, 1015 Rhode Island Ave. NE, and 1959 3rd Street, NW. Tr. 1172, 1181-82 (Harris); BX H3 at 5; BX H21; BX H24; BX H25. Dickens was familiar with Gladys Harris' property and assets when she died. BX H10 at 3 (¶ 8).

48. Two of the three real properties Ms. Harris owned were rental properties, including the 3rd Street property that she and her brother, Vernon Harris, had inherited from their grandfather. Tr. 1172, 1204-05, 1207 (Harris). These two properties continued to be rented after Ms. Harris' death and Barac Company, the property management company, continued to collect the rental income. BX H12; BX H13; Tr. 1172, 1204-05 (Harris).

49. Mr. Harris, 74 years old in 2000, was in the hospital recovering from a stroke when Gladys died. BX H3 at 2; Tr. 1170 (Harris). Upon learning of his sister's death, Mr. Harris traveled from his home in Marcy, New York, to the District of Columbia with his wife, children and other family members to attend her funeral. Tr. 1171, 1179, 1183-84 (Harris).

50. Catherine Pree, a close friend of Gladys Harris, told Mr. Harris that Dickens was Gladys' lawyer. Tr. 1171, 1175 (Harris). While he was still in the District of Columbia, Mr. Harris called Dickens and scheduled a meeting to discuss his sister's affairs. Tr. 1172-73 (Harris).

51. Mr. Harris met with Dickens at the Luxenberg firm, which in 2000 was still located in the District of Columbia. Tr. 1173-74 (Harris). Dickens appeared to be knowledgeable about the Harris family members, apparently based on information Gladys Harris had provided him. Tr. 1176 (Harris).

52. At their initial meeting, Dickens advised Mr. Harris that he would represent him and take care of probating Gladys Harris' estate. Dickens provided Mr. Harris documents relating to opening the estate and appointing Mr. Harris as personal representative for the estate. Tr. 1174, 1177-78 (Harris). Dickens already had completed or filled in the petition for probate that he asked Mr. Harris to sign, which Mr. Harris did. BX H3 at 2-7; Tr. 1182-83, 1185 (Harris).

53. The petition for probate did not disclose all of Gladys Harris' property or family members. BX H3 at 4-5. Dickens claimed that Mr. Harris was the sole surviving sibling despite his knowledge of their half-sisters. *Id.* at 4. Dickens told Mr. Harris that they did not have to be included on the petition. Tr. 1186 (Harris). The referenced documents, prepared by Dickens, also failed to disclose that Gladys Harris had nephews and nieces. BX H3 at 4.

54. In the petition, Dickens listed only one of the three real properties he knew Gladys Harris owned, and he did not list the cash, stocks and other liquid assets she held. BX H3 at 5; Tr. 1186-87 (Harris). Dickens valued the real and personal assets he disclosed at $98,000. BX H3 at 5. Mr. Harris did not see all the pages of the petition that Dickens asked him to sign, including the list (with valuations) of his sister's property. Tr. 1187-88 (Harris).

55. On May 17, 2000, Dickens filed the petition for probate for the Harris Estate with the Probate Division of the District of Columbia Superior Court in *In re Harris*, 2000 ADM 0874. BX H3. Dickens requested that the probate be unsupervised and abbreviated. *Id.* at 2. Dickens never sought to update the petition by including a complete and accurate list of Gladys Harris'

assets and their value, and the other beneficiaries or interested parties to her Estate. BX H3 at 1 (docket sheet); BX H3 (entire court file through August 2013); Tr. 902 (Matinpour).

56. On May 19, 2000, two days after he filed the petition for probate, Dickens provided Mr. Harris additional documents to sign. One of the documents was an engagement letter on the letterhead of "Luxenberg, Johnson & Dickens, P.C." BX H4.[14] In the letter, Dickens included two paragraphs under the caption "Hourly Billing Rates" setting forth different legal fees, including (i) a fee of 3.5% of the value of the estate to be paid in thirds (the last of which would not be due until the estate was closed); (ii) $1,000 to clear title to the 3rd Street property; and (iii) hourly fees of $250 for work on the Rhode Island property. *Id.* at 1-2. Dickens stated in the letter that he would provide Mr. Harris monthly statements detailing his work and any work others in the firm performed. *Id.* at 2. Mr. Harris testified that he did not understand how much Dickens would charge for the work, except that the fees would come out of his sister's estate. Tr. 1192-93 (Harris).

57. On May 19, 2000, Dickens also had Mr. Harris execute a "Statutory Power of Attorney" appointing Dickens as his agent or attorney-in-fact. BX H5; Tr. 1194-95 (Harris). Dickens told Mr. Harris that this would allow him to take care of everything so that Mr. Harris would not have to travel back to the District of Columbia. Tr. 1194-95 (Harris). Mr. Harris trusted Dickens to take the necessary steps to probate his sister's estate. Tr. 1195 (Harris).

58. Mr. Harris had to leave the District of Columbia shortly after arriving because of the death of his sister-in-law on May 19, 2000. Tr. 1179-80, 1184, 1189 (Harris). While he was in the District of Columbia in May 2000 and at a later time, Mr. Harris went through some of his sister Gladys' belongings and papers and learned that she had owned stock in some companies,

[14] Although Dickens did not become a partner of the firm until 2003, he and the firm used letterhead with the caption "Luxenberg, Johnson, & Dickens, P.C., Attorneys at Law" as early as 2000. *See, e.g.*, BX H4; BX H7.

had a couple of bank accounts, and had a safe deposit box. Tr. 1180-82 (Harris). When Mr. Harris asked Dickens about the contents of the safe deposit box, Dickens (who apparently had the key) claimed it was empty. Tr. 1181 (Harris). A couple of days after Mr. Harris left the District of Columbia, Dickens apparently prepared and forged the signature of Mr. Harris on a letter dated May 22, 2000, to Dickens stating that he (Harris) was enclosing documents and keys. BX H6. Mr. Harris knew nothing about the letter and did not sign it. Tr. 1195 (Harris).

59. On May 23, 2000, the Probate Court entered an "Abbreviated Probate Order" appointing Mr. Harris personal representative of the Estate, and directing that the administration of the Estate be unsupervised. BX H3 at 9.

60. The next day, May 24, 2000, Dickens opened an account for the Harris Estate on which he was the sole signatory. BX 24; *see also* BX 25 at 1. The account statements listed the Luxenberg firm's name and address, as well as Dickens' name on the account. BX 24; BX 25. Mr. Harris did not receive the bank statements and was unaware of the funds deposited in the account or what Dickens did with them. Tr. 1196-98 (Harris).

61. By the end June 2000, the Harris Estate bank account had more than $94,000. BX H24 at 3. On June 28, 2000, Dickens wrote a check to the Luxenberg firm for $10,000 drawn on the Estate account. *Id.* at 3-4; Tr. 904 (Matinpour). The Luxenberg firm negotiated the check notwithstanding that it had no billing statement or any other document indicating that the firm or Dickens was entitled to take this amount. Tr. 1021 (Johnson: firm had no billing records or statements for Harris Estate); Tr. 1193-94 (Harris). Dickens did not tell Mr. Harris that he was taking $10,000 in Estate assets and giving it to his firm, and Mr. Harris never authorized him to do so. Tr. 1198 (Harris). While presumably Dickens and the firm might have been entitled to some

amount of fees pursuant to the May 19, 2000 engagement letter, there is no evidence that Dickens or anyone in the firm ever created a billing statement as required by the engagement letter. *Id.*

62. Less than two months later, in August 2000, Dickens wrote two additional checks drawn on the Harris Estate account – one for $2,500 and another for $1,500 – both payable to himself. BX H23; BX H24 at 7-9; Tr. 904 (Matinpour). Dickens deposited these two checks, totaling $4,000, into his personal account at the Federal Credit Union. BX H23; BX H24 at 9. Dickens did not advise Mr. Harris that he was taking another $4,000 in Estate assets and paying it to himself, and Mr. Harris never authorized him to do so. Tr. 1198-99 (Harris). *See also* FF 61.

63. It is unclear what Dickens did in the first two years following Gladys Harris' death to administer her Estate. Dickens never provided Mr. Harris any statements or bills reflecting the work he was doing or disclosing the Estate funds that Dickens had paid to his firm and to himself. Tr. 1193-94 (Harris); Tr. 1021, 1023 (Johnson).

64. The firm's file contained a letter dated February 7, 2001, to Mr. Harris, which Dickens signed. BX H7; Tr. 1025 (Johnson: document in firm file). The statements in the letter, however, bear no relation to what actually occurred. For example:

- Although the letter refers to a check for $60,000 to Mr. Harris, Mr. Harris did not receive the $60,000 check until July 2005, more than four and one-half years later. BX 30 at 1; Tr. 1202, 1215 (Harris); *see also* BX H9 (in August 2002 Dickens told a lawyer for the Estate of Jean Harris, one of Mr. Harris' half-sisters, that Gladys Harris' Estate had more than $82,640, approximately the same amount it had in October 2000, which is consistent with Dickens not sending a check in 2001); BX H24 at 14; Tr. 1199-1200, 1202-03, 1215 (Harris: remembered and had a record of receiving only one check for $60,000).

- Dickens did not close the Harris Estate in February 2001, as he represented in the letter (BX H7), but kept it open for several more years. BX H3 at 1.[15]

[15] In September 2004, more than three years later, Dickens forged Mr. Harris' name on a request to extend his appointment as personal representative because Dickens still had not taken steps to sell the 3rd Street property. BX H3 at 16; Tr. 1190-91 (Harris).

- Dickens did not take the others steps outlined in the February 2001 letter, including: transferring the real property to Mr. Harris; notifying Barac Company to send reports (and rent) to Mr. Harris; completing or filing tax returns for Ms. Harris or her Estate; and accounting for the Estate assets. Tr. 1193-94, 1203, 1207 (Harris); *see also* Tr. 1023 (Johnson: no tax return or accounting in firm file).

65. In August 2002, a lawyer acting on behalf of the Estate of Jean Harris contacted Dickens about her estate's right to receive a share of Gladys Harris' Estate. BX H8; Tr. 1025 (Johnson: document in firm file). When Mr. Harris learned of the request, he told Dickens that he had no problem including his half-sisters as beneficiaries. Tr. 1209 (Harris).

66. Dickens later communicated with the Estate of Jean Harris (BX H9) and thereafter with Diane Harris Marsh, the other half-sister. BX H10; Tr. 1026 (Johnson: document in file).

67. In a letter to Ms. Marsh, Dickens attached a proposed petition in which he sought to replace himself for Mr. Harris as personal representative – something he never discussed with his client, Mr. Harris. Tr. 1210-11 (Harris). However, Dickens never filed the petition to appoint himself successor personal representative. BX H3 at 1. Dickens also never amended the petition for probate or advised the Superior Court that Gladys Harris' half-sisters should be included as interested parties and beneficiaries of her Estate. BX H3.

68. In February 2003, Dickens had Mr. Harris sign two letters that he prepared on firm letterhead to Barac Company concerning the two rental properties. BX H11-12; Tr. 1206-07 (Harris). In the letters, Dickens and Mr. Harris directed Barac Company to send the rental income for the properties to Dickens. BX H11-12.

69. Dickens never provided Mr. Harris an accounting or any information about the rental income he received or what he had done with it. Tr. 1207 (Harris). Mr. Harris also had no idea what Dickens had done with the stock his sister owned. When he asked Dickens about the stock, Dickens told him that he was accumulating and selling it. Tr. 1217-18 (Harris).

70. Later in 2003, Dickens arranged for the sale of the Rhode Island Avenue property, which sold in late September or October 2003 for $151,410 (BX H18), and the T Street property, which sold in October 2003 for $183,000 (BX H19); Tr. 902 (Matinpour); BX H18-19 records from D.C. Recorder of Deeds); *see also* Tr. 1191, 1205-06 (Harris: did not know why it took so long to sell properties).

71. In December 2003, and again in March 2004, Dickens wrote to Mr. Harris and the two other beneficiaries about the sale of the Rhode Island and T Street properties. BX H15-16. In the December 2003 letter, Dickens claimed he was enclosing checks to them, while retaining $8,000 to pay taxes. BX H15. There is no evidence the Dickens ever filed a tax return or paid any taxes. Tr. 1023 (Johnson); Tr. 1204 (Harris).

72. In March 2004, Dickens prepared another letter that purportedly enclosed additional checks. BX H16. Although Dickens eventually sent Mr. Harris a check for $60,000, it was not until July 2005. BX H30 at 1. Mr. Harris had no record of receiving a check for $55,380.75 – the amount that Dickens claimed to have sent him in March 2004. BX H16; *see* Tr. 1202-03 (Harris).

73. In March 2004, Dickens advised Mr. Harris and the other Estate beneficiaries that he would have to file a petition or action to quiet title to the 3rd Street property. BX H16. Although Dickens began work on a draft petition, he never completed or filed it. BX H14; Tr. 1027-28 (Johnson: document in firm file); Tr. 1134 (Matinpour). The 3rd Street property nevertheless was sold, but not until June 2005. BX H20.

74. In September 2004, more than four years after Gladys Harris died, Dickens again forged Mr. Harris' signature, this time on a request to extend his appointment as personal representative. BX H3 at 16; Tr. 1190-91 (Harris). Dickens claimed that the decedent's estate

could not be completed because it had an interest in the 3rd Street property which would not be "distributed" until November 2004. BX H3 at 16.

75. On October 5, 2004, the Probate Court granted the request and extended Mr. Harris' appointment as personal representative of the Estate, *nunc pro tunc* from May 23, 2003, the third anniversary of his initial appointment. BX H3 at 19-21.[16]

76. The October 5, 2004 order was the last action reflected in the Probate Court records for the Harris Estate through 2013. BX H22. Mr. Harris had no idea why Dickens took so long to sell the 3rd Street property. Tr. 1191, 1205-06 (Harris).

77. On June 30, 2005, Mr. Harris signed the HUD-1 form, the deed, and other documents to complete the sale of the 3rd Street property. BX H20; Tr. 1213 (Harris). Mr. Harris signed the documents in his capacity as the sole surviving heir of the Estate of John Robinson, his grandfather, and as Personal Representative for the Harris Estate. The 3rd Street property sold for $168,000, which after costs resulted in a net of $144,814.52 to the seller. BX H20.

78. On November 7, 2005, several months after the sale, Dickens sent Mr. Harris and the other heirs a letter enclosing a document entitled "Estate of Robinson Distribution." BX H17. Dickens disclosed that he had received $144,814.52 from the sale of the 3rd Street property, and stated he would pay each of the beneficiaries $21,710.86, and an additional $65,126.17 to Mr. Harris. BX H17 at 2. Dickens sent Mr. Harris a check for $21,710.86, but never paid him the additional $65,126.17. BX H30 at 2; Tr. 1201-03, 1214-15 (Harris). Dickens also never accounted for the other funds that he deducted from the sales proceeds of the 3rd Street property, including

[16] Pursuant to D.C. Code § 20-1301(c), in an unsupervised administration, the appointment of the personal representative who does not file a Certificate of Completion is terminated automatically on the date three years after the appointment, unless the Court extends the appointment, a point never acknowledged by Dickens in any pleading or writing available to the Committee, including the September 2004 petition for extension of appointment as personal representative.

the $10,000 for taxes and $4,000 for additional legal fees. BX H17 at 2; Tr. 1216 (Harris); *see also* Tr. 1021, 1023 (Johnson: confirms firm file does not include any tax returns, accountings, or legal bills or statements for services). Because there is no evidence that Dickens ever prepared a tax return, the Committee concludes that Dickens took the $10,000 along with the rest of the funds for himself.

79. Mr. Harris asked Dickens for an accounting of the Harris Estate funds, but never received one. Tr. 1193-94, 1203, 1216-18 (Harris). In response to one of Mr. Harris' requests, Dickens lied and said that he already had sent him an accounting. Tr. 1217 (Harris); Tr. 1023 (Johnson: firm file does not include an accounting). There was never any response to Mr. Harris' follow-up request for an accounting. Tr. 1217 (Harris).

80. By the end of 2005, Mr. Harris believed that his sister Gladys Harris' Estate was probated and there was nothing left to do. Tr. 1217-18 (Harris); *see also* Tr. 1023-25 (Johnson: firm file does not include any documents or correspondence after 2005).

81. Unbeknownst to Mr. Harris, Dickens continued to maintain a bank account for the Harris Estate, which sometime between November 2000 and July 2006 was transferred from Century Bank to United Bank. BX H24; BX H25; *See* Tr. 1220 (Harris: did not know that Dickens still had an account for Estate in and after 2006).

82. Neither Dickens nor the Luxenberg firm had or maintained financial records for the Harris Estate after October 2000, notwithstanding that Dickens sold the last real property in 2005, and continued to receive funds on behalf of the Estate through 2010. Tr. 1021-23 (Johnson); *see* BX H17; BX H25.[17] Because Dickens and the firm did not maintain those financial records and

[17] Rule 1.15(a) and D.C. Bar R. XI, § 19(f) require that a lawyer maintain *complete* records of entrusted funds for five years after the representation ends. Because Dickens continued to receive funds on behalf of the Harris Estate through December 2010 (*see* FF 89, 91, *infra*), he and his firm should have maintained complete records for the Harris Estate, including bank and other financial records, through at least December 2015.

because banks are required to retain records for only seven years, there was no evidence presented as to exactly how much money was deposited in the Harris Estate account and what Dickens did with the funds.

83. Bar Counsel could not obtain records for the Harris Estate account from November 2000 through July 2006. Tr. 903-04 (Matinpour); BX H25. The records for the account as of August 2006 reflect that United Bank sent the monthly bank statements for August and September 2006 to Dickens at the Luxenberg firm in the District of Columbia. BX H25 at 1-3. Beginning in October 2006, Dickens had the bank send the monthly statements to his home address in Sterling, Virginia, not the Virginia office address, even though the statements continued to include the law firm name of "Luxenberg, Johnson & Dickens, PC." *Id.* at 4-101.

84. In and after 2006, Dickens continued to receive funds on behalf of the Harris Estate, including dividend checks payable to the Harris Estate. BX H25. Dickens deposited some of those dividend checks in the Harris Estate account. BX H23; Tr. 907-08 (Matinpour). Many of those checks, however, were never credited to the account because Dickens delayed depositing them, sometimes for more than a year. *Id.*; BX H23. For example, on March 7, 2008, Dickens deposited five checks payable to Ms. Harris or her Estate totaling $681.62 in the Harris Estate account. The bank returned three of those checks totaling $525.24 (and charged fees of $22.50) because the checks were dated in either 2005 or 2006. BX H25 at 45-49.

85. The available bank records reveal that Dickens used the funds in the Harris Estate account to pay personal expenses. For example, Dickens wrote eight checks drawn on the account totaling $7,480 payable to himself or Billy Tolar, his friend and later spouse. BX H23 at 1; Tr. 905 (Matinpour). Tolar had nothing to do with the Harris Estate. Tr. 1220 (Harris).

86. Dickens used another $4,965.27 from the Harris Estate to pay his Capital One credit card. BX H23 at 1; Tr. 905-06 (Matinpour). He used $3,995 in Harris Estate funds to pay AutoHaus, a store for auto parts for Audis and Volkswagens near his home. BX H23 at 1; BX H24 at 43-44 (Dickens wrote the check to the bank and used it to purchase a bank check payable to AutoHaus); Tr. 905-06 (Matinpour).

87. Dickens also deposited into the Harris Estate account a settlement check for another client, who had nothing to do with the estate. BX H23 at 1-2; Tr. 1221 (Harris). On January 4, 2008, Dickens deposited a $77,000 check payable to the Luxenberg firm. This check was the third and final installment due on a settlement in favor of Samuel Ghanem and his company, AFG International. BX H25 at 35; BX H27 at 3-10; Tr. 1135 (Matinpour).[18] After Dickens deposited the $77,000 check in the Harris Estate account, he disbursed $62,000 to Sam Ghanem by writing a check to the bank for $62,008 and purchasing a bank check to Ghanem for $62,000. Tr. 1135 (Matinpour); BX H25 at 33-38. Dickens kept the balance in the account and then used the funds to pay his personal expenses. BX H25.

88. In and after 2006, Mr. Harris communicated with Dickens on occasion, but on personal matters. Tr. 1218-19 (Harris). Dickens had befriended Mr. Harris' family, and remained in contact with them, even after he had fled to St. Kitts. Tr. 762-63 (Matinpour); Tr. 1219 (Harris); *see* FF 374, *infra*. Dickens did not tell Mr. Harris that he was continuing to receive funds on behalf of the Estate, much less that he was taking those funds for himself. Tr. 1220-22 (Harris). The last time Dickens spoke to Mr. Harris was Thanksgiving weekend 2010. Tr. 1219-20, 1222 (Harris).

[18] The first two $77,000 installments apparently were deposited in the Luxenberg firm's IOLTA account, and distributed to Ghanem or AFG, after the firm deducted $30,000 as its fee. BX H27 at 11 (two checks payable to AFG and Ghanem for $47,000 and $77,000 drawn on Luxenberg firm's IOLTA account).

89. On or about November 19, 2010, UPRR Securities, LLC, a company dealing with unclaimed property, sent a check to Dickens at the firm's Virginia office payable to "Estate of Gladys Eloise Harris" in the amount of $30,347.29. BX H26 at 11. Dickens negotiated the check by depositing it in his personal bank account at United Bank on November 23, 2010. *Id.*; BX H23; Tr. 908-09 (Matinpour). Before Dickens deposited the check, his account had a negative balance of $6,778.49. BX 26 at 9; Tr. 909 (Matinpour).

90. By December 17, 2010, the balance in Dickens' personal account had fallen to $907.86. BX H26 at 15-16. None of the funds Dickens withdrew from his personal account were used for anything relating to the Harris Estate. BX H26 at 9-12 (most of the funds were used to pay personal bills).

91. On or about December 17, 2010, UPRR Securities, LLC, sent another check to Dickens payable to "Estate of Gladys Eloise Harris" in the amount of $3,851.52. BX H26 at 18.

92. Dickens negotiated the December 17, 2010 check by depositing it in his personal bank account at United Bank on December 21, 2010. BX H26 at 18; Tr. 909 (Matinpour). Before Dickens deposited the check, his account had a balance of $907.86. BX H26 at 16. On the same day, United Bank paid a check for $1,281 dated December 14, 2010, that Dickens had written to pay a personal expense, leaving a balance of $3,478.38. *Id.* By January 7, 2011, Dickens' personal account again had a negative balance of $1,666.97. None of the funds Dickens withdrew from his personal account were used for anything relating to the Harris Estate. BX 279; BX H26; Tr. (Matinpour).

93. Dickens never told Mr. Harris about the $34,000 he received on behalf of Gladys Harris' estate in 2010. Tr. 1221-22 (Harris). Mr. Harris first learned of the UPRR checks (and

that Dickens had taken the funds for himself) when Bar Counsel contacted him in 2012. Tr. 1221-22 (Harris). Mr. Harris never gave Dickens permission to take the funds. *Id.*

94. By 2012, Luxenberg and her firm also knew that Dickens had deposited the UPRR checks payable to the Harris Estate in his personal account, based on discovery in litigation related to the Seltzer Matter, which is discussed below at pp. 46-112, *infra*. Tr. 1022-23 (Johnson); Tr. 491 (Luxenberg). Luxenberg and her firm never contacted Mr. Harris concerning Dickens' actions and the checks. Tr. 491 (Luxenberg); *see also* Tr. 1224 (Harris).

95. By no later than 2013, Mr. Harris, with the help of his daughters, learned that there were stock certificates held in Gladys Harris' name that Dickens had failed to marshal. Tr. 1225 (Harris); BX H21.

96. The District of Columbia Office of Finance and Treasury, Unclaimed Property Division, instructed Mr. Harris and his daughters that they would have to reopen the Estate to claim the stock. *See* BX H21 at 4-7, 15-20. After a couple of unsuccessful attempts, Mr. Harris was able on April 3, 2014, to get the Probate Court to accept his motion to reopen the Harris Estate. Tr. 1225-26 (Harris); BX H22. Mr. Harris has yet to recover the stock that Dickens failed to marshal as part of the estate assets. Tr. 1225 (Harris).

C. The O'Brien Matter

97. In late April 2008, more than a year after moving his office to Virginia, Dickens agreed to represent William Patrick Garrity in probating the Estate of Dr. JoAnne S. O'Brien in the District of Columbia. Neither Johnson, who drafted O'Brien's will, nor Luxenberg, who handled intake for the firm, recalled how Garrity became a firm client and how Dickens was assigned to represent him. Tr. 1013-14 (Johnson: did not recall how Garrity was assigned to

Dickens, but Luxenberg decided whether firm would accept the representation); Tr. 351 (Luxenberg: could not recall how Garrity became a firm client).

98. In 1999, O'Brien, who was a veterinarian, established a fund with Virginia Tech Foundation – The Dr. JoAnne S. O'Brien Fund – to pay for a laboratory and research in canine and feline reproduction. Tr. 1123-25 (Blank). During her lifetime, O'Brien gave approximately $800,000 to the Foundation. Tr. 1124 (Blank).

99. On August 19, 2005, O'Brien executed her "Last Will and Testament." BX O2 at 12-21. Johnson prepared the will for O'Brien. Tr. 1013, 1035 (Johnson).[19] In her will, O'Brien made specific bequests of some of her personal property and funds to organizations, friends and relatives. She left the residue of her estate to the fund she had established with Virginia Tech Foundation. BX O2 at 14-16. O'Brien appointed Garrity to be her personal representative, and Johnson as the alternate personal representative (in the event Garrity could not or would not serve). *Id.* at 17; Tr. 1013 (Johnson).

100. On April 21, 2008, O'Brien died in her home in Washington, D.C. BX O6 at 1. Shortly after her death, Garrity contacted Virginia Tech Foundation and advised them of O'Brien's death. Tr. 1125 (Blank). Around this same time, Garrity contacted the Luxenberg firm about the administration of the O'Brien Estate and someone referred him to Dickens for representation. Tr. 1013-14 (Johnson); *see also* Tr. 163-64 (O'Connell).

101. Dickens told Garrity he would represent him for a fee of $30,000. Tr. 164 (O'Connell). It is unclear how Dickens arrived at this amount – $30,000 appears to have little or no correlation with the time required to probate the O'Brien Estate, which consisted of funds in accounts and personal property. *See* BX O6 at 4 (incomplete list of property); *see also* BX O5.

[19] Johnson testified that he did not do trusts and estates work. Tr. 1042 (Johnson).

102. Neither Dickens nor the firm provided Garrity a retainer agreement or other writing setting forth the basis for the fee or the scope of the representation. Tr. 164 (O'Connell); *see also* Tr. 1014, 1067 (Johnson: firm had no fee agreement). During the representation, Dickens also did not generate any bills or statements reflecting the services he was providing. *Id.*

103. On May 6, 2008, Dickens filed O'Brien's will with the Probate Division of the District of Columbia Superior Court, *In re O'Brien*, 2008 WIL 0386. BX O4; Tr. 886 (Matinpour). On that same day, Dickens filed a Petition for Probate for the Estate of JoAnne S. O'Brien, *In re O'Brien*, Admin. No. 0464-08. BX O6; Tr. 886 (Matinpour). Dickens filed the petition as attorney for the petitioner, Garrity, and listed his firm's Virginia office address on the petition. BX O6 at 5.

104. On the same day he filed the petition, Dickens filed a praecipe stating that he was withdrawing the petition for standard probate, and would be filing a petition for abbreviated probate. BX O7. The following day, May 7, 2008, Dickens filed another Petition for Probate as counsel for Garrity. BX O8; Tr. 886 (Matinpour). In this petition, Dickens again requested that the Probate Court appoint Garrity as personal representative of the Estate, but checked the boxes requesting that the probate be unsupervised and abbreviated. BX O8 at 1.

105. On May 12, 2008, the Probate Court entered an "Abbreviated Probate Order" appointing Garrity personal representative of the Estate, and directing that the administration of the Estate be unsupervised. BX O9; Tr. 886 (Matinpour).

106. On May 23, 2008, Dickens and Garrity went to United Bank and opened two accounts for the O'Brien Estate, account no. xx-xxxx-5098 (the 5098 Estate Account), and account no. xx-xxxx-0416 (the 0416 Estate Account). BX O12 at 1-8; BX O13 at 1; Tr. 887 (Matinpour). It is unclear why Dickens caused the bank to open two accounts or why, after the accounts were

open, he split deposits and shifted money between the accounts. *See* BX O11. Dickens had the bank include him as a signatory on both accounts (BX O12 at 1-2, 5, 8; BX O13 at 1) and directed the bank to send the monthly statements to the Luxenberg firm in Sterling, Virginia. BX O12 at 1; BX O13 at 1.

107. Dickens' initial deposit in the 5098 Estate Account was a Citibank check payable to the Estate of JoAnne O'Brien for $8,028.69, dated May 21, 2008. BX O9 at 9-10. Dickens used funds amounting to more than half the total to rent a storage unit from Self Storage Plus in Sterling, Virginia, and to pay Joseph Ghanem $3,000 to move O'Brien's furniture and personal items to the storage unit. BX O12 at 12-13 (checks for $1,659.20 to Self Storage and $3,000 to Ghanem); BX O10 at 5; Tr. 1100 (Ghanem).

108. Joseph Ghanem was a personal friend of Dickens. Tr. 1087 (Ghanem). Over the years, Dickens had done legal work for Ghanem and his family members, including creating a trust for Ghanem's sister. Tr. 1087-89, 1113 (Ghanem);[20] *see* FF 87 (Sam Ghanem also a firm client). Between 2008 and 2011, Dickens gave Ghanem more than $60,000 in checks (including one for $20,000 to buy a car for his son), paid for vacations for Ghanem and his family, and took Ghanem on overseas trips related to purported business ventures. Tr. 1092-96, 1109-10 (Ghanem).

109. In or around May 2008, Dickens asked Ghanem to clean out O'Brien's house and put the contents in storage in Sterling, Virginia. Tr. 1097-98 (Ghanem). Dickens told Ghanem that, for reasons Dickens did not disclose and not apparent to the Committee, he (Dickens) had to keep the contents of O'Brien's home for six months before disposing of them. Tr. 1098-99 (Ghanem). He offered to pay Ghanem $3,500 to move O'Brien's belongings to the storage unit, but then paid him more than $7,000 to do the work. Tr. 1098-1103 (Ghanem). Ghanem accepted

[20] Ghanem claimed that Dickens misappropriated money from this trust. Tr. 1113-14 (Ghanem).

the payments, which Dickens made with O'Brien Estate funds. Tr. 1100-03 (Ghanem); BX O11 at 2; BX O12 at 13, 22, 85 (three checks payable to Ghanem totaling $7,006).

110. Dickens leased the unit in Sterling, Virginia, in the name of the Luxenberg firm on a month-to-month basis, for $272 per month. BX O10 at 7 (rental agreement). After the six-month period following of O'Brien's death, Dickens continued to use the storage unit, but for himself and Ghanem. Tr. 1103-04 (Ghanem). Dickens nevertheless paid the rental fees with the O'Brien Estate funds. BX O11 at 2; Tr. 888-89 (Matinpour).[21]

111. On June 19, 2008, Merrill Lynch Chase sent a check for $886,028.18 payable to the "JoAnne O'Brien Estate" to Dickens at the firm's Virginia office. Dickens split the deposit between the Estate Accounts – he put $800,000 in the 0416 Estate Account, and the remaining $86,028.18 in the 5098 Estate Account. BX O11 at 2; BX O12 at 15-17; BX O13 at 2-5.

112. Between October 2008 and December 2009, Dickens received additional checks payable to the O'Brien Estate or Garrity as personal representative totaling $8,135.08. BX O11 at 2. Dickens deposited $4,458.63 in the 0416 Estate Account, and the remaining $3,676.45 in the 5098 Estate Account. *Id.* On December 16, 2008, Dickens transferred $250,000 from the 0416 Estate Account to the 5098 Account. BX O12 at 42.

113. The bank records for the two O'Brien Estate accounts reflect that Dickens received at least $902,191.95 in funds belonging to the O'Brien Estate (not including interest earned on those funds). BX O11 at 2. Dickens used only $250,000 of those funds to pay the beneficiaries of the Estate, pay O'Brien's creditors, and cover expenses associated with the administration of

[21] The rental fee for six months was $1,632. BX O10 at 7 (rental agreement). Dickens' initial payment to Self Storage with the O'Brien Estate funds was $1,659. *Id.* at 5. He made another payment of $544 in November 2008 (BX O12 at 38), which Bar Counsel did not include in the tally of misappropriated funds. BX O11 at 2; Tr. 888-89 (Matinpour).

the Estate. BX O11; BX O12; BX O13. Dickens took the rest of the Estate funds for himself. BX O11.

114. Garrity also was a signatory on the 5098 and 0416 Estate Accounts with Dickens. BX O12 at 1; BX O13 at 1; Tr. 890 (Matinpour). However, he signed only one check – a check dated June 26, 2008, drawn on the 5098 account for $5,000 payable to the Luxenberg firm that Dickens had filled in – a check that the firm negotiated. BX O12 at 19. With the exception of this check, Garrity had no involvement with the accounts. Tr. 890-91 (Matinpour); BX O12-O13.

115. United Bank sent the monthly statements to Dickens and he signed all the other checks drawn on the accounts. Tr. 891 (Matinpour). Garrity was unaware what Dickens was doing with the O'Brien Estate funds. Tr. 164-65 (O'Connell).

116. Virginia Tech Foundation communicated with Dickens shortly after O'Brien's death and later followed up with Dickens to learn what, if any, additional funds it would receive from the O'Brien Estate. BX O17; Tr. 1128 (Blank).

117. In 2009, the Foundation received more than $450,000 on behalf of O'Brien, but none of these funds came from her Estate. Rather, the funds came directly from financial institutions in which O'Brien had accounts with a beneficiary designation or were payable on death to the Foundation. Tr. 1125-26 (Blank). These were the only funds the Foundation received after O'Brien's death pursuant to her wishes. *Id.*

118. On January 26, 2009, Dickens falsely represented to Virginia Tech Foundation that there was around $200,000 left in O'Brien's Estate, but claimed this was a preliminary number. BX O17 at 2. Dickens knew this was a lie because by January 26, 2009, he had received more than $895,000 on behalf of the Estate, had helped himself to more than $150,300 from the Estate Accounts by January 26, 2009, and there still was more than $600,000 left. BX O11 at 1-2; BX

O12 at 48 (balance in 5098 Estate Account was about $124,000 on January 26, 2009); BX O13 at 16 (balance in 0416 Estate Account was about $480,000 on January 26, 2009).

119. Contrary to the provisions in O'Brien's will, Dickens did not disburse any of the funds deposited in the O'Brien Estate accounts to Virginia Tech Foundation as directed in Ms. O'Brien's will. Instead, Dickens began stealing funds from the O'Brien Estate on June 24, 2008, a month after opening the Estate Accounts. BX O11 at 1. He did not stop until June 2010, when there was almost nothing left to steal. BX O12 at 95 (by June 2010, the balance in the 5098 Estate Account was down to $500); BX O13 at 50-51 (in January 2010, Dickens had taken the remaining funds in the 0416 Estate Account, totaling $3,970.88, and deposited them in his personal account at United Bank, leaving a balance of $0); Tr. 896-97 (Matinpour).

120. Dickens stole a large portion of the funds by writing checks on the Estate Accounts that were payable to United Bank. In an apparent effort to make his theft more difficult to trace, Dickens then used the checks payable to the bank to purchase a bank check payable to himself that he deposited in his personal account. Tr. 891-94 (Matinpour); BX O11; *see, e.g.*, BX O12 at 27-28, 64-65 (Dickens wrote checks to United Bank for $12,500 and $50,000 in August 2008 and May 2009, which he used to purchase bank checks payable to himself in same amounts, and deposited the bank checks in his personal account). Dickens stole hundreds of thousands of dollars more using this same technique (BX O11 at 1); *see also* FF 221, *infra* (Dickens used same technique in Seltzer case).

121. Dickens also wrote a number of checks drawn on the O'Brien Estate Accounts payable to himself. BX O11; *see, e.g.*, BX O12 at 32, 36, 39, 41 (checks Dickens wrote to himself for $4,000, $1,800, $3750, and $1,750, which were negotiated between September and November 2008).

122. Dickens appropriated tens of thousands of dollars from the O'Brien Estate by writing checks to third parties for his own personal and business expenses having nothing to do with the O'Brien Estate. BX O11 at 2. Those checks included: (i) payments of $10,000 to Executive Suites for the rent for the Luxenberg firm's Virginia office; (ii) an additional payment of $5,241.66 to Ghanem, having nothing to do with the O'Brien Estate (Tr. 1104-05 (Ghanem)); and (iii) $20,588.27 to Lindsay Volkswagen to buy a car for Ghanem's son who celebrated his 16th birthday in February 2009. BX O11; Tr. 894-96, 898 (Matinpour); *see also* Tr. 1105-06 (Ghanem); BX O12 at 53;

123. Dickens also took funds from the O'Brien Estate to pay his law firm. In addition to the $5,000 check that Dickens filled in and caused Garrity to sign, payable to his firm, in June 2008 (BX O12 at 19), Dickens wrote two additional checks to the Luxenberg firm on the 5098 Estate Account – one for $7,500 in December 2008, and another for $8,000 in March 2009. BX O11; BX O12 at 44, 58. The Luxenberg firm had no fee agreement, billing records or other documents to indicate that it was entitled to these funds. Tr. 1014-15 (Johnson). The firm nevertheless negotiated the checks, and received a total of $20,500 from the O'Brien Estate. *Id.;* BX O11 at 2; BX O16 (firm's deposit summaries); Tr. 898 (Matinpour)

124. Dickens never prepared or provided Garrity an accounting or information about the funds he received on behalf of the O'Brien Estate and what he had done with them. Tr. 164-65 (O'Connell); Tr. 1019 (Johnson).

125. Dickens also never told Garrity, his client, that he (Dickens) had taken more than $650,000 in Estate funds for himself. Dickens had no authority to take these funds, and Garrity never consented to him doing so. Tr. 164-65 (O'Connell).

126. The Probate Court closed the O'Brien Estate on May 17, 2011, three years after appointing Garrity personal representative, pursuant to D.C. Code § 20-1301. BX O5 at 1, *see* p. 30, n.15, *supra*.

127. Luxenberg and her firm learned that Dickens had taken the O'Brien Estate funds to pay the firm's rent for the Virginia office sometime in 2011 or 2012, based on discovery they received in litigation related to the Seltzer Matter. Tr. 1048-49 (Luxenberg); Tr. 1015-19 (Johnson). Luxenberg and her firm did not notify Garrity or Virginia Tech Foundation about the funds that Dickens misappropriated from the O'Brien Estate. Tr. 491-92 (Luxenberg); *see also* Tr. 1124 (Blank: the first notice that the Foundation received was in February 2013, when it was contacted by the FBI).

128. In February 2013, FBI Special Agent John Lund contacted Virginia Tech Foundation about Dickens, and served it with a subpoena. Tr. 1124, 1126-28 (Blank). Counsel for Virginia Tech Foundation later provided documents from its files to Bar Counsel. Tr. 1127 (Blank).

129. Garrity died in June 2013, six months after Bar Counsel filed its Specification of Charges with the Board. Tr. 162 (O'Connell); Tr. 1130 (Blank); BX O18 at 5; BX 01.

130. In September 2013, Virginia Tech Foundation filed a motion to reopen the O'Brien Estate so that it could investigate what happened to the residuary funds in the Estate and prosecute claims to recover the funds. BX O18; Tr. 1130-31 (Blank). The Probate Court denied the Foundation's initial motion to reopen, but without prejudice. BX O5 at 1. The Foundation subsequently refiled the motion, posted a bond and, in March 2014, succeeded in having the Probate Court reopen the Estate. Tr. 1130-31 (Blank). The Probate Court appointed Karen Blank as successor personal representative. *Id.*

131. As of April 2014, Virginia Tech Foundation had filed a claim against Garrity's Estate and made a demand on the Luxenberg firm in pursuit of assets owed to the Dr. JoAnne S. O'Brien Fund. Tr. 1130-31 (Blank). The Foundation has yet to recover any of the funds left to the Foundation that Dickens stole during the representation. Tr. 1132 (Blank).

D. The Seltzer Matter

Luxenberg's Prior Representation of Seltzer in a Divorce Matter

132. In 1994, Ms. Seltzer worked as a part-time librarian and was married to Stephen Seltzer. Tr. 41-42, 49 (Falk); Tr. 665-66 (Seltzer); BX 8 at 2; Tr. 389 (Luxenberg). She had two adult children – Jerri Seltzer (now known as Jerri Seltzer Falk), whom Stephen Seltzer adopted after their marriage, and Eric Seltzer. BX 8 at 1; Tr. 42-43 (Falk). Ms. Seltzer and her two children have resided in Maryland their entire lives. Tr. 41-42 (Falk); Tr. 665-66 (Seltzer).

133. In June 1994, Ms. Seltzer retained Luxenberg to represent her in separating from Stephen Seltzer and negotiating a property settlement. BX 6; Tr. 43 (Falk); Tr. 386 (Luxenberg). Luxenberg later amended the fee agreement to reflect that Ms. Seltzer would be filing for divorce and seeking alimony. BX 7. Luxenberg charged Ms. Seltzer an hourly fee. BX 6.

134. In November 1994, Luxenberg filed a complaint for limited divorce on behalf of Ms. Seltzer with the Circuit Court for Montgomery County, Maryland. BX 8. The principal issue in the case was the division of the couple's property. *Id.* at 3; Tr. 386-87 (Luxenberg); Tr. 43-44 (Falk). During Luxenberg's representation of Ms. Seltzer, in preparation for filing a Joint Statement of Marital and Non-Marital Property, Luxenberg obtained information about Ms. Seltzer's financial situation, including her income, her living expenses, the funds she had inherited from her parents, her retirement and investment accounts, and the more than $80,000 she had invested in CDs. BX 296; Tr. 387-89 (Luxenberg).

135. By January 1997, Ms. Seltzer and her ex-husband reached a settlement as to the division of their property and the court granted them an absolute divorce. BX 9; BX 10; Tr. 389 (Luxenberg).

136. Falk testified that Ms. Seltzer felt comfortable with Luxenberg and felt she did a good job in the divorce case. Tr. 43. Ms. Seltzer and Luxenberg "stayed in touch" after 1997, and formed a friendship. Tr. 389, 406 (Luxenberg); Tr. 146-47 (Falk).

137. Sometime after the divorce, Ms. Seltzer became a full-time librarian for Montgomery County. Tr. 80 (Falk); Tr. 172 (Hohlfeld). Her son Eric lived with her former husband, Stephen Seltzer, who supported him until Stephen's death in June 2008. Tr. 47-48 (Falk); Tr. 666-68 (Seltzer). Her daughter Jerri married Andrew Falk, and had two daughters. Tr. 40-41, 47 (Falk).

The Luxenberg Firm's Amendment of Trust Documents in 2004

138. The 1990 Trust, which was a revocable *inter vivos* trust, provided that Ms. Seltzer could use the trust assets for her benefit during her lifetime and that, after her death, the trustee would distribute them to her two children in equal shares provided they were at least 25 years old. BX 12 at 14-24. The 1990 Trust designated Ms. Seltzer and Charles Schaffer, her brother, as trustees. *Id.* Until Ms. Seltzer's death in March 2010, Luxenberg was a co-trustee of the 1990 Trust, which the Luxenberg firm amended in 2004. Tr. 405-07 (Luxenberg); BX 16 at 4. Luxenberg remained the trustee of the 1990 Trust until she consented to be removed in June 2011, when attorneys for the Seltzer children became involved in the matter of Ms. Seltzer's Estate. Tr. 489-90; BX 16 at 4-5.

139. In June 2004, Ms. Seltzer contacted Luxenberg about updating her estate plan. Tr. 389-90 (Luxenberg).[22] On June 8, 2004, Ms. Seltzer sent Luxenberg a letter explaining some of her reasons for wanting to change her estate plan, including protecting her money from her ex-husband and ensuring that Eric would not squander the money she left him. BX 12 at 2; Tr. 390 (Luxenberg). Ms. Seltzer provided Luxenberg copies of the 1990 Trust, her 1990 will, and other relevant documents. BX 12. She advised Luxenberg that except for two savings accounts in her name and held in trust for her two children that she wanted to include in her revised trust, everything else was in the 1990 trust. *Id.* at 2-3. Ms. Seltzer also attached a list of her current assets to be included as the trust assets. *Id.* at 4-5.

140. Luxenberg advised Ms. Seltzer that she did not practice trusts and estates work. Luxenberg and Ms. Seltzer agreed that the Luxenberg firm would undertake the representation of Ms. Seltzer in 2004, but only after Ms. Seltzer understood that Dickens would perform the work. Tr. 391 (Luxenberg). Luxenberg specifically told Ms. Seltzer that trusts and estates was not her field, and that because Dickens had more experience, he would be assisting her and advising her with regard to her trusts and estates. *See* Tr. 390-91; BX 28 at 2-3. As a result of the agreement between Luxenberg and Ms. Seltzer, the task of reviewing and rewriting or amending the existing trust agreement and preparing any other estate planning documents came to Dickens, whom Ms. Seltzer first met in 2004. Tr. 392-93, 402 (Luxenberg). At that time in 2004, Luxenberg did not know whether Dickens had ever prepared a trust or estate plan for a client. Tr. 393-94 (Luxenberg).

[22] Luxenberg recalled that the event which occasioned Ms. Seltzer's request to change her trust in 2004 was the death of her brother, who was named co-trustee in the 1990 trust. Tr. 389-90, 392 (Luxenberg). Luxenberg's recollection is not accurate. Ms. Seltzer's brother was alive, and listed as one of the beneficiaries of Ms. Seltzer's will prepared by the Luxenberg firm in December 2009. BX 76 at 2. The Committee does not believe that Luxenberg intentionally misrepresented the facts and in any event Ms. Seltzer's motivation was best memorialized in her June 8, 2004 letter to Luxenberg.

Luxenberg knew only that Dickens had some experience with his own family's trust and that of his spouse, Billy Tolar. *See* FF 14.

141. At the express request of Ms. Seltzer, Luxenberg agreed to serve as trustee of Ms. Seltzer's amended 1990 Trust. Tr. 395-96 (Luxenberg). Ms. Seltzer's reliance on Luxenberg and Luxenberg's agreement to represent Ms. Seltzer in the trust matter was largely motivated by their prior professional relationship and the friendship resulting therefrom. *See* FF 136.

142. Luxenberg met with and communicated with Ms. Seltzer about her reasons for wanting to amend her estate plan. *See* BX 12 (letter to Luxenberg); Tr. 391(Luxenberg); BX 13 (Luxenberg's handwritten notes of meeting with Ms. Seltzer); BX 17; BX 18; BX 19 at 1 (Luxenberg billed Seltzer an hour for "Consultation with two attorneys"). Luxenberg also set the fee for the work that her firm would do – she charged Mr. Seltzer a "discounted rate of $500 . . . as a courtesy for [her] being an old, and very good client." BX 15 (Sep. 27, 2004 e-mail); Tr. 394 (Luxenberg). However, Luxenberg provided no substantive legal advice regarding trust and estate matters, *see* Tr. 391 (Luxenberg); BX 13 (Luxenberg's handwritten notes of meeting with Ms. Seltzer); the drafting of the trust and its presentation to Ms. Seltzer was left to Dickens. *See* FF 172, 175-76, 179, 183, *infra*.

143. By the end of July 2004, the Luxenberg firm had lost or misplaced the estate planning documents, list of assets, and other relevant documents that Ms. Seltzer had sent on June 8, 2004. BX 14. Ms. Seltzer resent the documents to the firm in late July or early August 2004. BX 19 at 2 (firm credited Seltzer $5.57 for "re-mailing lost documents").

144. Dickens made minor and inconsistent amendments to Ms. Seltzer's 1990 Trust and prepared two form documents - a general power of attorney (POA) and a healthcare power of

attorney for Ms. Seltzer. BX 17; BX 18; Tr. 393 (Luxenberg).[23] Dickens' 2004 changes to the 1990 Trust included: (i) changing the introductory paragraph to reflect that Ms. Seltzer was amending her Trust; (ii) substituting Luxenberg for Charles Schaffer as the co-trustee; and (iii) increasing the age that Ms. Seltzer's two children must reach from 25 to 45 under Article 7.A, governing the continuation of her Trust after her death; but leaving unchanged the age limit of 25 under Article 7.B governing the distribution of the remainder of her Trust – creating a conflict in the provisions, that neither Dickens nor Luxenberg (who was the trustee through June 2011) ever sought to correct. BX 16; Tr. 544-46 (Gelfeld); Tr. 780 (Altman). Dickens also included a footer on the amended 1990 Trust that misspelled his client's name, and he referred to her daughter, who married after 1990, as Jerri Falk Seltzer, rather than her actual name of Jerri Seltzer Falk. BX 16 at 3. In all other respects, Dickens did not change the terms of the 11-page 1990 Trust document – including the provision that the law of Maryland governed its validity and interpretation. *Compare* BX 12 at 14-24 *with* BX 16. Bar Counsel's experts testified that with respect to (iii) above, Dickens' work on the 1990 Trust fell below the standard of care. Tr. 619 (Gelfeld); Tr. 828-20 (Altman).

145. On November 19, 2004, Ms. Seltzer executed the amended 1990 Trust in her capacity as grantor and trustee, and Luxenberg executed it as trustee. BX 16 at 10; *see also* BX 19 at 6 (firm invoice reflecting Luxenberg present at Nov. 19, 2004 meeting).

146. The only time Dickens recorded for his work for Ms. Seltzer in 2004, was on December 6, 2004 (BX 19 at 7), more than two weeks after she had executed the three documents

[23] The general POA prepared by the firm named Luxenberg as Ms. Seltzer's attorney-in-fact, and Dickens as her successor attorney-in-fact. BX 17. The healthcare POA named Harry Grant, a close friend of Ms. Seltzer, as her attorney-in-fact and Luxenberg as the successor attorney-in-fact. BX 18. Ms. Seltzer executed both the general and healthcare POAs on November 19, 2004, the same day she executed the amended 1990 Trust. BX 17-18. Dickens did not prepare a codicil to Ms. Seltzer's will as contemplated in Luxenberg's e-mail of September 27, 2004. BX 15; Tr. 394-95 (Luxenberg).

described above. Dickens billed four hours to "[p]repare living will, advance directive, review trust documents" (*id.*) – an inaccurate description of what he actually did. Tr. 400 (Luxenberg).[24]

147. In August 2006, Ms. Seltzer contacted Luxenberg and Dickens because she was purchasing a new certificate of deposit in the name of her amended 1990 Trust and needed the signature of Luxenberg as trustee. BX 20. In response, Luxenberg said or did nothing to disavow her role or responsibility as co-trustee. Tr. 403-04 (Luxenberg).

Deterioration of Ms. Seltzer's Health and the Death of Mr. Seltzer

148. In November 2007, Ms. Seltzer was diagnosed with Stage IV colon cancer. Tr. 46 (Falk); Tr. 671 (Seltzer). On December 8, 2007, several days before undergoing surgery, Ms. Seltzer provided written instructions to Luxenberg, in the event she did not survive. Tr. 404-05 (Luxenberg); *see* BX 22, BX 23.

149. After her cancer surgery in December 2007, Ms. Seltzer began chemotherapy treatment. She continued to receive such treatment through 2009, until it was clear she did not have much longer to live. Tr. 46-47, 54-55 (Falk); Tr. 679 (Seltzer).

150. In June 2008, Stephen Seltzer died. Tr. 49 (Falk); Tr. 666 (Seltzer).

151. A year or so before his death, Stephen Seltzer had consulted with Carole Gelfeld, a family friend and lawyer who did trusts and estates work in Maryland. Tr. 49 (Falk); Tr. 533-34 (Gelfeld). Gelfeld prepared an estate plan for Stephen Seltzer that included a trust to which he transferred the bulk of his estate to provide financial support for Eric for the 10 years following his death. Tr. 47-49, 53 (Falk); Tr. 667-68 (Seltzer); Tr. 534, 536 (Gelfeld).

[24] Additionally, Dickens did not bill any time to prepare a letter to Ms. Seltzer dated November 4, 2004, in which he gave advice inconsistent with the trust amendments he prepared. BX 291. This letter was not in the firm's files and surfaced for the first time in late April 2011, after Dickens' theft of Seltzer's funds was discovered. BX 291; BX 290 at 4 (Dickens produced letter to Gelfeld and Altman on April 27, 2011); Tr. 576-77 (Gelfeld); Tr. 400-01 (Luxenberg: first saw November 4, 2004 letter in 2014).

152. Gelfeld met with Eric Seltzer and Jerri Falk after their father's death to review his will, the terms of the trust, and all his assets. Tr. 49-50 (Falk); Tr. 668-69 (Seltzer); Tr. 534-35 (Gelfeld). Falk, who inherited some funds from her father, was designated as the trustee for the trust established for her brother Eric. Tr. 48-50 (Falk); Tr. 668-69 (Seltzer); Tr. 535-36 (Gelfeld). She served in that capacity for a few months, but because of the time required to attend to her brother's needs and her own responsibilities, determined that she should not continue serving as the trustee. Tr. 51 (Falk); Tr. 536 (Gelfeld); Tr. 668-70 (Seltzer). Stuart Plotnick, a lawyer and a cousin of Falk and Eric Seltzer, agreed to take over as trustee. Tr. 51 (Falk); Tr. 669-70 (Seltzer); Tr. 537 (Gelfeld). Plotnick served as trustee for the trust for Eric until May 2010, when Gary Altman took on the role. BX 114 at 3; Tr. 670 (Seltzer); Tr. 775-76 (Altman).

153. In late 2008, Stephen Seltzer's house was sold and the proceeds went to his trust for Eric's care and benefit. Around that time, Eric Seltzer moved into an apartment close to his mother's condominium in Bethesda, Maryland. Tr. 51-52 (Falk); Tr. 678-79 (Seltzer). Eric Seltzer visited his mother frequently, and took her to her chemotherapy sessions. Tr. 678-79 (Seltzer).

154. During her treatment, Ms. Seltzer continued to work as a librarian, live frugally, and save her money. She rarely, if ever, took vacations and kept the heat down so low in her condominium that her son complained about the cold when he visited. Tr. 680-81 (Seltzer); Tr. 45, 56 (Falk).

155. Before and after her father's death, Falk talked to her mother about having her own estate plan to provide for Eric Seltzer's continued care. Tr. 47-48, 52-53, 151-52 (Falk); *see also* Tr. 537 (Gelfeld). Ms. Seltzer was private about her finances, but her children knew that she had inherited money from her parents, had savings and investments, and wished to have a long-term

plan in place to provide for Eric financially after she died. Tr. 44-45, 55 (Falk); Tr. 680, 684-85 (Seltzer).

Ms. Seltzer Returned to the Luxenberg Firm in 2009 to Revise Her Estate Plan

156. By no later than April 20, 2009, Ms. Seltzer had contacted Luxenberg about helping her with further revisions to her estate plan. BX 25; Tr. 405-06 (Luxenberg). Luxenberg told her that "[w]e are happy to help you update and revise your will and trust" but that the work would have to wait until May because she, Johnson and Dickens would be vacationing out of the country. *Id*.

157. At some point in 2009, in response to her daughter's urging, Ms. Seltzer advised that she had contacted "Debbie Luxenberg" about updating her estate plan. Ms. Seltzer advised that Luxenberg could not assist her with her estate and trust matter, but that Dickens would be able to assist her in preparing an estate plan and would serve as the trustee. Tr. 53-54, 59 (Falk); Tr. 672 (Seltzer); Tr. 538 (Gelfeld).

158. Ms. Seltzer also shared her concerns and the steps she was taking to provide for Eric after her death with Carolyn Hohlfeld, who worked for the Human Resources Department for Montgomery County, Maryland. Tr. 171-72, 174 (Hohlfeld). Despite her failing health and comments from Ms. Hohlfeld, Ms. Seltzer refused to cut back on her work schedule. *See* Tr. 174-75, 200-01 (Hohlfeld).

159. On May 11, 2009, Ms. Seltzer again contacted Luxenberg about updating her estate plan. Ms. Seltzer told Luxenberg about her cancer treatment and the name and contact information for Plotnick, whom she asked Luxenberg to contact so that they could coordinate her Trust with the trust that her ex-husband had established for Eric Seltzer's benefit. BX 26 at 1. In response, Luxenberg stated that she needed to retrieve Ms. Seltzer's file from storage and that Dickens would

have to deal with any trust questions, but that she would talk to Eric's attorney and trustee in the meantime. BX 27 at 1. Luxenberg's email expressly indicated to Ms. Seltzer that Dickens, not Luxenberg, would be providing the substantive representation to Ms. Seltzer in connection with her estate and trust matter. BX 27 at 1.

160. In the days that followed, Ms. Seltzer communicated with Luxenberg about her medical condition and her desire to have a long-term plan in place that would provide for Eric Seltzer's care after she died. Because of her concerns for Eric, Ms. Seltzer stated that she wanted Eric to receive monthly dividends for more than the nine years her ex-husband's trust provided, and wanted to figure out a way to coordinate that trust with her Trust. Ms. Seltzer also told Luxenberg that she wanted to handle her affairs as long as she was able. She described her financial holdings, including the certificates of deposit, savings accounts in trust for her children, a residence and other assets worth more than $1 million. BX 28 at 2-3; Tr. 408 (Luxenberg: acknowledged Seltzer wanted long-term arrangements). Ms. Seltzer stated she was willing to have Dickens serve as her "primary trustee," now that she knew him better. BX 28 at 1. Ms. Seltzer also advised her daughter, Falk, that she liked Dickens and was comfortable with him. Tr. 57.

161. By e-mail on May 14, 2009, Luxenberg transmitted to Dickens, with a copy to Ms. Seltzer, the information that Ms. Seltzer had provided. BX 28. In that e-mail, Luxenberg told Dickens that she (Luxenberg) would be involved in her matter, stating that: "[Ms. Seltzer] has known me for 20 years though and would like me to be involved." *Id.* at 3. Luxenberg stated that she had told Ms. Seltzer that "this is not my field and that you [Dickens] would contact Stuart [Plotnick] and will be drafting any new documents." *Id.*

162. Luxenberg delegated to Dickens the responsibility for drafting the estate planning documents including a new trust. When she did so in 2009, Luxenberg's only knowledge of

Dickens' experience in estates and trust matters was the work Dickens did for Seltzer in 2004, and that he had also done some work for his family and Tolar's family. Tr. 394, 413-17 (Luxenberg);[25] *see* FF 14, 140.

163. Luxenberg did not do anything to determine whether Dickens, who was not licensed in Maryland, could do the estate plan and have Ms. Seltzer sign legal documents in Maryland. Tr. 407-08 (Luxenberg). Dickens drafted a trust pursuant to District of Columbia law. *See* BX 67 at 12. Because Dickens had experience practicing *pro hac vice* in Maryland and Virginia, Ms. Luxenberg relied on Mr. Dickens to let her know if he needed Maryland counsel in the Seltzer matter. Tr. 407 (Luxenberg).

164. Luxenberg continued to be involved in representing Ms. Seltzer and regularly communicated with her. In May 2009, in response to Luxenberg's request, Ms. Seltzer sent Luxenberg her estate papers, including her will and the trust document that her firm had amended in 2004. BX 29 at 1; BX 30 at 1. Ms. Seltzer also conveyed to Luxenberg additional information relevant to her estate plan, demonstrating that she continued to regard Luxenberg as her lawyer in the matter. *See* BX 30 at 1; *see also* Tr. 124 (Falk: Ms. Seltzer trusted Luxenberg as her lawyer); Tr. 410 (Luxenberg: same). It is clear from the record that Luxenberg made Ms. Seltzer aware that Dickens, not Luxenberg, would draft Ms. Seltzer's trust. *See* Tr. 390-91, 406 (Luxenberg did not work on Ms. Seltzer's estate and trusts), 410, 983-84; BX 28 at 2-3; BX 30 at 1.

[25] Luxenberg's testimony in this regard was somewhat confused. In response to questions from Bar Counsel, she testified that she knew "he did some [trust and estates work]. I don't remember the name of the case, but I know he did some work on trusts, but I don't know specifically." Tr. 413-14. She knew Dickens had prepared a trust for the Ghanem family. Other than assuming that the business resulted from Dickens' friendship with the Ghanems, Luxenberg did not know how Dickens became involved in their estate work, she did not know when he did the work, for whom the trust was established, and whether and how much the firm (or Dickens) was paid. Tr. 414-16 (Luxenberg). In responding to the Committee's questions, it became clear that in 2009, Luxenberg knew nothing about Dickens' preparing the trust for the Ghanems, and learned of it only recently because the Ghanem family has since complained to her firm. *Id.*

165. It was Luxenberg who determined how much she and the firm would charge for the work. She told Ms. Seltzer that they would charge a discounted hourly rate of $375 "because of our long relationship with you." BX 29 at 1; *see also* BX 135 at 9-10 (Luxenberg only person who billed time in May and June 2009 to Seltzer); *but see* Tr. 410-11 (Luxenberg: admitted setting the fee at $375/hour, but claimed Dickens was supposed to provide Ms. Seltzer a retainer agreement – something Luxenberg admitted he never did). Luxenberg delegated the work to Dickens with the expectation that Ms. Seltzer would pay the firm, not Dickens personally.[26] Tr. 412 (Luxenberg).

166. Upon receiving Ms. Seltzer's existing trust document, her will, and POAs, a non-lawyer employee of the firm sent them by e-mail to both Dickens and Luxenberg. BX 31; BX 32 at 1.

167. Between May and September 2009, Ms. Seltzer and Luxenberg exchanged e-mails about Dickens' progress – or lack thereof – in preparing the estate documents. BX 32-36; Tr. 412-13, 417-18 (Luxenberg: Dickens "slow"). Luxenberg copied Dickens on some of her responses to Ms. Seltzer. Luxenberg also sent Dickens separate e-mails asking him what, if anything, he was doing on Ms. Seltzer's matter. *See, e.g.*, BX 36 at 1 (Aug. 12, 2009 e-mail "I need to know if you can do this realistically. Otherwise we need to get someone else to do it."); Tr. 417-18 (Luxenberg). Within minutes of Luxenberg's email on August 12, 2009, Dickens e-mailed Ms. Seltzer and assured her that he would complete the work. BX 37.

[26] In response to Bar Counsel's inquiry concerning the firm's arrangements with Dickens and Ms. Seltzer regarding charging Ms. Seltzer and paying Dickens, Luxenberg said, "No, he wasn't going to -- well, he wasn't going to get paid for it, the firm was going to get paid for it." Tr. 412. It is unclear if her response means Dickens' work was to be totally uncompensated or would receive payment through the firm. In any event it is clear that Dickens was not to independently charge Seltzer and that the firm, and specifically Luxenberg, controlled the billing and intake of payment for the 2009 Seltzer trust work

168. On August 13, 2009, Dickens acknowledged in an e-mail to Ms. Seltzer (copying Luxenberg) that her matter was a "priority." BX 38. The previous day, Dickens had told Ms. Seltzer that his failure to work on her matter was due to his involvement in "a major case that the court rushed to trial." BX 37 at 1.[27] When Dickens finally communicated with Ms. Seltzer, she responded immediately. BX 41. Ms. Seltzer told Luxenberg about her continued chemotherapy and the toll it and the medication were taking on her (BX 41; BX 50) – something that Dickens confirmed in a later e-mail to Luxenberg. BX 59.

169. Despite acknowledging Ms. Seltzer's matter as a "priority," Dickens still did not act promptly, which Luxenberg knew. Tr. 417-19 (Luxenberg). On August 14, 2009, Luxenberg sought to reassure Ms. Seltzer about her firm's lack of progress, claiming:

> Your trust is as important to us as anything we are working on in the office. I hope I told you before but if not, I will tell you now. I have practiced law for 34 years and you are in my top ten all time favorite clients.

BX 44 at 1; Tr. 419 (Luxenberg). Luxenberg sent follow-up emails to Dickens asking for updates. BX 45-46.

170. In August 2009, Luxenberg was aware that Dickens had not recorded any time for work on Ms. Seltzer's matter. BX 49; Tr. 420-21 (Luxenberg). Ms. Seltzer continued to communicate with Luxenberg when Dickens did not follow through, reiterating her desire to complete the matter given her deteriorating condition. *See* BX 50 (Seltzer asked Luxenberg if she

[27] The "major case" was a three-day criminal case in the federal court in the District of Columbia against Courtney Stadd, who was indicted in March 2009. BX 207 at 1-3. At Dickens' request, the trial court continued the trial to August 2009. BX 207 at 3. The court records (PACER) reflect that another lawyer – Mark Rollins, Esquire – filed the prehearing motions and also attended the trial. BX 207 at 3-5. It is unclear what criminal law experience Dickens had and what role he played in the trial. Dickens, however, received a $100,000 check from the Stadds in September 2009, a month after a District of Columbia jury found Stadd guilty of all counts. BX 279 at 5; BX 207 at 5. Dickens filed and briefed the appeal of the conviction, which the District of Columbia Circuit affirmed in March 2011, without hearing argument. BX 207 at 9-12.

should find someone else to do the work; she also reiterated that she trusted Luxenberg and Dickens who she thought could help her).[28]

171. By no later than mid-September 2009, Luxenberg asked Dickens to provide her with copies of the documents he had prepared so the firm would have them in its central files and be able to provide them to the client. BX 57. Although the firm had a policy of including all documents in the client file, Dickens did not comply with it and Luxenberg did not follow up. Tr. 421, 423 (Luxenberg: still did not have Seltzer file by end of March 2011).

172. On September 21, 2009, Dickens met with Ms. Seltzer to discuss her new trust – apparently the only document he had prepared at the time. BX 59 at 1.[29] Dickens sent Luxenberg an e-mail telling her about the meeting and stating that Ms. Seltzer was "feeling the effect of intensive chemotherapy" and could not focus on more than one thing at a time. *Id.* Ms. Seltzer also e-mailed Luxenberg, stating that they were making "progress." BX 60. Dickens sent Luxenberg another e-mail, stating he was working on the matter. BX 61 at 1.

173. A few days after meeting with Dickens, Ms. Seltzer made a detailed list of her assets, complete with account numbers. Eric Seltzer helped his mother by writing down the numbers for bonds and accounts from documents in her safe deposit box at PNC Bank, and then sending the information to Dickens in an e-mail on September 26, 2009. BX 63; Tr. 673, 675-78

[28] In an apparent effort to explain some of the delay, Dickens falsely claimed he did not have Ms. Seltzer's correct address (BX 51-56, 58) – a claim his own e-mails belied. BX 47.

[29] When Dickens eventually recorded time for his work on the trust document, he claimed the trust document took 10.5 hours to draft. While such a claim is reasonable when the document represents a complicated trust requiring research and drafting, the document Dickens produced was "boiler plate" reflecting cutting and pasting, and could not reasonably have taken 10.5 hours to prepare. BX 135 at 12 (Dickens' time reflected in bill to Seltzer). There is further evidence that Dickens' bill did not accurately reflect his work. Dickens stated on August 12 and 13, 2009, that he had not done any work on Ms. Seltzer's case because of his representation of Stadd in a "major case." FF 174. Yet, Dickens billed 8 hours on August 8, 2009, for drafting the trust. BX 135 at 12; *see also* Tr. 420-21 (Luxenberg: did not think Dickens did any work in Seltzer matter before September 2009).

(Seltzer). Ms. Seltzer sent Dickens another e-mail to confirm he received the list, and asked him how other assets should be handled. BX 64 at 1-3.

174. In a later conversation, Ms. Seltzer asked Dickens about including her condominium in the trust. Dickens displayed his lack of knowledge and competence in estate planning by contending, among other things, that her condominium could not be included in her trust because she had a mortgage on it. BX 63 at 5; BX 110; Tr. 98-99 (Falk); *see* Tr. 555 (Gelfeld: putting real estate in trust made sense; condominium with a mortgage could easily be transferred to trust); Tr. 806, 808-09 (Altman: same).

The 2009 Trust and Other Estate Documents Prepared by Dickens

175. By late October 2009, Dickens had advised Ms. Seltzer that the trust document was complete. Ms. Seltzer told her children that she wanted them to meet Dickens because he would be responsible for the Trust when she died. Tr. 53-57 (Falk); Tr. 682, 722 (Seltzer); BX 65 at 3. She also asked Dickens if Luxenberg would be at the meeting. BX 65 at 3. There is no direct evidence that Ms. Seltzer insisted that Luxenberg be present at the meeting or that she was relying on Luxenberg to advise her at the meeting. BX 65.

176. To accommodate Ms. Seltzer's treatment and poor health, the meeting was scheduled for November 2, 2009, in the Luxenberg firm's office in Bethesda, Maryland. BX 65 at 1-3; BX 66; Tr. 57-58 (Falk). Dickens forwarded the date, time and place of the meeting, as well as his exchange of e-mails with Ms. Seltzer and her children to Luxenberg on October 26, 2009. BX 65 at 1. Dickens did not provide Ms. Seltzer's children before the meeting with copies of any of the documents he had prepared for the meeting. Tr. 60 (Falk); Tr. 682 (Seltzer).

177. On November 2, 2009, Dickens met with Ms. Seltzer, who was accompanied by her two children, in the firm's Maryland office. Dickens – still unlicensed in Maryland – was the

only lawyer advising Ms. Seltzer at the meeting. Tr. 60-61 (Falk); Tr. 672, 682-83 (Seltzer); Tr. 424 (Luxenberg); Tr. 794 (Altman: work and advice should have been under the supervision of Maryland lawyer). Falk and Eric Seltzer understood that Dickens was their mother's attorney, as well as her attorney-in-fact, trustee, and that he would be preparing the estate documents. Tr. 55, 57, 71-72, 153-55; Tr. 722. Ms. Seltzer had also advised Falk that Dickens was slow to get things done and that he sometimes needed to be prodded a bit. Tr. 57, 66, 91, 154.

178. During the November 2, 2009 meeting, there were no specific numbers discussed regarding the value of Ms. Seltzer's Estate. Tr. 55. Ms. Seltzer was secretive with respect to her finances, did not like to discuss money with her children, and did not want them to know the value of her assets. Tr. 55, 62-63, 66-68, 74 (Falk); Tr. 680, 684-85, 723-24 (E. Seltzer). Ms. Seltzer was independent, and proud that she was able to manage her financial affairs. Tr. 150-51 (Falk).

179. The document that Dickens prepared was entitled the "Michelle S. Seltzer Family Trust" (the "2009 Trust"), and designated himself "trustee, of Luxenberg, Johnson, and Dickens, P.C." BX 67 at 1. He designated Johnson, as successor trustee. *Id.* at 3. The 2009 Trust referred to a schedule of assets (Schedule A), which was to be attached to the 2009 Trust, but Dickens did not provide Ms. Seltzer's children with the list of the assets during or after the meeting. Tr. 66-69 (Falk); Tr. 684-86 (Seltzer).[30] On the cover page to the list of assets, Dickens wrote the following:

> This Schedule A lists and describes the assets that GRANTOR, did as part of her creation of the [2009 Trust] hereby assign, convey, transfer, and deliver to the Trustee.
>
> The Trustee of this Trust is empowered by the terms of the Trust to demand, receive, and collect these assets which are by my hand, this day, delivered to him.
>
> And in exercise of powers granted to him under Section I. xi. of the [2009 Trust] the Trustee hereunder may by the fact of my granting him this power demand, receive, and collect the property and assets of any other trust which I have created.

[30] The list of assets that Dickens later attached to the 2009 Trust was the same list of CDs, savings bonds, Roth IRAs, and bank accounts that Ms. Seltzer and Eric Seltzer had sent to Dickens on September 26, 2009, and in the same format (although in a slightly different order). *Compare* BX 63 *with* BX 67 at 14-19.

BX 67 at 13.

180. As of November 2009, Falk and Eric Seltzer understood their mother's intention was to put all of her assets into the 2009 Trust. Tr. 72-73, 91, 123-124 (Falk); Tr. 702, 704 (E. Seltzer).

181. Luxenberg knew that the 2009 Trust designated Dickens as trustee and her husband as successor trustee. She also knew that Dickens was soon leaving the firm and practice of law to pursue other ventures. Tr. 408 (Luxenberg); BX 28. Luxenberg resolved any concern in this regard because she "knew one way or the other, we would get it done. We would refer it to somebody else if we needed to." Tr. 409. There is no evidence that Luxenberg, Dickens, or Johnson discussed with Ms. Seltzer that Dickens was planning to leave or how this might affect the administration of the long-term trust she wanted in place. Tr. 408-10 (Luxenberg). *See also* FF 182.

182. Bar Counsel's expert witnesses testified that when creating the 2009 Trust and advising Ms. Seltzer about her estate plan, Dickens failed to provide competent advice and the documents he prepared fell below the standard of care of a reasonably competent lawyer. Dickens failed to include key terms and conditions, including the relative interests of the beneficiaries and guidance to the trustee as to the distribution of the trust assets upon Ms. Seltzer's death. Tr. 621-22 (Gelfeld); BX 145; Tr. 778-79, 793, 827-28 (Altman). Dickens also failed to amend or even address the amended 1990 Trust, which continued to exist and held much, if not most, of Ms. Seltzer's assets. The language that Dickens included in the cover page to the Schedule A, did not transfer or convey legal title of the assets to the 2009 Trust. A competent lawyer would have told his client that the client needed to transfer title to the assets to the 2009 Trust and instructed her how to do so. Tr. 548-49, 584-85 (Gelfeld); Tr. 809-11, 826-27 (Altman). There is no evidence

that Dickens told Ms. Seltzer (who was dying of cancer) what she needed to do, or took any steps himself to ensure that title to her accounts and assets was transferred to the 2009 Trust. Consequently, many of the assets included in the list continued to be held in her name or the 1990 Trust. Tr. 584 (Gelfeld); Tr. 809-10 (Altman); see BX 203 (accounting for 1990 Trust; $658,654.96 owned by trust on date of Ms. Seltzer's death). According to Bar Counsel's expert, these failures fell below the standard of care. Tr. 812, 826-27, 829 (Altman: even assuming there was a reason for irrevocable 2009 Trust, Dickens should have further amended 1990 Trust; creating two trusts where assets could not be transferred, "absolutely" fell below standard of care).[31]

183. At the November 2, 2009 meeting, Dickens went over some of the provisions of the 2009 Trust with Ms. Seltzer and her children, Jerri and Eric. Dickens advised (contrary to the expert testimony at the hearing) that the 2009 Trust would receive more favorable tax treatment under the D.C. laws. Tr. 62, 64 (Falk); BX 280. Dickens would not divulge the assets that were supposed to be transferred to the 2009 Trust, although he represented that they would be in this trust when Ms. Seltzer died (Tr. 65-68, 72 (Falk); Tr. 684-86 (Seltzer); BX 280) – something that in fact did not happen. Tr. 584 (Gelfeld); Tr. 809-10 (Altman); BX 203.

184. Dickens also did not discuss the contents of Ms. Seltzer's will at the November 2009 meeting. Tr. 62-63, 74 (Falk); Tr. 685, 687-88 (Seltzer); BX 280. However, there is no evidence that he had begun work on making the few changes he eventually did to Ms. Seltzer's

[31] Testimony at the hearing revealed other irregularities with the 2009 Trust, but these issues were described as concerns and not expressly stated as below the standard of care. For example, Dickens specified that D.C. law would govern the 2009 Trust, purportedly for tax reasons. BX 67, at 12; Tr. 546-47 (Gelfeld); Tr. 778 (Altman: "pretty strange" to have irrevocable trust under D.C. law for Maryland resident). Dickens included boilerplate provisions that had no apparent relevance to Ms. Seltzer's estate plan, and many of the provisions were included multiple times. *See, e.g.,* BX 67 (arts. 8.1.E. and 8.1.I(vii) same; arts. 8.1.I(xiv) and 8.1.I(xx) same); Tr. 545 (Gelfeld: trust document looked like something out of form book that was improperly copied).

1990 will. *See* BX 135 at 15 (in firm's bill, Dickens claimed 1.5 hours to prepare will on December 30, 2009).

185. Ms. Seltzer and Dickens signed the 2009 Trust at the meeting in Maryland. The notary who witnessed their signatures (an employee of Luxenberg's firm) was a D.C. notary. BX 67 at 12; Tr. 68-69 (Falk).

186. After signing the 2009 Trust document, Ms. Seltzer and Falk met with Ms. Luxenberg to say "hello and chat[] for a few minutes." Tr. 71-72 (Falk). There is no evidence in the record to suggest that Ms. Seltzer made any attempt at this meeting to seek advice from Ms. Luxenberg or otherwise discuss her trusts and estates matter.

187. In addition to the 2009 Trust, Dickens prepared two form documents for Ms. Seltzer to execute – a general power of attorney ("POA") and a durable POA for health care. Ms. Seltzer signed the documents Dickens prepared designating Dickens as Ms. Seltzer's attorney-in-fact or agent, and Johnson as his successor. BX 287 at 1-2; Tr. 71 (Falk). Eric Seltzer, who lived very close to his mother, was named as her agent or attorney-in-fact under the health care POA, and Falk was named as successor. BX 288; Tr. 152-53 (Falk).

188. Ms. Seltzer also signed the two POAs on November 2, 2009 in Maryland, and they were witnessed by two firm employees (including Gleichman), whose signatures were notarized by the same D.C. notary. BX 287 at 3; BX 288 at 4; Tr. 70-71 (Falk); Tr. 241-42, 244-49 (Gleichman). After the meeting with Dickens, Ms. Seltzer and her two children met briefly with Luxenberg. Tr. 71-72 (Falk); Tr. 409, 424 (Luxenberg). Seltzer did not discuss any substantive issues related to her estate and trusts with Luxenberg. Tr. 71-72.

189. On November 12, 2009, Ms. Seltzer wrote to Dickens asking him to include her cemetery plots and car in the 2009 Trust. BX 68. When Dickens failed to respond, she sent him

and the Luxenberg firm follow-up e-mails. BX 69-71. In her e-mail of November 20, 2009, Ms. Seltzer also asked about the status of her will, and reiterated her desire to compete all the paperwork, noting that she was scheduled to go back to Johns Hopkins for further evaluation. BX 71. Dickens still did not respond.

190. On December 5, 2009, Ms. Seltzer sent another e-mail to Dickens asking if there were other documents, whether they could take care of them "now," referring again to her medical treatment. BX 71. A few days later, Luxenberg received copies of the e-mail exchange between Ms. Seltzer and Dickens. BX 74 at 2-3.

191. On December 5, 2009, Dickens e-mailed Ms. Seltzer, stating he had "updated" her will. BX 72. A couple of days later, he sent her another e-mail stating it would be "better" or "easier" to include her car and cemetery plots in her will, not the 2009 Trust. BX 73. Luxenberg also received copies of this e-mail exchange and knew that Ms. Seltzer would be back in the firm's Maryland office on December 11, 2009, to execute her will. BX 74**.**

192. On December 11, 2009, Ms. Seltzer returned to the Luxenberg firm in Bethesda, Maryland, to execute her will. Dickens was the only lawyer who met with Ms. Seltzer. Tr. 425 (Luxenberg).

193. The will that Dickens prepared was essentially the same as the 1990 will that Ms. Seltzer had executed, with a few modifications. *Compare* BX 12 at 10-13 (1990 will) *with* BX 76 (2009 will).[32] Dickens designated himself as the personal representative of Ms. Seltzer's estate,

[32] Specifically, Dickens modified the language in the introductory paragraph and Articles 1 and 5 (4 in the 1990 will) to refer to the Irrevocable or 2009 Trust; included an Article 4 giving her cemetery plots to her brother (who Luxenberg testified had already died, *see* p. 44 n.25), and her car to the 2009 Trust; and appointed himself personal representative of her estate and her "daughter, Stephen D. Johnson, as his successor." BX 76 at 3. The firm's bill reflected that Dickens billed 1.5 hours to "Prepare Will" on December 30, 2009 – three weeks after Ms. Seltzer executed the will. BX 135 at 15-16 (invoices to Seltzer reflecting time billed and payment).

and Johnson, whom he identified as Ms. Seltzer's "daughter," as successor personal representative. BX 76 at 3. [33]

194. Ms. Seltzer signed the will on December 11, 2009. BX 76 at 5. Tolar and Gleichman served as witnesses, but were not present for whatever discussion occurred between Dickens and Ms. Seltzer.[34] Tr. 242, 250-51, 265 (Gleichman). Gleichman was not aware of any documents that Ms. Seltzer executed or signed other than the will, and the firm's files did not contain copies of any additional documents. Tr. 251-52, 259-60 (Gleichman).

195. Later in December 2009, Ms. Seltzer was scheduled to meet Dickens at the PNC Bank in Potomac, Maryland, so that she could introduce him to Rakhee Dhawan, a PNC employee whom she knew. BX 77; BX 79; Tr. 427 (Luxenberg). Dickens failed to show up and did not tell Ms. Seltzer that he would not be there – a fact that Luxenberg learned when she received e-mails between Ms. Seltzer and Gleichman about Dickens' failure to appear because he allegedly was "stuck in court for a vicious case." BX 77; Tr. 253 (Gleichman); Tr. 425-26 (Luxenberg). Luxenberg responded to Ms. Seltzer's emails on December 24, 2009.[35]

196. Dickens' personal bank records reflected he was making charges and ATM withdrawals on December 24, 2009, in Sterling, Virginia, where he lived. BX 279 at 19. There is no evidence that Dickens ever rescheduled the meeting at PNC Bank with Ms. Seltzer or took any steps to ensure that ownership of Ms. Seltzer's assets was transferred to the 2009 Trust while she

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[33] In March 2011, more than a year after Ms. Seltzer's death and in response to the court's audit letter, Dickens provided affidavits to the Maryland court from himself and Johnson "regarding the typographical error." BX 199 at 1, 10-11.

[34] Gleichman was not certain that Tolar was not present for any discussion but after considering his normal practice in such events and his feeling that it would be strange if Tolar had been in the room (and apparently therefore memorable), it was Gleichman's "best recollection" that he and Tolar were only present for the signing. Tr. 265 (Gleichman).

[35] First, Luxenberg told Ms. Seltzer that Dickens was out of town for Christmas and did not know when he would see her e-mail. BX 78 at 1; Tr. 426 (Luxenberg). Then, later that same day, Luxenberg told Ms. Seltzer that Dickens had been "stuck in a lengthy hearing in Montgomery County." BX 82 at 4.

was alive. *See* BX 203; *but see* Tr. 977-79 (Luxenberg testified she "knew" that they were transferring assets, but when pressed for supporting facts, conceded that it was her "impression" they were).

197. In late December 2009 and January 2010, Ms. Seltzer and Luxenberg exchanged e-mails and notes about Ms. Seltzer's continued medical treatment and deteriorating health, the firm's legal work, and the bill that Luxenberg sent her for that work. BX 79-82; BX 135 at 14-15 (firm bills). Ms. Seltzer had already paid the firm more than $5,000 in fees for the 2009 estate documents – *i.e.*, the 2009 Trust and Will. BX 135 at 9-13.

198. On January 19, 2010, Ms. Seltzer asked Dickens whether her 2009 Trust was in effect and what she should do for her 2009 taxes. BX 83. Dickens responded that the 2009 Trust did not "begin functioning" until the beginning of 2010, and that Ms. Seltzer should file her 2009 taxes. *Id.* There is nothing in the written instrument creating the trust which would delay the effective date of the trust. It is true, however, that when he gave this advice, Dickens had not yet effected the transfer of all the designated assets to the 2009 trust.

199. In early February 2010, Dickens advised Luxenberg and others that he intended to move to Italy. BX 85; Tr. 428 (Luxenberg). Dickens previously had told Luxenberg about his plans to leave the firm and the practice of law. However, Luxenberg's understanding was that Dickens would "be back and forth" between Italy and the United States, that Dickens' companion, Billy Tolar, was staying in Virginia, and that Dickens would still be able to handle some matters. Tr. 428-29 (Luxenberg).

200. Luxenberg did not discuss with Ms. Seltzer Dickens' plans to move to Italy or how those plans could affect the administration of her trust. This was because it was Luxenberg's impression that Ms. Seltzer knew that Mr. Dickens planned to spend considerable time in Italy and

because Luxenberg knew that Mr. Dickens did not plan to make a long-term move to Italy. Tr. 373-75, 429-30 (Luxenberg). Dickens also told Luxenberg that he would be back and forth between Italy and the United States. *See* Tr. at 429 (Luxenberg).

201. Before Dickens' announced move to Italy, Ms. Seltzer was hospitalized at Suburban Hospital. She spent a few days there in the first half of January 2010, returned for several days between January 27 through February 1, and was readmitted a final time on February 7, 2010. Tr. 76-78 (Falk). On February 12, 2010, Ms. Seltzer was transferred from Suburban Hospital to hospice care at Casey House in Rockville, Maryland. Tr. 77-78 (Falk).

202. At Ms. Seltzer's request, Falk called Dickens to advise him that Ms. Seltzer was in Casey House and did not have long to live. Falk could not reach Dickens, so she sent him an e-mail. Tr. 79-81 (Falk); BX 88

203. Dickens subsequently called Falk and asked her to have Ms. Seltzer sign a blank check for him. Falk was unwilling to send him a blank check, and consulted with Ms. Seltzer's contact at PNC Bank, Rakee Dhawan. Ms. Dhawan knew of no reason for such a check. Nonetheless Ms. Falk obtained the check and told Dickens that she had it. Dickens never came to get it. Tr. 82-84 (Falk).

The Letter of Instruction and Dickens' Theft of Funds Beginning in February 2010

204. On February 23, 2010, both Luxenberg and Dickens went to Casey House to meet with Ms. Seltzer. Tr. 176-78, 188 (Hohlfeld); Tr. 431 (Luxenberg).[36] Luxenberg was there to visit Ms. Seltzer. Dickens was apparently there to facilitate his theft of funds from Ms. Seltzer's trust.

[36] Dickens and Luxenberg had visited Ms. Seltzer in the hospital, and previously at Casey House. On one of the hospital visits, Dickens was dressed as a priest. Tr. 80-81 (Falk); Tr. 689 (Seltzer); Tr. 429-31 (Luxenberg).

When they arrived in the room together or nearly together,[37] Hohlfeld was finishing her visit, having delivered a quilt she made for Ms. Seltzer and told Ms. Seltzer that she would return the following day to deliver a pin and certificate for her 20 years of service as a County librarian. Tr. 176-78, (Hohlfeld); *see* BX 91 at 2; Tr. 80 (Falk). Luxenberg and Dickens introduced themselves as Ms. Seltzer's lawyers and friends. Tr. 177-78, 189-90, 194-95 (Hohlfeld); *see also* BX 249.

205. When Ms. Hohlfeld left the room, Dickens followed her to discuss Ms. Seltzer's condition. Dickens falsely claimed he had been a doctor before becoming a lawyer, and stated that Ms. Seltzer had only a few days to live. Tr. 178-79 (Hohlfeld). Dickens asked Hohlfeld how she knew Ms. Seltzer and, after learning that they worked together and had known each other for some time, asked Hohlfeld if she would witness Ms. Seltzer signing a document relating to her trust. Tr. 178-79 (Hohlfeld). Hohlfeld agreed, based on Dickens' representations that the document related to the trust that Ms. Seltzer had created to distribute funds to her son Eric – something that Ms. Seltzer had previously discussed with Hohlfeld. Tr. 179 (Hohlfeld); *see also* Tr. 87-88 (Falk: at the end of her life, Ms. Seltzer talked to everyone about wanting to take care of Eric).

206. When Ms. Hohlfeld went back into Ms. Seltzer's room, she was sufficiently concerned about Ms. Seltzer signing a document, given her condition, that she questioned Ms. Seltzer. Ms. Seltzer said that Dickens had set up a trust and the document was needed for the lawyer who would oversee the trust and distribute money to her son. Tr. 179-80, 190-92, 197,

[37] At the hearing, there was considerable debate regarding how Dickens and Luxenberg arrived at Casey House. Luxenberg testified that she did not know Dickens planned to be there, they arrived separately and she only happened to meet Dickens there. Tr. 432 (Luxenberg: "I met Mr. Dickens in the parking lot, I didn't know he was coming"). Ms. Hohfeld did not see how they arrived at Casey House, but the timing of their arrivals in Seltzer's room was such that she believed they arrived together. Tr. 178 (Hohfeld: "They came together."); Tr. 188 (Hohlfeld did not know if they arrived in the same vehicle, but "they just walked in the door together.") We credit Luxenberg's testimony, which is not inconsistent with what Ms. Hohlfeld saw.

201-02 (Hohlfeld); BX 249. Because Ms. Seltzer's explanation was consistent with what Dickens had told her in the hallway, Hohlfeld agreed to witness Ms. Seltzer's signing the document. Tr. 179-80, 190, 193, 202 (Hohlfeld); BX 249.

207. While Hohlfeld was talking to Ms. Seltzer, Dickens spoke to Luxenberg. At some point Luxenberg either handed Dickens a portfolio and he removed the document from it or Luxenberg removed the document from the portfolio and handed it and the portfolio to Dickens.[38] Dickens then placed the document on the tray for Ms. Seltzer to sign. Tr. 180, 187-88, 192-94, 198, 199-200, 203 (Hohlfeld). The document did not have any attachments. Tr. 181 (Hohlfeld); Tr. 434, 973 (Luxenberg).

208. Hohlfeld did not read the document captioned "Letter of Instruction," because she did not believe it was any of her business. Tr. 197 (Hohlfeld); BX 90. Neither Dickens nor Luxenberg read or explained it to Ms. Seltzer. Tr. 180-81, 191-92, 202 (Hohlfeld); Tr. 434 (Luxenberg). Luxenberg also did not read the document until after Ms. Seltzer's death. At the time, Luxenberg believed the document was to enable Dickens to transfer funds to the 2009 Trust. Tr. 439, 974. In a sense, the document was consistent with Luxenberg's understanding, as its clear purpose was to transfer Ms. Seltzer's assets to Dickens. BX 90. However, what the document actually did was transfer the assets to Dickens with no restrictions on his disposition of the assets thereafter. In other words, the document facilitated Dickens' theft and was an inadequate expression of Ms. Seltzer's testamentary intent and what Luxenberg assumed was its purpose. BX 89; Tr. 817-19, 832-33 (Altman: document not competently drafted if intention was to transfer

[38] There was also considerable contention as to exactly how the document got from the portfolio in Luxenberg's possession to the table for Ms. Seltzer to sign and how that related to Bar Counsel's contention that Luxenberg and Dickens came to Casey house together. While Bar Counsel's contention that they came to Casey House together would buttress its more important contention that Luxenberg was acting as Ms. Seltzer's attorney with respect to this document and therefore should have known what was in the document, as we explained in *fn.* 37, *supra*, we credit Luxenberg's testimony that their presence together was coincidental.

assets); Tr. 980-83 (Luxenberg: admitted, based on after-the-fact reading, that the document did not restrict transfer of assets to trust).

209. Although Luxenberg and Dickens both represented Ms. Seltzer and knew that Ms. Seltzer had only days to live, neither of them explained to Ms. Seltzer what they were asking her to sign, why she was being asked to sign it, what Dickens intended to do with the document and her funds, or the consequences (and monetary penalties) of "cash[ing] in or liquidat[ing]" her certificates of deposit, her Roth IRAs and other assets. BX 90; Tr. 180-81 (Hohlfeld); Tr. 436-37 (Luxenberg). When testifying as an expert witness, Altman opined that Dickens' conduct fell below the standard of care because a competent attorney would have advised Ms. Seltzer regarding the tax consequences of liquidating these CDs and accounts. Tr. 833 (Altman). He further opined that if the real purpose of the Letter of Instruction were to facilitate the transfer of assets from the 1990 Trust to the 2009 Trust, Dickens' failure to so state in the letter fell below the standard of care. Tr. 833 (Altman). [39]

210. Ms. Seltzer signed the document because she trusted Luxenberg and Dickens, who were her lawyers. Tr. 410 (Luxenberg: knew Seltzer trusted her); Tr. 59, 86-87, 124 (Falk: same); *see also* Tr. 439, 507, 979-80 (Luxenberg: admitted she was Seltzer's lawyer); *but see* 983-84 (Luxenberg: "I did not view myself as her attorney at the time.").

211. After Ms. Seltzer signed the Letter of Instruction, Hohlfeld signed it as a witness, and included her address. Tr. 182, 198 (Hohlfeld). Luxenberg also signed the document as a witness. BX 90. There is no evidence that Luxenberg ever questioned Dickens about the lack of

[39] Bar Counsel's experts were not asked and did not offer expert testimony as to whether, under the circumstances here, which include Luxenberg's limited role in the representation of Ms. Seltzer, Luxenberg's conduct may have breached the standard of care that she owed Ms. Seltzer.

attachments referenced in the document or why he waited until Ms. Seltzer was on her death-bed to present the letter.

212. The "Letter of Instruction" that Luxenberg and Dickens had Ms. Seltzer sign provided:

> To: Any and All Officers of PNC Bank
>
> Please cash-in or liquidate all of the Certificates of Deposit that I have in your bank, including, but not limited to all those listed on the attached two sheets and give the proceeds to Dorrance D. Dickens, who is my Attorney.

BX 90.

213. On February 24, 2010, Hohlfeld sent Luxenberg and Dickens photos of Ms. Seltzer in Casey House at the e-mail addresses Luxenberg had provided her when she asked for copies of the photos. Tr. 182-83 (Hohlfeld); BX 91-92. In one of the photos, which Ms. Hohlfeld also sent to Falk, the document that Dickens and Luxenberg had Ms. Seltzer sign is visible. BX 92 at 3; Tr. 182, 184-85, 195 (Hohlfeld).

214. Falk learned about the existence of the document from Hohlfeld, but did not know what it provided. She was not concerned at the time because Hohlfeld told her that Luxenberg and Dickens had been there when her mother signed it. Tr. 86, 91 (Falk).

215. Luxenberg never saw or spoke to Ms. Seltzer after February 23, 2010, the day she signed the Letter of Instruction. Tr. 431 (Luxenberg).

216. It is unclear whether Dickens ever saw or spoke to Ms. Seltzer again, although he returned to Casey House the next day, February 24, 2010, to get a doctor to sign a document he had prepared attesting to Ms. Seltzer's mental alertness. BX 289; Tr. 92-94 (Falk: learned of document and obtained copy).

217. On February 26, 2010, Dickens went to the PNC Bank in Potomac, Maryland, and caused the bank to liquidate or cash-out 47 CDs, eight ROTH IRAs, and two savings accounts that

Ms. Seltzer held in her name or the name of her 1990 Trust, resulting in penalties of more than $4,000. BX 274A at 1-9; BX 246 at 8. Dickens deposited the proceeds, which totaled $332,940.46, into another PNC Bank account, number xx-xxxx-2943, titled "Michelle Seltzer Family TRT, Dorrance D. Dickens Trustee" (PNC Seltzer Trust Account). Dickens was the sole signatory of the PNC Bank Seltzer Trust Account. BX 274B at 39; Tr. 737, 742, 743 (Matinpour).[40]

218. Between February and July 2010, Dickens took and used approximately $360,000 from the PNC Seltzer Trust Account for himself. BX 271; Tr. 732-737, 741 (Matinpour). Dickens began misappropriating funds from the account the day he opened it, when Ms. Seltzer was still alive (although he knew she would die soon). On February 26, 2010, Dickens wrote himself a check for $20,000, which he deposited in his personal account at United Bank. BX 271 at 1; BX 274 at 10; Tr. 733 (Matinpour). The manner in which he converted the funds to his own use, on this and later occasions, makes clear that he was engaged in fraudulent conversion rather than the collection of a debt based on the interests he claims Ms. Seltzer purchased.

Ms. Seltzer's Death and Dickens' Continued Theft of Funds

219. On March 5, 2010, Ms. Seltzer died while a patient at Casey House. BX 94; Tr. 95 (Falk).

220. On March 11, 2010, Luxenberg and Dickens attended the memorial service for Ms. Seltzer. Dickens dressed as a priest for the service. Tr. 97 (Falk); Tr. 691 (Seltzer); Tr. 446 (Luxenberg). Luxenberg did not find this unusual, as Dickens had dressed as a priest on a number of other occasions. Tr. 293-94 (Luxenberg); *see also* Tr. 1091-92 (Ghanem).

[40] The bank records reflect that Rakhee Dhawan, the PNC employee whom Ms. Seltzer befriended, was involved in transferring the funds to the account that Dickens opened and controlled. BX 274 at 4-8.

221. On March 8, and again on March 11, 2010, the day of Ms. Seltzer's memorial service, Dickens stole another $60,000 by writing two checks on the Seltzer trust account for $30,000 each, payable to United Bank, which he deposited in his personal account and used to pay his credit card bills and other personal expenses. BX 271; BX 274 at 11-12; *see also* BX 279.

222. On March 11, 2010, Dickens also wrote a check for $4,478 on the Seltzer trust account payable to the Luxenberg firm. BX 274 at 13. The Luxenberg firm did not have any invoice or other records indicating that it was entitled to fees in this amount. BX 99 (firm e-mail to Dickens); BX 135 (firm bills). The firm nevertheless negotiated the check and kept the money. BX 274 at 13; Tr. 446 (Luxenberg).

223. In mid-March 2010, Montgomery County notified Dickens that Ms. Seltzer had designated her 2009 Trust as the beneficiary of her retirement funds of approximately $30,000 (before taxes), a death benefit of $44,000, and half of the value of her unused sick leave. BX 95.

224. By late March 2010, Ms. Seltzer's two children were asking Dickens about their mother's Will and the assets in her trusts. Tr. 89-90, 97-99 (Falk); Tr. 692-93 (Seltzer: Dickens hard to reach); BX 96-97 (March 2010 e-mails from Eric Seltzer).

225. On April 20, 2010, after receiving numerous calls and e-mails from Ms. Seltzer's children, Dickens sent them an e-mail falsely stating that he did not have a schedule of assets, and claiming that "[m]ost of the assets will be coming from the estate per the will. We don't know what they are yet." BX 105 at 2; Tr. 98, 116 (Falk). Dickens sent Luxenberg a copy of his e-mail. BX 105 at 2. There is no evidence that Luxenberg did anything to follow up with Dickens concerning this email. *But see* FF 196 (Luxenberg believed that in February 2010, the assets were being transferred).

226. On April 22, 2010, two days after his response to Ms. Seltzer's children, Dickens misappropriated additional funds due to Ms. Seltzer's 2009 Trust by depositing in his personal account a check from Montgomery County for $11,458.104 made payable to the Michelle Seltzer Family Trust. BX 271 at 2; BX 279 at 37.

227. On April 23, 2010, Dickens filed a Petition for Probate in the Orphans' Court for Montgomery County, Maryland, stating that pursuant to Ms. Seltzer's 2009 Will, he was to act as personal representative of her Estate. *In re Estate of Michele Seltzer*, Estate No. W-64977. BX 107 at 1; BX 108 at 2. Although he included "Esquire" after his name and listed the firm's Virginia address, Dickens claimed he was in possession of Ms. Seltzer's Will as her "friend." BX 108 at 1. He falsely claimed that Ms. Seltzer had given him the Will in the presence of her two children who witnessed her signing it. *Id.* at 3. In fact, neither of her children was present or had seen her Will. Tr. 74-75, 112-13 (Falk); Tr. 688 (Seltzer). Dickens falsely represented the value of Ms. Seltzer's Estate, claiming an estimated value of $850,000 (*see* BX 149 (in tax return, valued at $1.6 million), and posted only a nominal bond of $5,000. BX 108 at 4, 6.

228. On the same day, April 23, 2010, Dickens filed with the Orphans' Court an Appointment of Resident Agent designating Luxenberg as his resident agent upon whom service could be made. BX 108 at 9. Luxenberg knew that Dickens was acting as personal representative and not licensed to practice in Maryland where Ms. Seltzer's Estate was probated. She took no steps to determine what Dickens was filing or under what authority he was doing so. Tr. 453-54 (Luxenberg: claimed she did not know what had to be done, but admitted it would involve Maryland court system); *see* BX 121 (Luxenberg's June 23, 2010 e-mail to Dickens about "immediate deadline" in Seltzer case and "need to get [case] done"). More than a year later and

only after the Seltzers sued her, Luxenberg reviewed the Appointment of Resident Agent filing and told the court that Dickens forged her signature on it. BX 253; Tr. 490 (Luxenberg).

229. In and after April 2010, Falk and Eric Seltzer continued to ask Dickens for information about their mother's Estate and the probate process. Tr. 99, 102-05, 115 (Falk: Dickens hard to reach); Tr. 693-94 (Seltzer: same). Plotnick, the trustee for their father's trust naming Eric as beneficiary, also contacted the firm requesting documents and information about Ms. Seltzer's Estate and trusts. BX 101-03. Tr. 694 (Seltzer).

230. Luxenberg received copies of some of the e-mails reflecting the children's requests, as well as a number of the follow up e-mails reflecting that Dickens was not providing them the information and documents to which they were entitled. *See, e.g.*, BX 101, 103, 104, 106, 119, 130, 131; Tr. 450-51 (Luxenberg: knew Plotnick seeking information). Dickens also was not communicating with Luxenberg, Tr. 257 (Gleichman), and there are no documents in the record that reflect that the children sent any emails directly to Luxenberg seeking information or requesting that Luxenberg follow up with Dickens.

231. There is no evidence in the record to indicate that Dickens provided Ms. Seltzer's children (hereinafter, the children) any substantive responses to their questions about the assets in their mother's Estate and trusts. Tr. 106-07 (Falk); Tr. 694 (Seltzer).

232. Instead, in April 2010 Dickens provided the children (i) a copy of the 2009 Trust but *without* the list of assets that were supposed to have been transferred to the Trust (BX 103-04); (ii) a copy of Ms. Seltzer's 2009 Will (BX 106); and (iii) a copy of the amended 1990 Trust (BX 111). Tr. 106, 108-09 (Falk); Tr. 694, 696 (Seltzer); *see also* Tr. 558-59 (Gelfeld).

233. In late April and May 2010, the children continued to ask Dickens for information and documents, including his retainer agreement, documents their mother had executed at Casey

House, and all documents that governed or related to her estate plan. BX 109. They also asked Dickens to provide them information about the probate process, explain why Ms. Seltzer's assets had to go through probate if they had been transferred to her trusts, when they would receive distributions, whether an accountant would handle the tax issues, and what, if any, steps he was taking to sell their mother's car and condominium. They also asked to meet with Dickens. BX 109, 112-14; Tr. 98-99, 108 (Falk).

234. To the extent he responded, much of the information provided was wrong – *e.g.*, he claimed that the condominium could not be transferred to the 2009 Trust because it was mortgaged; he would handle the tax filings for the Estate and trusts; he was always available to discuss the Estate and trusts; he would work on a more complete answer to their questions; he would provide the rest of the documents; and he would meet with them (but then continued to dodge them, claiming he was doing other things). Tr. 98-99 (Falk); BX 110, 112-14.

235. Dickens falsely led Ms. Seltzer's children to believe that he was working on their mother's Estate, marshaling her assets, and taking other necessary steps. BX 110, 112-14, 116A, 116B; Tr. 106 (Falk); Tr. 702 (Seltzer). In fact, he continued to steal funds from Ms. Seltzer's Estate and trusts to finance his trips, which became more frequent, and to pay his personal expenses (BX 271; BX 279) – acts he continued to conceal from Falk and Eric Seltzer. *See also* FF 237.

236. At the end of April 2010, Dickens finally sent Falk a check to reimburse her for the cost of her mother's memorial service and related expenses – all of which Falk had advanced. Tr. 96, 118-19 (Falk); BX 113; *see also* BX 98. Dickens wrote the check on the PNC Seltzer Trust Account he had opened with Ms. Seltzer's funds in February 2010 (*see* BX 113 at 2; BX 274 at 20; Tr. 750 (Matinpour)) – an account that he later would contend contained only money that

belonged to him and had been opened erroneously in the name of the 2009 Trust. BX 205 at 3 n.1 (March 2011 Accounting for 2009 Trust).

237. During the month of April and May 2010, Dickens obtained the keys to Ms. Seltzer's safe deposit box and went through her papers and other belongings in her residence. BX 98 (Falk's email re keys), BX 106 (Dickens e-mail stating he would open safe deposit box); Tr. 101-02, 109 (Falk); *see also* BX 293 at 1 (2-16-10 entry: prior to Ms. Seltzer's death, Dickens told Eric Seltzer not to go into his mother's safe deposit box or house because IRS would get suspicious).

238. Dickens refused to allow Ms. Seltzer's children into their mother's home without him or his friend Joe Ghanem, and did not let them near her financial records – records that Ms. Seltzer kept meticulously during her lifetime that would have revealed the amount and whereabouts of her savings and investments. Tr. 101-02 (Falk); Tr. 699-700 (Seltzer); Tr. 847-49 (Shaw: Ms. Seltzer kept records for everything); *see also* BX 109 (Falk's e-mail to Dickens, noting mother kept "fairly meticulous" records). Dickens took $4,000 of the Seltzer funds to pay Ghanem to help Eric Seltzer move his mother's furniture to a storage unit that Eric rented. BX 115, 118 (e-mails about moving furniture and Ghanem's role); Tr. 119-20 (Falk); Tr. 698-701 (Seltzer); Tr. 1107 (Ghanem); BX 271; Tr. 737-38 (Matinpour); BX 274 at 22, 25. Ms. Seltzer's financial records and other documents were, at some point, delivered to Dickens at the firm's Virginia office. Tr. 847-48 (Shaw: reviewed Ms. Seltzer's records in Dickens' office).

Luxenberg Transferred Funds to Dickens and Both Failed to Provide Accountings

239. Luxenberg knew that she was and continued to serve as the only trustee of the amended 1990 Trust, and that it still held substantial assets upon Ms. Seltzer's death. Tr. 513 (Luxenberg); BX 106 (Dickens e-mail copied to Luxenberg). However, Luxenberg believed per

her discussions with Dickens and Ms. Seltzer, that all of the assets had to be transferred to the 2009 Trust. Tr. 448-49. Further, Luxenberg was present for and witnessed the signing of the document on February 23, 2010, which she incorrectly believed was in connection which the assignment of assets to the 2009 Trust. FF 208-16 (Luxenberg did not read the Letter of Instruction).

240. In April 2010, Luxenberg went to PNC bank with Dickens to transfer funds or assets belonging to the 1990 Trust. She returned to PNC with Dickens in July 2010. Tr. 448, 456, 460-61 (Luxenberg); BX 135 at 16; *see* FF 246, *infra*.

241. Luxenberg believed that Ms. Seltzer created the 2009 Trust to replace the 1990 Trust and that it was Ms. Seltzer's testamentary intent that the assets in the 1990 Trust be transferred to the 2009 Trust. However, there was nothing in the terms of the 1990 Trust that gave her that authority. Luxenberg did not dispute that provisions of 1990 Trust did not authorize her to make distributions. She testified that she believed she was obligated to do so, but admitted she had not read 2009 Trust at the time and therefore could not have relied on it. *See* Tr. 448-50, 514-15 (Luxenberg). *See also* Tr. 568, 584-85, 588-89 (Gelfeld: as trustee, Luxenberg bound by terms of the trust document (BX 16); she had no authority to distribute the assets of the 1990 Trust to another trust or trustee, but could distribute them only to the beneficiaries of the Trust, *i.e.*, Ms. Seltzer's children); Tr. 785-86 (Altman: provisions of 1990 Trust did not permit Dickens or Luxenberg to transfer assets to 2009 Trust).

242. Luxenberg charged the Seltzer Estate for her time, at her hourly rate for legal services, for her trips to PNC to transfer funds to Dickens or the 2009 Trust. BX 135 at 16; Tr. 450, 457 (Luxenberg).

243. Between March 2010 and March 2011, Luxenberg and Dickens transferred title and possession of more than $470,000 of the $650,000 in assets held by the 1990 Trust, of which

Luxenberg was the sole trustee, to either the 2009 Trust or Dickens personally. BX 203 (March 2011 accounting for 1990 Trust). The Hearing Committee finds that while Luxenberg mistakenly facilitated transfers to Dickens personally, it was not her intent to do so.

244. On May 13, 2010, Respondent Dickens opened an account for Ms. Seltzer's estate at United Bank, captioned "Estate of Michelle S. Seltzer / Dorrance D. Dickens, Personal Representative," account no. xx-xxxx-3867 (UB Seltzer Estate Account). Dickens was the sole signatory on the account. BX 277 at 1-4. Dickens later deposited other funds in the account, including more than $200,000 from the sale of Ms. Seltzer's condominium, which did not occur until January 24, 2011 – more than 10 months after Ms. Seltzer's death. BX 199 at 2-7; BX 277 at 15; *see* Tr. 697 (Seltzer: did not know why Dickens took so long to sell it).

245. In and after May 2010, Dickens continued to misappropriate funds from the PNC Seltzer Trust Account. BX 271 at 1. Also in June 2010, Dickens transferred more than $50,000 from the PNC Seltzer Trust Account to a third party (James Frelk) having nothing to do with Ms. Seltzer, her trusts, or her Estate. BX 271 at 1; Tr. 910 (Matinpour); BX 274 at 27.

246. On July 13, 2010, Luxenberg made another trip to PNC Bank with Dickens. Tr. 448, 456, 460-61 (Luxenberg); BX 135 at 16. Luxenberg directed PNC to close two accounts held for the 1990 Trust and gave the funds, totaling $33,871.77, to Dickens who deposited them in the PNC Seltzer Trust Account over which he was the sole signatory. Tr. 456-57 (Luxenberg); BX 272 at 15-18; BX 273 at 9-10; BX 274B; BX 274 at 30, 33.

247. The two accounts that Luxenberg controlled included the account from which Ms. Seltzer's mortgage payments, condominium fees, and other expenses were paid via automatic debit mechanisms. BX 272 at 7, 10, 13, 16.[41] While Ms. Seltzer's condominium was not property of

[41] Some of these automatic debit items were to pay Ms. Seltzer's Verizon bill and for long-term care – services

the amended 1990 trust of which Ms. Luxenberg was still the Trustee after Ms. Seltzer's death, *see* BX 16, neither Dickens nor Luxenberg took steps to cause the automatic payments to be deducted from another account or ensure that the payments were made on a timely basis. Tr. 461-62 (Luxenberg: trusted Dickens). In and after August 2010, Associate Community Management Company (CMC), the company managing Ms. Seltzer's condominium at Georgetown Village, assessed penalties for the late payments, which Dickens later paid with funds belonging to the Seltzer Estate or trusts. BX 147; BX 197 at 5; Tr. 857-59 (Shaw).

248. On July 14, 2010, the day after Luxenberg gave Dickens more than $33,000 belonging to the 1990 Trust, he wrote a check on the PNC Seltzer Trust Account to PNC Bank for $43,719.05 (BX 123 at 1, which Dickens mistakenly dated June 14, 2010), to purchase a PNC cashier's check in the same amount payable to Audi of Tysons Corner. BX 123 at 2. Dickens used the PNC cashier's check to purchase a Porsche Boxster on July 14, 2010, which he titled in both his and Tolar's name. BX 123 at 4-24; Tr. 735-36 (Matinpour); BX 120 (Dickens and Tolar married in Washington, DC on June 14, 2010).

249. After Dickens' July 14, 2010 withdrawal, there was virtually nothing left in the PNC Seltzer Trust Account. BX 274 at 31 (balance on July 14, 2011 was $216.54). By the end of July 2010, Dickens had misappropriated more than $360,000 from the PNC Seltzer Trust Account alone. BX 271.

250. Dickens stole additional entrusted funds by depositing checks payable to the Seltzer Trust into his personal account. For example, on July 20, 2010, Dickens deposited a check from Montgomery County payable to the Seltzer Trust for $25,035.59 into his personal account. BX

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that should have been discontinued after her death. BX 272, at 10, 13, 16.

271 at 2; BX 279 at 53 (deposit slip and check); Tr. 747-48 (Matinpour). This check was for Ms. Seltzer's death benefit, minus the federal taxes. BX 122.

251. A few days after depositing the $25,035.59 check in his own account, Dickens filed an inventory with the Montgomery County Orphans' Court in which he admitted that the $25,035.59 belonged to Ms. Seltzer's Estate. BX 124 at 2-3. Two months later, Dickens told the Orphans' Court that the death benefit was "payable to a friend as beneficiary" resulting in the imposition of a $2,781.73 tax (BX 136) – a tax that would not have been imposed if the funds went to the trust, as Ms. Seltzer had directed. Tr. 559 (Gelfeld); Tr. 855-56 (Shaw); BX 271 at 1. Dickens paid the tax with the Seltzer Estate funds. BX 277 at 11; Tr. 746-49 (Matinpour).

252. By June 2010, the Seltzer case was the only legal matter at the Luxenberg firm on which Dickens was working. BX 121 (Luxenberg's email); Tr. 455 (Luxenberg).

253. On June 23, 2010, Luxenberg told Dickens in an email that she wanted it "done," and that she "d[id]n't want to leave it hanging" BX 121. The email had more than one topic, but it is clear to the Committee that when Luxenberg referred to "it" she meant the Seltzer Matter.

254. There is no evidence that Luxenberg discussed with Dickens their respective roles as trustees and how that work would be accomplished after he left the firm. She knew that Dickens was "extraordinarily busy" pursuing his own ventures (BX 121: Luxenberg's description), including "traveling the globe" (BX 131: Luxenberg's description), and unavailable for extended periods of time. Tr. 1060-63 (Johnson). Nonetheless, she never communicated with Ms. Seltzer's children – including in and after August 2010, when she received their e-mails reiterating their requests for information and documents about their mother's Estate and trusts. FF 265.

255. By August 2010, Dickens still had not provided Eric Seltzer and Falk an accounting or information about the assets in their mother's Estate and trusts and was not responding to their calls and e-mails. Tr. 103-06, 108-09, 122-23, 129-30, (Falk); Tr. 701, 715 (Seltzer).

256. When Eric Seltzer was able to reach Dickens by telephone on August 2, 2010, Dickens claimed that there were "complications" because Ms. Seltzer had two trusts, he was not the trustee for one of them, and he was trying to merge them. BX 125A; Tr. 704 (Seltzer).

257. One week later, on August 9, 2010, Eric Seltzer sent Dickens an e-mail asking for an accounting of the assets in both Ms. Seltzer's trusts, and information about where Dickens was holding them, including Eric's half of his mother's life insurance proceeds. BX 125B at 3; Tr. 705-06, 709-10, 714-15 (Seltzer: he and sister worried and frustrated); Tr. 776 (Altman: trying to have Eric get information from Dickens). Dickens did not provide an accounting or disclose where all the assets were. Tr. 123, 129-30 (Falk); Tr. 715 (Seltzer).

258. Dickens sent Eric Seltzer and Falk e-mails – one on August 9, 2010, and another on August 10, 2010. BX 125B. In his initial response on August 9, Dickens lied and said that neither he nor Luxenberg had any of the assets, that their mother had all the records, and they had "no clue what was supposed to be in either [trust]." BX 125B at 5. He then admitted in the same message this was not "exactly true," stating that their mother had a list of assets, but she controlled them and they were held by T. Rowe Price, Dreyfus, and United Bank, and that he had deposited the life insurance proceeds in United Bank. *Id.* Dickens failed to disclose that he deposited the proceeds of those accounts, $44,533.06, in his *personal account* at United Bank, and already had spent them. BX 279 at 55-59 (funds deposited on Aug. 9, 2010, and by Aug. 24, 2010, account was overdrawn).

259. In his second e-mail response on August 10, 2010, Dickens told Eric Seltzer and Falk he was working with Luxenberg "to combine" the trusts. BX 125B at 2. He did not advise, and there is no evidence that he knew, that such a "merger" could not be accomplished without going to court. Tr. 584 (Gelfeld) He also claimed he was paying the "just taxes and probate fees," but the court had to "fix the amount of the probate tax on assets that passed outside the estate." Dickens stated he received the life insurance proceeds on behalf of the trust the day before (but concealed what he had done with them), and would send them each a distribution of $5,000. *Id.* Dickens claimed he would provide them additional information, stating: "I don't ever mean for a client to suffer from feedback starvation." *Id.* at 3.

260. Dickens sent Eric Seltzer and Falk a number of other e-mails on August 10, 2010, attaching documents, but failed to provide them any substantive information regarding their mother's assets. *See* BX 126 (enclosing Maryland Court schedule only); BX 128 (enclosing copy of the amended 1990 Trust, without a list of assets) BX 129 (enclosing copy of insurance check without disclosing he took the funds for himself); Tr. 123 (Falk); Tr. 707 (Seltzer).

261. Falk responded to the August 10, 2010 e-mail about combining the trusts, by writing both Dickens and Luxenberg. BX 130 at 1. She did so because Luxenberg also was a trustee and head of the firm, and she (Falk) and Eric trusted her and were very concerned. Tr. 123-24, 129-30 (Falk).

262. In an email copied to Luxenberg, Falk told Dickens that she was not interested in receiving a distribution or an estimate of earnings, but wanted a "full and accurate accounting of the assets that are supposed to be in trust." BX 130 at 1. Falk referred expressly to Schedule A, stating she had never received a copy, but believed that the trust should include the myriad certificates of deposit and investment accounts her mother had. She requested that they send her

and Eric Seltzer an inventory of the assets, and stated that she would be "happy to go over what I am aware of with you and Debby [Luxenberg] if that would help." *Id.*; Tr. 130 (Falk).

263. Luxenberg received and read Falk's e-mail, as well as those of Dickens and Eric Seltzer that preceded it. BX 130; BX 131 (Luxenberg admitted seeing e-mail exchange); BX 135 at 18 (Luxenberg's time record); Tr. 463 (Luxenberg). Luxenberg claimed she did not understand Dickens' statement that there were two trusts, and talked to Dickens about this, Tr. 464 (Luxenberg), but in her e-mail of August 10 she made no mention of the matter. In that email she asked Dickens to send her the documents in the Seltzer file, including the trust instruments and the will, claiming that "we have no file here." BX 131; *see also* BX 132 (confirmation receipt reflecting Dickens receipt of e-mail).

264. Dickens had DeLuca, who provided him some services of an office assistant for the Virginia office,[42] send Luxenberg the trust documents, will, POAs, death certificate, notice to creditors, and a 1998 refinance deed of trust. BX 133. Dickens did not send Luxenberg a list of Ms. Seltzer's assets, accountings, bank records, correspondence, e-mails, and other documents that should have been in the client file. BX 133; *see* Tr. 235-36 (Gleichman). Luxenberg asked Dickens, through DeLuca, to confirm that the Seltzer children got an inventory and list of assets. BX 133 at 2. Dickens did not respond, provide any accounting (or say he had done so), and Luxenberg did not pursue the matter further. Tr. 131 (Falk); Tr. 466-67 (Luxenberg: never saw any accounting until March 30, 2011, when she received Gelfeld's and Altman's letters); *see* Tr. 257-58 (Gleichman: by this time, Dickens was refusing to provide information to Luxenberg).

[42] DeLuca managed the property for the lessor and provided some clerical assistance to Dickens, apparently in exchange for his legal services, but she was not an employee of the firm.

265. Neither Dickens nor Luxenberg responded to Falk's request for an accounting and information about her mother's assets that were supposed to be held in the trusts or the Estate. Tr. 131 (Falk); Tr. 464 (Luxenberg). Despite numerous indications to the contrary, Luxenberg believed that Dickens was dealing with the children regarding the trusts.

266. Based on her trips to banks with Dickens, Luxenberg knew where some of Ms. Seltzer's money was and she knew that Dickens knew where it was. FF 240, 246.

267. Luxenberg, who was a trustee of the 1990 Trust, did not provide the Seltzer children the other information they sought and were entitled to receive. Tr. 131 (Falk); Tr. 464 (Luxenberg); *see* Tr. 621 and BX 145.

268. On August 11, 2010, after misappropriating virtually all the funds in the PNC Seltzer Trust Account, Dickens opened a new account for Ms. Seltzer's 2009 Trust at United Bank, captioned "Michelle Seltzer Trust / Dorrance Dickens, Trustee," account no. xx-xxxx-3685 (UB Seltzer Trust Account). BX 278. Dickens opened the account with an initial deposit of checks payable to Ms. Seltzer's 1990 Trust (one from Vanguard and two from Dreyfus). *Id.* at 3-5. Dickens was the sole signatory on the UB Seltzer Trust Account. *Id.* at 1-2.

269. On August 13, 2010, Dickens met with Eric Seltzer. Although Dickens did not provide him any substantive information about Ms. Seltzer's Estate or trusts, he sought to allay Eric Seltzer's concerns by falsely representing that he was the trustee of several prominent funds, controlled billions of dollars, and knew and worked with Bill and Melinda Gates. Tr. 710-12 (Seltzer); BX 293 at 2.

270. At the meeting, Dickens gave Eric Seltzer a check for $5,000, which was the first distribution Eric received after his mother's death. Tr. 703, 710, 720 (Seltzer). Dickens also sent a $5,000 check to Falk. BX 279 at 61. Dickens made the payments with bank checks purchased

with funds from his personal account (in which he already had deposited more than $81,000 of Seltzer estate and trust funds). BX 271 at 2. He did so by writing a check to the bank for $15,000 and purchasing three bank checks for $5,000 each. He gave two of the checks to the Seltzer children and the third he made payable to local counsel in the Stadd criminal case in Mississippi. *Id.* at 2; BX 279 at 60-61; BX 207 at 14; Tr. 755-56 (Matinpour).

Seltzer Children Retained Counsel Who Demanded Information and Documents

271. By August 2010, Altman was assisting Eric Seltzer in his efforts to get information and documentation from Dickens relating to Ms. Seltzer's Estate and trusts. BX 293 at 1 (8/9/10 entry); Tr. 780-82 (Altman).

272. In September 2010, Falk retained Gelfeld to represent her in connection with her mother's Estate and trusts. Tr. 125, 131, 148 (Falk); Tr. 542 (Gelfeld). Gelfeld previously had been providing Ms. Falk informal advice. Tr. 106-07, 125, 148 (Falk); Tr. 538-40 (Gelfeld: Falk had been calling her for months about her concerns).

273. In consultation with each other, Altman and Gelfeld discussed the situation, including their "tremendous concerns about the quality of [the trust] documents, about the omissions and the total inadequacies of those documents." Tr. 542-43 (Gelfeld). Initially, Altman and Gelfeld tried to communicate with Dickens by telephone. Dickens did not respond, at least not substantively. Tr. 542-43, 555-56 (Gelfeld); Tr. 781-82 (Altman).

274. In October 2010, Dickens called Falk and told her he was going to schedule a meeting with Altman and asked if she wanted to be included. When Falk told Dickens she had hired a lawyer and provided him Gelfeld's name, Dickens did not pursue the matter – either with Falk or with Gelfeld and Altman. Tr. 133-34 (Falk); Tr. 555-56 (Gelfeld).

275. On October 31, 2010, Dickens was hospitalized for an apparent heart attack. Tr. 713-15 (Seltzer); Tr. 1108-09 (Ghanem); BX 293 at 2 (11-4-10 entry); BX 137. Dickens previously had complained to Luxenberg about his poor health, and she knew that he had a heart attack. Tr. 469 (Luxenberg). Dickens' health issues did not concern Luxenberg sufficiently to contact the Seltzer children or their counsel because Dickens had assured her he could handle the matter. *Id.;* Tr. 556 (Gelfeld heard about Dickens' condition from Falk).

276. In November 2010, Altman and Gelfeld continued to try to reach Dickens but were unable to speak with him. Tr. 556-57 (Gelfeld).

277. On November 23, 2010, Gelfeld called Johnson in his capacity as successor trustee to Dickens. Gelfeld stated in her message that she had been trying to reach Dickens without success and needed to speak to Johnson about the trust, and the matter could not wait. BX 138; Tr. 557 (Gelfeld). Gelfeld did not ask to speak with Luxenberg. Tr. 557. The firm's receptionist relayed the message to Luxenberg as well as Johnson. BX 138. Neither Johnson nor Luxenberg responded to Gelfeld. Tr. 557 (Gelfeld); Tr. 469 (Luxenberg: admitted did not call Gelfeld, but said she called Dickens).

278. A week later on November 30, 2010, Luxenberg sent Johnson an e-mail about who should contact Dickens (BX 139), and then sent Dickens an e-mail containing Gelfeld's message; Luxenberg wrote "HELP!!!!!!!" and asked Dickens to call Gelfeld and Luxenberg. BX 140. That same day, Luxenberg asked DeLuca to call her or Johnson about Dickens. BX 141.

279. On December 3, 2010, when Gelfeld called the Luxenberg firm in Maryland and asked for Johnson, she was told he was on vacation. Tr. 557 (Gelfeld). Gelfeld left another message saying Altman and she were representing Ms. Seltzer's two children, they wanted to meet

with Johnson, and that the firm was liable for the estate tax which was due the following business day, Monday, December 6, 2010. BX 142; Tr. 557-58, 582 (Gelfeld).

280. This message, too, was relayed to Luxenberg as well as Johnson, neither of whom returned Gelfeld's call. BX 142; Tr. 469-471 (Luxenberg); Tr. 557 (Gelfeld). Less than 30 minutes after getting the message, Johnson e-mailed Luxenberg: "[Dickens] is really screwing this [sic] on this one." BX 142. Ten minutes later, Luxenberg forwarded Johnson a copy of the series of e-mails she received on August 10, 2010, reflecting that Ms. Seltzer's children had been asking for an accounting and information for months, and in which Dickens stated he was working with Luxenberg to transfer the trust assets. BX 143.

281. Still on December 3, 2010, Gelfeld also sent a letter to Dickens and Johnson, setting forth Falk's and her "serious concerns" relating to the trust and its administration, including deficiencies in the trust documents, the absence of any accountings or information about Ms. Seltzer's assets, the trustee's inability to administer the trust on a reasonable and timely basis, and the estate tax return that was due on December 6, 2010. She repeated her request for a meeting. BX 145; Tr. 557-58, 582 (Gelfeld). Gelfeld did not address her letter to Luxenberg or copy Luxenberg on it. BX 145. However, Luxenberg received Gelfeld's letter. Tr. 470 (Luxenberg).

282. Dickens ultimately agreed to meet with Gelfeld and Altman, but then said he was only available by telephone. BX 146 at 2; Tr. 560 (Gelfeld); *see also* BX 150 (Altman letter of Dec. 8, 2010); BX 151.

283. Prior to their telephone communication, Dickens wrote Gelfeld a letter dated December 3, 2010, in which he made a number of false representations, including: he had done "legal work" for Ms. Seltzer since 1995; he did not want the job as personal representative; that he had provided Falk a copy of Schedule A to the 2009 Trust; that he had discussed with Ms.

Seltzer and her children that the 2009 Trust intentionally did not include provisions defining the interests of the beneficiaries; that Ms. Seltzer herself had transferred the PNC bank assets to her trust; that he had no control or knowledge of her investments; and that he had complied with the terms of the trust agreement. BX 146. He concealed that he had taken for himself hundreds of thousands of dollars from the Seltzer Estate and trusts, including the $44,000 in insurance proceeds that he admitted in his letter belonged to the trust. *Id.*; *see* FF 258.

284. On December 6, 2010, Dickens filed with the Orphans' Court in Maryland a Maryland State estate tax return with a federal return attached. BX 148. Dickens did not, however, pay the taxes until January 19, 2011, more than a month later, resulting in a penalty of $6,609.70. BX 165; BX 168; *see* Tr. 784 (Altman); Tr. 560 (Gelfeld: filed late).

285. Accordingly to Bar Counsel's experts, the tax return Dickens filed with the Maryland court on December 6, 2010, was "replete with errors and omissions" and was incompetently done. Tr. 561-62, 619-20 (Gelfeld: tax returns fell below standard of care of competent lawyer); Tr. 784 (Altman); Tr. 872 (Shaw); BX 155-56; *see* FF 289. Dickens claimed that Ms. Seltzer's Estate was worth more than $1.6 million, but made no mention of her purported investment in LLCs or a demand note (BX 148; BX 149) – claims and omissions contrary to those he would make four months later. BX 205 (accounting for 2009 Trust); Tr. 569-70, 620 (Gelfeld). Dickens did not send the tax returns to Gelfeld and Altman until January 2011. BX 162; BX 163.

286. Gelfeld and Altman talked by telephone with Dickens on December 15, 2010. Tr. 560 (Gelfeld). The following day, December 16, 2010, Gelfeld sent Dickens a letter summarizing the matters they had discussed and the steps Dickens had agreed to take with respect to numerous aspects of Ms. Seltzer's Estate and trusts, including modifying the 2009 Trust to clarify the interests or rights of the beneficiaries, and stepping aside as trustee. BX 154. Gelfeld

had copies of the trust documents and knew that Luxenberg was Trustee of the amended 1990 Trust but did not address her letter to Luxenberg or copy Luxenberg on it. *See* Tr. 542 (Ms. Gelfeld had copies of both trusts in the fall of 2010); BX 154.

287. Around this same time, Dickens took another trip and, by late December 2010, Luxenberg did not know where he was or how to reach him directly but believed she could reach him through the Virginia office. BX 159 (Luxenberg's email to DeLuca); Tr. 384, 472-73, 477 (Luxenberg: did not know where Dickens going, how long would be away, and had difficulty reaching him).

288. Luxenberg knew that Ms. Seltzer's children (and their counsel) still had not received an accounting by January 2011. Tr. 474 (Luxenberg). Luxenberg did not question Dickens about this in late December 2010 or January 2011, but did ask him about the money he owed on a firm credit card. BX 157-58, 160-61. Dickens had promised Luxenberg "quite a long time ago" to pay the $20,000-$25,000 he had charged on the firm credit card for personal expenses. BX 158. He had not and, by early January 2011, Luxenberg was again trying to get Dickens to pay the money he owed. *Id.*; BX 157.

289. More than three years earlier, the firm had paid $27,000 to pay off the debt Dickens incurred using this same card, which Bank of America stated had a history of returned payments. BX 157 at 4-6; *see* FF 44, *supra*. Although the firm tried to close the account associated with the card in 2007, it apparently was not successful and Dickens continued to use the card. *Id*. at 1; *see* FF 44, *supra*. ..

290. By January 2011, Dickens had accumulated another $25,000 in unpaid charges, which Luxenberg knew. BX 157; BX 158; Tr. 474-75 (Luxenberg); *see* FF 44, *supra*. Luxenberg told DeLuca that the bank was calling her and the firm, and that the unpaid balance could ruin her

credit. BX 158, 160-61.[43] Luxenberg testified that she was sending e-mails to DeLuca, rather than Dickens, because by January 2011, Dickens was refusing to return her calls or respond to her. Tr. 476-77 (Luxenberg).

291. Luxenberg claimed that in January 2011, she "had no reason to doubt Dickens." (Tr. 479-80) She admitted knowing that: Dickens was not around most of the time and even when he was, he refused to speak to her (Tr. 477); he had not provided the Seltzer children the accountings and information over the eight months she knew they had been asking for them (FF 280); both children had hired lawyers who were calling and writing the firm because Dickens was not doing what he required to do (FF 281); Dickens had suffered a heart attack in late October 2010, and claimed he had other medical problems (FF 275); Dickens had charged more than $25,000 on a firm credit card that he was refusing to pay (FF 44, 290); she had requested, on multiple occasions but never received, documents in the Seltzer file that would shed light on whether Dickens was carrying out his responsibilities (FF 263-64); and Dickens told her that he was moving out of the country. FF 199.

292. Dickens had not yet fled the United States to St. Kitts and between January 20, 2011 and April 29, 2011, stole an additional $115,000 from the Seltzer Estate and trusts. BX 271 at 3.

293. On January 6, 2011, Dickens sent a letter to Gelfeld and Altman in which he falsely claimed that he had drafted "rather minor changes" to Ms. Seltzer's 1990 Trust, but had not done any estate planning for her. BX 162 at 1. Dickens falsely claimed that Ms. Seltzer had made several amendments to the 1990 Trust, which he claimed not to know of until after her death. *Id.*

[43] In another e-mail, Luxenberg congratulated DeLuca on settling DeLuca's divorce case (BX 159 at 2) – a case that had been filed in Virginia and in which Dickens had represented DeLuca although he had no Virginia license. FF 36; Tr. 478 (Luxenberg).

He also falsely repeated his claim that he never wanted to be her personal representative or serve as trustee, and said that Johnson also did not want the job. *Id.* Dickens failed to respond to Gelfeld's and Altman's requests for documents and information, with the exception of what he had included in the Maryland and federal tax returns that he enclosed with his letter. BX 162; Tr. 560-61 (Gelfeld). Dickens concluded his letter by saying he would complete the "close-out of the estate which is all but done" and after closing-out the tax year, would hand over the trusteeship. BX 162 at 2; *see also* BX 293 at 2-3 (1-6-11 entry: Dickens told Eric Seltzer he was letting Gelfeld and Altman take over as trustees).

294. Altman responded to Dickens by letter dated January 10, 2011, in which Altman listed numerous errors and inconsistencies in the tax forms Dickens prepared. BX 163 at 2 (list included Dickens' failure to mention the trusts and the assets they contained); Tr. 784-85 (Altman). Altman reiterated his request for documents and information including about the amended 1990 Trust, which Dickens admitted still existed as a separate trust. BX 163 at 2-3. In the letter, Altman demanded that Dickens, as personal representative, pay the Maryland estate tax owed and use his personal funds to pay the estimated $8,600 in interest and penalties. BX 163 at 1. Altman did not address his letter to Luxenberg or copy her on it. BX 163.

295. When Dickens failed to respond, Altman sent him a follow-up letter on January 19, 2011, repeating his request for information and documents and asking for additional information and supporting documentation regarding the sale of Ms. Seltzer's condominium. BX 166. In the interim, on January 12, 2011, Gelfeld also wrote Dickens reiterating the points and requests made in Altman's January 10, 2011 letter. BX 164. Neither Altman nor Gelfeld addressed their letters to Luxenberg, or copied her on them. BX 164, 166.

296. When Dickens finally sent Altman and Gelfeld some of the documents they had requested, their concerns were not allayed. Indeed, the documents confirmed their concern that Dickens was "seriously mishandl[ing]" Ms. Seltzer's Estate and trusts. BX 169 at 1; Tr. 563 (Gelfeld: the information Dickens provided was incomplete and did not match up with tax returns). Altman wrote Dickens another letter on January 26, 2011, listing some of the missing documents and identifying the inconsistent and incorrect information in the documents that Dickens provided. BX 169. Altman told Dickens it was "inconceivable" he could not account for Ms. Seltzer's financial assets, and asked Dickens how he could merge the 2009 Trust with the 1990 Trust, which still owned assets. *Id.* Believing that Ms. Seltzer's estate and trust matters had been "seriously mishandled" by Dickens, Altman's January 26, 2011 letter was not addressed directly to Luxenberg, nor was she copied on it. *See* BX 169. When testifying as an expert witness, Gelfeld opined that Dickens did not meet the standard of care when he filed an estate tax return that omitted an individual retirement account, made arithmetic errors and attached schedules that did not add up. Tr. 619 (Gelfeld).

297. In response, Dickens sent Altman and Gelfeld a letter dated January 28, 2011, confirming that the two trusts "were not merged." BX 170. Dickens did not provide Altman or Gelfeld the other information and documents they requested, with one exception – he finally provided them a copy of Schedule A to the 2009 Trust, which listed Ms. Seltzer's accounts and assets. BX 170 at 14-20. This is the first time that Altman and Gelfeld (and their clients, the two Seltzer children) had seen the schedule of assets. Tr. 565 (Gelfeld); Tr. 784 (Altman).

298. Gelfeld and Altman did not send copies of their correspondence to Luxenberg and Johnson in late 2010 and early 2011 because they believed that Dickens was handling Ms. Seltzer's trust and estate matter, and because they did not know where the assets were held. Tr. 595-601

(Gelfeld). Also, Luxenberg and Johnson had not responded to their previous communications. Gelfeld and Altman did not learn until the end of March 2011 that the 1990 Trust continued to hold substantial assets. *Id.*

Shaw Prepared Accountings Based on Information and Documents Provided by Dickens

299. In early February 2011, Dickens agreed to Gelfeld's proposal to have Peg Shaw prepare accountings for Ms. Seltzer's Estate and trusts. BX 171-72; Tr. 563-65 (Gelfeld); Tr. 787-88 (Altman); Tr. 845 (Shaw); *see also* Tr. 135 (Falk). Shaw was a D.C. licensed lawyer who did contract work for other lawyers, including preparing accountings. Tr. 837-38 (Shaw). Although Shaw had never worked with Dickens before, she had prepared seven to eight accountings for Luxenberg in probate matters involving guardianships or conservatorships. Tr. 840-41 (Shaw).

300. Gelfeld called Shaw and sent her a copy of the letters confirming that Dickens had agreed to have her prepare the accountings as well as some of the documents that Dickens had provided with questions and concerns that she hoped Shaw could address. BX 173-76 (notes and documents from Shaw's files); Tr. 566, 598 (Gelfeld); Tr. 839, 843-44 (Shaw). There is no evidence in the record to reflect that Gelfeld told Shaw to contact Luxenberg in connection with the trusts nor is there any indication that Shaw did so.

301. Shaw first worked on the accounting for the Estate, which had to be filed on February 23, 2011. Tr. 600 (Gelfeld); Tr. 848, 852 (Shaw); *see* BX 153 (Dickens' request to extend filing deadline, and order granting extension until Feb. 23, 2011).

302. Dickens did not have or provide Shaw with complete financial records for the funds he received on behalf of the Estate and what he had done with them. Tr. 878-79 (Shaw never saw checks drawn on Estate account).

303. Shaw sent Dickens e-mails requesting information and supporting documents about the Estate assets. *See, e.g.*, BX 180; BX 181 (questions or missing information in draft accounting marked with double underlines); Tr. 856-57 (Shaw). In response to many of the questions, Dickens provided explanations without any supporting documentation, which Shaw accepted without further inquiry. For example, Shaw asked Dickens what happened to the pension payment of $25,035.59. BX 180. Dickens did not disclose that he had deposited the funds in his own account and spent them. Instead, Dickens gave Shaw documents reflecting that the funds were paid to an unidentified "friend." BX 180 at 2-3; Tr. 853, 855 (Shaw). Shaw thought this was a mistake because the funds were payable to Dickens as trustee and so this is what she included in the accounting, and Dickens acquiesced. Tr. 853-55 (Shaw); BX 181 at 3, 6, 8 (initial draft); BX 182 at 3, 6, 8 (final draft); *see also* BX 197 at 2, 7 (final version that Dickens signed and filed with Maryland court on Feb. 23, 2011). At this time, Dickens made no mention to Shaw of any debt that Ms. Seltzer allegedly owed him. Tr. 854-55 (Shaw).[44]

304. On February 10, 2011, while Shaw worked on the Estate accounting, Dickens wrote a check for $3,184 drawn on the UB Seltzer Estate Account and deposited it in his personal account. BX 271 at 1; BX 277 at 17. Dickens wrote "Reimbursement of Funeral Expenses" on the check, although he had not incurred any such expenses. *Id.*; Tr. 750-51 (Matinpour).

305. On February 23, 2011, Dickens signed and filed with the Maryland Orphans' Court the account that Shaw had prepared for the Seltzer Estate. BX 197. Dickens later sent copies of the Estate accounting to Gelfeld and Altman. Tr. 567 (Gelfeld).

[44] In mid-March 2011, when Dickens first announced the purported debt Ms. Seltzer owed him, Shaw testified that Dickens and she "did this complicated calculation to make it balance" including attributing the pension payment of $25,035.59 as part of the payment on the Demand Note purportedly signed by Ms. Seltzer. Tr. 854, 879-81 (Shaw).

306. Dickens also had Shaw go through Ms. Seltzer's pre-death financial records and other papers that he had taken from her home – records that were complete and went back for years. Tr. 847-49 (Shaw). With Dickens' knowledge and permission, Shaw destroyed at least three boxes of these documents. BX 183; Tr. 848 (Shaw).

307. Dickens did not have – or at least did not provide to Shaw – anything close to complete documents or records of the Seltzer funds or assets he had controlled since her death, and what he had done with them. Tr. 849-52, 864, 874, 878 (Shaw).

308. By February 23, 2011, Shaw had begun work on the accountings for Ms. Seltzer's two trusts – the amended 1990 Trust and the 2009 Trust. BX 184. Shaw knew that Luxenberg was the trustee for the amended 1990 Trust (BX 189 at 1-2, 15), but Shaw worked only with Dickens. Tr. 861-62, 867-68 (Shaw). Shaw relied solely on Dickens for the information and documents to prepare the accountings which had "huge holes." BX 192 (Shaw's e-mail to Dickens); Tr. 847, 849-50, 870, 874-75, 878 (Shaw); *see also* BX 188; BX 189 at 1 ("a lot of double underlines" indicating missing information; Shaw also listed missing assets).

309. As she had done with the accounting for the Seltzer Estate assets, Shaw provided Dickens with initial draft accountings for the two Seltzer trusts based on the information and documents Dickens provided. BX 189. When she transmitted the initial draft accountings, Shaw told Dickens that they "need[ed] to find the missing stuff" and documentation for the investments that were on the Estate tax return. BX 189 at 1; Tr. 869-70 (Shaw).

310. Among the assets for which Shaw requested information and documents were the funds in the PNC Bank accounts held by the amended 1990 Trust, for which Luxenberg was trustee. BX 189 at 3. Shaw also asked Dickens to provide documentation for numerous expenditures relating to the 2009 Trust, and the "missing assets" included in Schedule A, including

the two-page list of certificates of deposit (some of which were payable on death to Ms. Seltzer's children), and Roth IRAs worth $43,000. BX 189 at 28; Tr. 870 (Shaw).

311. In response to Shaw's questions about the missing assets, Dickens claimed on March 9, 2011, that Ms. Seltzer had given him the certificates of deposit on February 24, 2010 (10 days before her death) in exchange for a 1% interest in FRW Telecom, LLC. BX 190; Tr. 865, 867, 871-72 (Shaw). This was the first mention that Dickens made of any so-called investment, notwithstanding that Shaw had been reviewing records and preparing accountings for more than a month. Tr. 865, 867, 871, 878 (Shaw).

312. Later that night, Shaw sent Dickens revised accountings for both the amended 1990 Trust and 2009 Trust, with additional questions about Ms. Seltzer's financial holdings, the lack of tax returns, missing records, missing bank statements, missing assets, the whereabouts of dividend payments that had been deposited in the PNC Bank accounts that he and Luxenberg closed in mid-July 2010, documentation to support Ms. Seltzer's purported investment in FRW Telecom, and copies of a "bunch of checks" Dickens wrote on the Vanguard and T. Rowe Price accounts that he or Luxenberg transferred from the 1990 Trust to the 2009 Trust. BX 191 at 1-2, 21; Tr. 881-82 (Shaw: never saw all the checks Dickens wrote to himself; Dickens did not disclose he had taken all funds until March 16th).

313. In the revised accounting that Shaw prepared at the end of the day on March 9, 2011, the value she assigned to Ms. Seltzer's alleged 1% interest in FRW Telecom was "about same value of CD's etc. cashed in 2/24/10." BX 191 at 20; Tr. 877-78 (Shaw). This amount would change during her next conversation with Dickens, after she had asked him to identify the payee and purpose of checks written on the UB Seltzer Trust Account, the Vanguard account, and T. Rowe Price account. *See* BX 191 at 27-28.

314. After March 9, 2011, but before March 14, 2011, Dickens came up with a new amount for Ms. Seltzer's alleged investment. It was no longer the amount of the certificates of deposit, Roth IRAs, and other assets in her PNC accounts that Dickens falsely told Shaw Ms. Seltzer had liquidated. BX 192 at 1. The new amount Dickens came up with was $685,000 – an amount that would cover the $332,940.46 he took from her PNC accounts on February 26, 2010, and also the other funds he stole after Ms. Seltzer's death. BX 192 at 4; Tr. 879-82 (Shaw). Dickens made up other details about Ms. Seltzer's purported investment in his companies that Shaw included in her March 14, 2011 draft accounting, including: that for $685,000, Ms. Seltzer received a 1% interest in not one but two companies (FRW Telecom and JECRAL); that the assignment Dickens provided Ms. Seltzer was dated March 21, 2010 (more than two weeks after she died); and Ms. Seltzer gave Dickens a promissory note dated November 9, 2009. BX 192 at 4. Dickens and Shaw later would change these dates in the final accounting to correspond with the fabricated documents that Dickens created to corroborate his story. *See* BX 205 at 3 n.1 (in final accounting, dates of Assignment and Demand Note changed to December 11, 2009 (the date Ms. Seltzer signed her will)); *see also* BX 206 (forged Assignment and Demand Note dated December 11, 2009).

315. When Shaw sent Dickens the revised draft accountings on March 14, 2011, she remarked that there were still "huge holes in the documentation." BX 192 at 1. For most of the bank and financial accounts, Shaw had only the monthly statements, and even those were not complete. Tr. 850-52 (Shaw). Dickens did not provide Shaw with many of the actual checks or the account records showing where the funds went. Tr. 851 (Shaw). Dickens also failed to provide Shaw the documentation showing that he had deposited the insurance proceeds and pension check in his personal account. BX 192 at 1. Shaw reminded Dickens that if the $300,000 in certificates

of deposit had not been liquidated, many of them would have been payable on her death directly to her children. Shaw continued:

> Therefore, I believe we need to find a way in the accounting for the [2009 Trust] to explain what happened to those CD's in a way that makes sense and will cut off at the knees any demands in court for further accounting.

BX 192, at 1.

316. Shaw apparently accepted Dickens' explanation, *i.e.*, Ms. Seltzer had invested $685,000 in his to-be-formed companies. His explanation is not credible to the Hearing Committee, however, given the totality of the evidence presented at the hearing regarding Ms. Seltzer's financial situation, her pattern of savings and investments, and her reasons for requesting that Luxenberg and Dickens help her establish an estate plan that would provide her son with long-term financial support. Tr. 45, 137-38 (Falk: her mother was very careful with money, would never take financial risks; put money in certificates of deposit so it would be available to her during her life and Eric after she died); Tr. 680-81 (Seltzer: mother's taking risk with money "would be inconceivable to put it mildly"); *see* Tr. 848-49 (Shaw: Seltzer had most of her money in bank accounts and certificates of deposit). Consequently, Gelfeld and Altman, and their clients did not accept Dickens' claims regarding the missing funds and assets. Tr. 569-70, 626-27 (Gelfeld).[45]

317. On March 16 and 17, 2011, Dickens and Shaw further discussed what to include in the accountings about Ms. Seltzer's alleged purchase of a 1% interest in Dickens' companies. BX 193; BX 196 at 11. During this time period, Dickens changed the dates of the Assignment and Demand Note to December 11, 2009, to correspond with the date Ms. Seltzer signed her 2009 will. BX 193 at 1; BX 196 at 11. Dickens also told Shaw that he obtained a physician's certified letter

[45] Even Shaw recognized that Dickens' claim and his treatment of the funds "[was] not a consistent story" and he needed a "coherent version of the facts." BX 192 at 1.

before going to the bank to take Ms. Seltzer's funds and that Luxenberg and a librarian (*i.e.*, Hohlfeld) were witnesses. BX 193 at 3 (Shaw's handwritten notes of March 16, 2011).

318. On March 17, 2011, Shaw e-mailed Dickens the final version of the accounting for the 2009 Trust. BX 194. This accounting reflected not only the revised amount of $685,000 for Ms. Seltzer's alleged investment in Dickens' companies, but the revised date of December 11, 2009 for the Assignment of Interest. BX 194 at 4 n.1. According to the accounting, Ms. Seltzer had liquidated her certificates of deposit, and other PNC Bank accounts and used the proceeds totaling $332,940.46, to pay in part the alleged Demand Note. *Id.* Dickens (and Shaw) further represented that PNC had "mistakenly deposited" the proceeds in an account titled in the name of the 2009 Trust. *Id.* In fact, PNC had not made any mistake – the account name, TIN number for the 2009 Trust, and signature card that Dickens completed on February 26, 2010, clearly indicated that the account had been opened as a trust account, and Dickens signed the signature card as trustee. BX 274B at 39.

319. Dickens substantiated his new claims to Shaw with the fabricated Assignment and Demand Note that he created sometime in March 2011, but back-dated to December 11, 2009. BX 206. Dickens prepared and he alone signed the Assignment that said he was "the owner of the right to an undivided TWO PERCENT (2%) interest in JECRAL and FRW Telecom, forming Virginia Limited Liability Companies." BX 206 at 3. Dickens further purported to assign a 1% interest in these two ostensible companies to Stadd (his client in criminal matters), and The Michelle S. Seltzer Family Trust (*i.e.*, the 2009 Trust). *Id.* Neither of Dickens' companies existed on December 11, 2009. BX 86-87; Tr. 729-30 (Matinpour).[46]

[46] Dickens formed FRW Telecom, LLC, on December 22, 2009, but failed to continue paying the required fees and Virginia cancelled its status on December 31, 2010. BX 87 at 2; Tr. 729-30 (Matinpour). FRW Telecom shared Dickens' law firm address in Sterling, VA. BX 87. Dickens filed the certificate of organization for JECRAL, LLC on January 22, 2010. BX 86; Tr. 729 (Matinpour). Dickens was the only person known to be associated with JECRAL,

320. Luxenberg did not know anything about the two companies prior to April 2011, though Dickens created them when he was a partner in the firm and both companies shared the firm's address. Tr. 583-84 (Luxenberg).

321. Dickens also prepared and dated December 11, 2009, a fabricated Demand Note on which he forged Ms. Seltzer's signature. BX 206 at 1. It provided that Ms. Seltzer "on behalf [of] the trusts" agreed to pay Dickens $685,000. *Id.*

322. On March 17, 2011, Shaw sent Dickens an e-mail stating she still did not have some of the checks and documents and that some of the entries in the accounting were based on "second-hand information" for which she had no support. BX 194 at 1. In a follow-up e-mail sent on March 18, 2011, Shaw reminded Dickens that he still had not marshalled all Ms. Seltzer's assets, including her IRA accounts, and she advised him to amend the inventory he filed with the Maryland court. BX 195.

323. Dickens paid Shaw a total of $5,071.35 with funds from the UB Seltzer Trust Account. BX 196.

324. In late March 2011, Dickens provided copies of Shaw's accountings for the two trusts to Gelfeld and Altman. *See* FF 331, 333. Before doing so, Dickens finalized his plans to leave for St. Kitts, which he had communicated to Luxenberg and others. Tr. 1111 (Ghanem knew of Dickens' plans to move to St. Kitts in January 2011); Tr. 480 (Luxenberg); BX 201 at 2 (in March 15, 2011 e-mail to DeLuca, Luxenberg asked about continuing Virginia office after Dickens left for St. Kitts).[47]

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and it also shared his law firm's address in Sterling, Virginia. *Id.* JECRAL did not exist after April 2012, because Dickens failed to pay the fees required for its continued registration. BX 87 at 1; Tr. 729 (Matinpour).

[47] In March 2011, Dickens also purchased a domain name and started using a new e-mail address – dickens@dorrancedickens.com, which he continued to use in St. Kitts, at least through August 2013. Tr. 762 (Matinpour).

325. Based on the e-mails she sent, Luxenberg apparently had little or no knowledge where Dickens was and what he was doing between January and March 2011. BX 201; BX 202; BX 204. Knowing Dickens' plans to move to St. Kitts, Luxenberg did not take any steps to ensure that Ms. Seltzer's trusts – including the amended 1990 Trust for which Luxenberg was still the trustee – were and would continue to be administered in the manner that Ms. Seltzer had requested.

326. On March 16, 2011, Dickens signed the accounting that Shaw had prepared for the 1990 Trust, even though Luxenberg was the trustee and Dickens had no legal authority to act for the 1990 Trust – an action that, according to Bar Counsel's expert, was below the standard of care for a reasonably competent lawyer. BX 203; Tr. 567-68, 620 (Gelfeld). A few days later, Dickens sent the accounting for the 1990 Trust to Gelfeld and Altman. Tr. 567 (Gelfeld). The accounting reflected that the 1990 Trust had more than $650,000 in assets when Ms. Seltzer died in March 2010, and that, by March 2011, Luxenberg and Dickens had transferred more than $470,000 of those assets to the 2009 Trust. BX 203 at 1, 14 (distributions), 16 (remaining balance).

Dickens Disclosed His Taking of $685,000 and the Litigation that Ensued

327. Dickens signed the accounting that Shaw had prepared for the 2009 Trust, and dated it March 25, 2011. BX 205. In this accounting, Dickens claimed that Ms. Seltzer had provided him a Demand Note and purportedly agreed to pay him $685,000 for a 1% interest in his then un-formed LLCs. Dickens also claimed that pursuant to Ms. Seltzer's instructions to PNC Bank, *i.e.*, those set forth in the Letter of Instruction Ms. Seltzer signed at Casey House on February 23, 2009 (BX 90), $332,940.46 was "given" to Dickens from Ms. Seltzer's various PNC Bank accounts, leaving a purported balance of $352,059.43 due on the Demand Note. BX 205 at 3 n.1. The accounting further reflected that Dickens had taken another $264,073.58 from Ms. Seltzer's Estate

and trusts as purported "note payments" leaving a purported balance of $87,985.96 due on the Demand Note. BX 205 at 3 n.1, 17.

328. Dickens sent the accounting for the 2009 Trust to Gelfeld and Altman on March 28, 2011. BX 208; Tr. 569 (Gelfeld). That same day, Dickens stole another $29,985.86 belonging to the Seltzers. BX 271; BX 276 at 7. He later wrote on the Demand Note: "This note is hereby Satisfied, Cancelled, and Released this 29th Day of March, 2011" and signed his name. BX 206 at 2.

329. Before receiving Dickens' accounting on March 28, 2011, neither Ms. Seltzer's children nor their counsel nor Luxenberg knew anything about the purported investment by Ms. Seltzer and Demand Note that Dickens relied on, but did not provide until the end of April 2011. Tr. 136-37 (Falk); Tr. 715-16 (Seltzer); Tr. 569-71 (Gelfeld); Tr. 787, 788-89 (Altman). The $685,000 Dickens admitted taking from Ms. Seltzer's trusts and Estate represented almost half of Ms. Seltzer's net worth (BX 205 at 17) – funds Ms. Seltzer had requested be included in her trusts for distribution to her two children.

330. The morning of March 29, 2011, Altman and Gelfeld called Dickens, then Johnson, and then Luxenberg – none of whom took their calls. Tr. 573 (Gelfeld); Tr. 790 (Altman). Altman and Gelfeld left a message for Luxenberg that they were calling about an "emergency" and reported that Dickens had taken money, but provided no further information, saying they wanted to speak to her. Tr. 573, 601-02 (Gelfeld). Tr. 781-82 (Altman); BX 209 (message from receptionist to Luxenberg described matter as "absolute emergency"). Luxenberg did not return their call; instead, per the express suggestion of Altman, she made attempts to contact her malpractice insurance carrier. Tr. 442-43 (Luxenberg); Tr. 573, 590-91, 604 (Gelfeld); Tr. 781-82, 790 (Altman). Altman's suggestion placed the Luxenberg firm, and specifically Luxenberg

and Johnson, in an adversarial position to parties represented by counsel, thereby inhibiting further direct communication between Luxenberg and the heirs and their counsel.

331. A couple of hours later, Eric Seltzer also called and left a message for Luxenberg to call him. BX 210. She did not return his call. When Eric Seltzer called again, he was told to "put it in writing." Tr. 717-18 (Seltzer).

332. In the meantime, Luxenberg sent Dickens an e-mail complaining: "I don't know anything about what has been happening in this case." BX 211. She also indicated that she was nervous and frightened because the family had "threaten[ed] malpractice." *Id.*

333. The next day, March 30, 2011, Altman and Gelfeld sent letters to Luxenberg, as well as to Johnson and Dickens, about the $685,000 that Dickens admitted taking from the Seltzer Estate and trusts. They set forth in some detail the "pattern of malfeasance and malpractice regarding [the Seltzer Estate and trusts]." BX 212. They reminded Luxenberg that she was the sole surviving trustee of the 1990 Trust and had no authority to appoint Dickens as successor trustee. Based on the information in the accountings, they knew $470,000 was transferred from the 1990 Trust to the 2009 Trust with Luxenberg's assistance, and Dickens had taken a substantial portion in payment of the Demand Note allegedly signed by Ms. Seltzer. They outlined Dickens' other illegal and unethical conduct, including filing a false tax return, and demanded that the funds Dickens took be returned, and that Dickens and Luxenberg resign as trustees. BX 212 (Gelfeld letter of March 30, 2011); Tr. 574, 602-03 (Gelfeld); BX 214-15 (Altman letter of March 30, 2011); Tr. 786, 789, 791 (Altman).

334. Luxenberg received and read Gelfeld's and Altman's letters, including allegations that Dickens had taken at least $685,000 from the Seltzer Estate and trusts. Tr. 482 (Luxenberg); *see* BX 213; BX 216. Luxenberg and her firm sought counsel to represent her and her firm against

malpractice claims. Tr. 484-85 (Luxenberg); *see* Tr. 603-06 (Gelfeld: sent letters to Luxenberg firm seeking information and to prevent the flow of money out of the Seltzer Estate and trusts). There is no evidence in the record to indicate that Luxenberg or Johnson had any control over any of the missing funds. Rather, the record strongly indicates that those funds were in the sole control of Dickens (if they were still available), and the Committee so concludes.

335. On March 31, 2011, Luxenberg e-mailed DeLuca asking her to have Dickens call her. BX 217 at 1-2. On the same day, Luxenberg asked DeLuca to find and provide her with the Seltzer files (BX 217 at 2-3; BX 220 at 1-3; BX 224) – files she had been asking Dickens to provide since September 2009. (BX 57).

336. On April 1, 2011, Dickens sent Gelfeld and Altman a letter denying any wrongdoing, and making a number of knowing false statements. BX 221; Tr. 574 (Gelfeld). Both in his initial draft sent to Luxenberg (BX 219), and final letter to Gelfeld and Altman on April 1, 2011, Dickens made knowing false statements, including: that Gelfeld and Altman had not requested access to the facts or documents; that he no longer practiced law and had not for some time; that he would not "run from the Bar;" that he had not committed any crime or abused Ms. Seltzer; that he provided everything to Shaw to do a complete accounting and asked to draft another document to transfer property from the 1990 Trust to the children; that he was not acting as an attorney but as Ms. Seltzer's friend. BX 219; BX 221; BX 233 at 2.

337. Dickens sent Luxenberg a copy of his April 1, 2011 letter to Gelfeld and Altman, and an earlier draft dated March 31, 2011. BX 219; BX 233. In his cover letter to Luxenberg dated March 31, 2011, Dickens defended his conduct by reminding her of what happened "at Michelle's bedside." BX 219 at 1. Dickens told Luxenberg that she knew "from actually being there . . . what went on and that no pressure was applied and that no abuse took place." *Id.*

338. At some point after reading Dickens' letter, Luxenberg became aware that Dickens had taken $685,000 from Ms. Seltzer (which he never denied) and that Dickens was seeking to justify his actions with the Letter of Instruction (BX 90) she had witnessed on Ms. Seltzer's death-bed – a claim Luxenberg testified at the hearing was not merely "totally inconsistent" with her understanding but "shocking to [her]." Tr. 442 (Luxenberg).

339. Luxenberg wrote Dickens back, care of DeLuca, describing Gelfeld and Altman as seeming "totally shady." BX 223 (Luxenberg e-mail of April 1, 2011). The day of Dickens' March 31, 2011 draft letter, Luxenberg told DeLuca that she did not believe Dickens had done anything wrong but it is unclear whether Luxenberg had read Dickens' letter before rendering her opinion. BX 218 at 1.

340. After Gelfeld's and Altman's letters of March 30, 2011, Dickens continued to steal money belonging to the Seltzer Estate and trusts. On April 27, 2011, Dickens wrote himself a check drawn on the UB Seltzer Trust Account for $11,000, which he deposited in his personal account. BX 271; BX 278 at 25. Dickens wrote on the check "2011 fees." BX 278 at 25; *but see* BX 65 at 4 (in October 2009, Dickens told Ms. Seltzer his fee would be $600/year or $50/month, which assumed he performed as a trustee). On April 28, 2011, Dickens wrote another check drawn on the UB Seltzer Trust Account for $1,289.14 payable to Executive Suites for rent for the firm's office in Sterling, Virginia. BX 271; BX 278 at 26; Tr. 753 (Matinpour).

341. In the interim, Gelfeld and Altman continued to try to get what information and documents they could. Gelfeld and Altman wrote Dickens asking for a meeting. BX 225; BX 226; BX 231; BX 236; BX 240; Tr. 574, 612-13 (Gelfeld). They also asked Dickens for documents and additional information. BX 226 (Altman's letter of April 6, 2011 with a list of information and document requests); BX 240 (Gelfeld's letter of April 25, 2011).

342. Altman sent a copy of his April 6, 2011 letter to the Luxenberg firm's office in Maryland. BX 228-29; Tr. 795-96 (Altman). The Luxenberg firm responded by stating it was retaining its own counsel. BX 232; Tr. 574-75 (Gelfeld); Tr. 790-91, 796 (Altman).

343. Dickens put off the meeting with Gelfeld and Altman until the end of April 2011, claiming he was busy with other matters; Tr. 790-91 (Altman); BX 230; BX 235. In fact, he was finalizing his plans to leave the country for St. Kitts, which Luxenberg had known about for more than a month. FF 329. By April 21, 2011, everyone in the Luxenberg firm was told that if anyone called for Dickens, they should say that he had retired. BX 239.

344. On April 27, 2011, Dickens met with Altman and Gelfeld in the firm's office in Sterling, Virginia. BX 241. This was the first time Altman and Gelfeld had ever met with Dickens. Tr. 571 (Gelfeld); Tr. 796-97 (Altman). Dickens said he would close out the Seltzer Estate before he left on May 6, 2011 (after he returned from a trip to Rome where he was going the next day), and would resign as trustee. BX 290 at 1 (Gelfeld's notes of meeting). Dickens admitted that his purported telecom deal was worthless and had been since at least August 2010. Tr. 572 (Gelfeld). He falsely claimed that Ms. Seltzer had asked him for the opportunity to invest, "haggled" over the price she would pay, and had three unidentified people call him on her behalf while he was in Dubai. BX 290 at 2 (Gelfeld's notes from meeting); Tr. 576 (Gelfeld). Dickens also misrepresented when Ms. Seltzer had been diagnosed with cancer and what her condition was in December 2009, when she allegedly was "haggl[ing]" with him. BX 290 at 2; Tr. 625-26 (Gelfeld). Dickens did not respond to the statement that the transaction he described with Ms. Seltzer violated black letter law, and said he could not repay the $685,000 because he had spent it. BX 290 at 3; Tr. 572 (Gelfeld); Tr. 797 (Altman).

345. Dickens also provided Gelfeld and Altman some documents, including copies of the fabricated Assignment and Demand Note dated December 11, 2009 (BX 206), and a copy of the Letter of Instruction (BX 90), which Dickens claimed Ms. Seltzer signed willingly and knowingly. Tr. 797-800 (Altman); BX 290 at 1, 4.

346. On May 2, 2011, Dickens proposed a "settlement" in which he, Luxenberg and Johnson would resign or refuse to serve as trustee or personal representative, but not return any of the money he had stolen. BX 242; BX 244.

347. On May 5, 2011, Eric Seltzer and Falk, through litigation counsel, filed a civil action in the Circuit Court for Montgomery County, Maryland. The complaint named as defendants Dickens, Luxenberg, and their law firm. *Falk, et al. v. Dickens, et al.*, Case No. 347178V. BX 246; Tr. 140, 142 (Falk); Tr. 577 (Gelfeld); Tr. 801 (Altman).[48]

348. On the same day, the Circuit Court issued a Temporary Restraining Order enjoining Dickens, Luxenberg, and others acting with them, from withdrawing any funds or taking property held by the 1990 Trust, the 2009 Trust, or Ms. Seltzer's Estate. BX 248. The Circuit Court also granted plaintiffs' request for a Writ of Attachment for the accounts of Ms. Seltzer and her trusts, as well as accounts of her residuary trust to which her Estate was to be distributed. BX 247. The court subsequently issued an order granting a preliminary injunction, which Luxenberg and her firm did not oppose. BX 252; Tr. 577-78 (Gelfeld).

349. On May 7, 2011, Dickens and Tolar left for St. Kitts. Tr. 1111 (Ghanem: drove Dickens and Tolar to airport for flight to St. Kitts in the first week of May 2011); BX 279 at 120.

[48] When the lawsuit was filed, Falk asked Hohlfeld to write up a description of what happened on February 23, 2010, when Ms. Seltzer signed the Letter of Instruction (BX 90). Tr. 139-40 (Falk). Hohlfeld sent Falk an e-mail that day, describing the events. BX 249; Tr. 186 (Hohlfeld).

350. On May 11, 2011, Gelfeld and Altman, as counsel for the Seltzer children, filed with the Orphans' Court, a Petition for Removal of Personal Representative, and a Petition for an Immediate Accounting and Return of Assets. BX 251; Tr. 578 (Gelfeld). They served Luxenberg, as well as Dickens, with the petitions because Dickens had designated her as his Registered Agent in his initial filings with the Orphans' Court. BX 251 at 5; BX 108 at 9; Tr. 578 (Gelfeld).

351. On May 16, 2011, Luxenberg, through counsel, filed a motion with the Orphans' Court requesting that the court remove her as the Registered Agent for Dickens. In her motion, Luxenberg said that what purported to be her signature on the Appointment of Registered Agent filed with the court in April 2010, was a forgery. BX 254; *see also* BX 253.

352. On May 17, 2011, Dickens (or someone acting on his behalf, because he had already left St. Kitts) caused a document entitled "Line" to be filed with the Orphans' Court, which stated that Dickens was resigning as personal representative of the Seltzer Estate, and claiming that the records for the Estate were left in the Luxenberg firm's office in Sterling, Virginia. BX 255.[49]

353. On May 23, 2011, Luxenberg went to the firm's Virginia office and took all the Seltzer documents that Dickens had left behind. BX 257-58 (May 26 and 27, 2011 e-mails among Gelfeld, DeLuca and Luxenberg); Tr. 485-86 (Luxenberg).

354. Luxenberg took the Seltzer documents with her and gave them to her counsel. BX 258. It is unclear what happened to the other client files that Dickens maintained in the firm's Virginia office, although it is noted that when Luxenberg went to the Virginia office on May 23,

[49] Tolar travelled to St. Kitts with Dickens, his spouse, the first week of May 2011, but later returned to the U.S. Tr. 1111-12 (Ghanem). In late May 2011, and July 2011, Tolar filed documents with the Maryland court claiming that Dickens had not lived at their home in Sterling since May 2, 2011. BX 256; *see also* BX 259; BX 264.

2011, Luxenberg saw Rebecca Stadd, the wife of a firm client in a criminal matter, shredding documents. Tr. 485-86 (Luxenberg).

355. On June 3, 2011, Luxenberg signed a document resigning as trustee of the amended 1990 Trust. BX 260. On that same day, Johnson signed a document stating that he refused to serve as successor trustee of the 2009 Trust. BX 261. Johnson previously had signed a document refusing to serve as successor personal representative for the Seltzer Estate. BX 250. These documents were signed voluntarily, at the request of Altman and Gelfeld. Tr. 489.

356. On June 7, 2011, Gelfeld and Altman filed a revised proposed order with the Orphans' Court. BX 262. On June 17, 2011, the court appointed them co-successor personal representatives of the Seltzer Estate. BX 262; Tr. 578 (Gelfeld); Tr. 801, 822 (Altman).

357. Gelfeld and Altman also petitioned the Montgomery County Circuit Court to remove Luxenberg and Dickens as trustees of the 1990 Trust and 2009 Trust, respectively. BX 265. Luxenberg did not oppose the petition. The court appointed Gelfeld and Altman successor co-trustees of the 1990 Trust on July 11, 2011, and, after a hearing, appointed them successor co-trustees of the 2009 Trust in August 2011. Tr. 578 (Gelfeld); Tr. 822 (Altman); BX 265.

358. Gelfeld and Altman marshaled the approximately $700,000 in assets remaining in Ms. Seltzer's Estate and trusts. Tr. 579 (Gelfeld); Tr. 801-801 (Altman). They successfully petitioned the court to modify the two trusts. Tr. 802 (Altman).

359. During discovery in the Seltzer civil litigation, Luxenberg (and the other parties) learned that Dickens had misappropriated funds belonging to the Harris and O'Brien Estates. Tr. 490-92 (Luxenberg). Neither Luxenberg nor anyone acting on her behalf reported these facts to Bar Counsel or contacted the firm clients – Mr. Harris and Mr. Garrity, the personal

representatives of the Estates – to advise them of Dickens' misappropriation of entrusted funds. Tr. 491-92 (Luxenberg).

E. Summary of Amounts Stolen by Dickens in All Matters

360. Dickens stole at least $1,434,298.50 from the Harris, O'Brien and Seltzer Estates. This calculation was made by Bar Counsel's investigator, based upon her review of records of accounts held by each estate and Dickens' personal accounts, and other available evidence regarding expenditures made by Dickens.

- In the Harris Matter, Dickens stole $60,639.08 from the Estate. *See* BX H-23 (summary exhibit); BX 24-28 (supporting documentation); Tr. 903-910 (Matinpour) (explanation of methodology).
- In the O'Brien Matter, Dickens stole $651,145.04 from the Estate. *See* BX O11 (summary exhibit); BX O12-16 (supporting documentation); Tr. 887-899 (Matinpour) (explanation of methodology)
- In the Seltzer Matter, Dickens stole $722,514.38 from the Estate. *See* BX 271 (summary exhibit); BX 272-79 (supporting documentation); Tr. 732-763 (Matinpour) (explanation of methodology).

F. Dickens Failed to Respond to Bar Counsel's Inquiries and to Comply with an Order of the Board

361. Bar Counsel docketed an investigation of Dickens and Luxenberg in July 2011, based on the civil complaint and the supporting documents that Falk provided to Bar Counsel. BX 300 (Thornton Aff. ¶ 8); BX 267 at 1, 5-6.

362. Dickens did not respond to Bar Counsel's two inquiry letters of July and December 2011, that Bar Counsel sent to him at the address he listed (and continues to list) with the District of Columbia Bar.

363. Dickens also did not respond to Bar Counsel's motion to compel filed with the Board on Professional Responsibility on December 23, 2011. BX 267 at 1-3, 7-14; BX 300 (Thornton Aff. ¶¶ 9-11, 13).

364. On January 9, 2012, the Board issued an order directing Dickens to respond to Bar Counsel's written inquiry in Bar Docket No. 2011-D271 (the Seltzer case) within 10 days of the date of the Board order. BX 268. He never did. BX 300 (Thornton Aff. ¶¶ 14, 16).

365. In January 2012, Bar Counsel opened two additional investigations of Dickens. The first, Bar Docket No. 2012-D010, concerned Dickens' conduct in the Harris Estate. On January 18, 2012, Bar Counsel sent Dickens a letter of inquiry at the address he listed with the D.C. Bar, enclosing the bank records reflecting that Dickens had deposited two checks payable to the Harris Estate in his personal account at United Bank, and the relevant court records for the Harris Estate. Bar Counsel requested a response to its letter by January 30, 2012. BX 300 (Thornton Aff. ¶ 17-18); BX H28. The U.S. Postal Service did not return Bar Counsel's letter. BX 300 (Thornton Aff. ¶ 19).

366. Dickens did not respond to Bar Counsel's inquiry in the Harris matter or seek additional time to do so. BX 300 (Thornton Aff. ¶ 21).

367. Bar Counsel sent Dickens a second letter in the Harris Estate matter on February 22, 2012, requesting a response, and enclosing a subpoena *duces tecum*. The U.S. Postal Service did not return Bar Counsel's letter. BX 300 (Thornton Aff. ¶ 20). Dickens did not respond. BX 300 (Thornton Aff. ¶ 21).

368. On January 20, 2012, Bar Counsel sent Dickens a letter of inquiry relating to the O'Brien Estate. Bar Counsel sent the letter, with copies of checks Dickens had written on the O'Brien Estate account to pay the firm's office rent, and relevant court records, to Dickens at the

address he listed with the D.C. Bar. BX O19. Bar Counsel requested a response to its letter by January 30, 2012. BX O19; BX 300 (Thornton Aff. ¶ 22-23). The U.S. Postal Service did not return Bar Counsel's letter. BX 300 (Thornton Aff. ¶ 23).

369. Dickens never responded to Bar Counsel's letter. BX 300 (Thornton Aff. ¶ 24).

370. Both before and after the Board issued its January 2012 order in the Seltzer matter (Bar Docket No. 2011-D271), and Bar Counsel wrote letters of inquiry to Dickens in the Harris and O'Brien matters, Bar Counsel made numerous attempts to contact Dickens, including: talking to his spouse Tolar, who falsely claimed that he did not know Dickens' whereabouts; talking to his neighbors; talking to DeLuca, the property manager for the location of the Virginia office**;** sending Dickens e-mails, including to the e-mail address that he has used in St. Kitts through at least July 2013; calling him and leaving voice mail messages, which Dickens failed to return; and contacting the medical school in St. Kitts where he had enrolled in classes. Tr. 157-8-61, 170 (O'Connell); BX 267 at 15-16 (O'Connell affidavit); BX 267 at 17-24; BX 270 (some of Bar Counsel's e-mails sent to Dickens and records of messages left for Dickens); Tr. 761-62 (Matinpour).

371. Dickens has never complied with the Board's order in the Seltzer matter, and has never responded to Bar Counsel's inquiries in any of the three matters. BX 300 (Thornton Aff. ¶¶ 16, 21, 24).

G. Mitigating Circumstances as to Luxenberg

372. Bar Counsel presented no evidence in aggravation with respect to Luxenberg; Luxenberg presented extensive evidence in mitigation.

373. Ms. Luxenberg has been active in the Council for Court Excellence, where she remains a board member. Tr. 952, 961. She received that organization's Charles Horsky Award

for her service to the profession. Tr. 952-53. On behalf of that organization's Children and Courts Committee, Ms. Luxenberg testified before the United States Congress regarding the creation of the Family Law Court and the tenure of District of Columbia judges. Tr. 953-54. She also testified before the City Council in connection with juvenile, abuse, and neglect matters and oversaw the update of the abuse and neglect manual for the Court. Tr. 954.

374. Ms. Luxenberg has spent many hours assisting victims of domestic violence, receiving an award from the D.C. Coalition Against Domestic Violence for her work. Tr. 955. She chaired the Task Force for Abused Women for the Women's Legal Defense Fund, which later became the National Partnership for Women and Children. Tr. 955. With the assistance of U.S. District Court Judge Gladys Kessler and a small committee, Ms. Luxenberg started My Sister's Place, the first battered women's shelter in the District of Columbia. Tr. 955. Ms. Luxenberg was an advisor to the Emergency Domestic Violence Project for the Women's Legal Defense Fund, and trained the paralegal who ran the program. Tr. 955-56.

375. When Luxenberg was a Fellow of the American Bar Foundation, she created a committee to examine adoption procedure in the District of Columbia after a gay couple complained that they could not find out any information regarding their adoption case. Tr. 962-63. Ms. Luxenberg discovered years ago that petitioners and attorneys could not find out any information about an adoption case after it was filed inasmuch as the cases were sealed. Tr. 963. Therefore, an adopting couple could not determine, for example, if any mistakes had been made in their application or whether the social worker was timely filing his or her report. Tr. 963. For three years, Ms. Luxenberg met with judges, Children and Family Services, Legal Aid Societies, and attorneys who did adoption work, but could not make any progress on changing the system. Tr. 964. Therefore, Ms. Luxenberg went to the press and had an article written about the system.

Tr. 964-65. Within days, the District of Columbia Courts appointed an adoption judge and issued an Order changing the system such that petitioners and attorneys could find out information about adoption cases after they were filed. Tr. 965.

376. Luxenberg has taught law classes at Catholic University and American University and has received awards from the D.C. Bar for her contributions to Continuing Legal Education. Tr. 956, 959.

377. Magistrate Judge Diane Brenneman testified that Luxenberg has a "very high reputation" in the legal community. Tr. 996. She explained that Luxenberg was very active in helping put together a domestic violence representation program for individuals who were victims of domestic violence. She testified that Luxenberg represents her clients to the fullest, with great ethical considerations and civility, and works with other Bar members to make sure that justice is done and that people's voices are heard. Tr. 993-94. Judge Brenneman also opined that Luxenberg is "a person of very high moral standing" and that Luxenberg's word is "sacrosanct." Tr. 994-95. Judge Brenneman pointed out that Luxenberg "really went the extra mile for her [clients], particularly those who were not well-off financially." Tr. 995-96.

378. The Honorable Bruce S. Mencher, a Judge for the Superior Court for the District of Columbia for more than 38 years, testified that Luxenberg performed "top-notch" work on several programs for the Bar Association. Tr. 1003-04. Judge Mencher also testified that he had no reason to question Luxenberg's truthfulness, her professional ethics, or her devotion to her clients. Tr. 1004-05. He stated that Luxenberg's reputation in the legal community was the "highest." Tr. 1005. Notably, Judge Mencher also indicated that he knew about the allegations against Luxenberg, and if proven true, he would have been very surprised if his own law partner had committed the same acts as Dickens. Tr. 1007-08.

379. Dwight Murray, a member of the D.C. Bar for more than 37 years, testified that Luxenberg is of high moral character. Tr. 1074. He also testified that Luxenberg is someone who gives back to the community, cares about people, is a consummate professional, is very good at what she does, and is dedicated and honest. Tr. 1074. Mr. Murray testified that he couldn't see Luxenberg "doing anything that would cast aspersions on her character," and that Luxenberg has an excellent reputation in the legal community. Tr. 1074-75. Importantly, Mr. Murray noted that he could not "over-emphasize [Luxenberg's] honesty and sincerity and the dedication to the profession and to her clients." Tr. 1076.

380. Joan Strand, a former D.C. Bar President and member of the Bar for over 30 years, testified that Luxenberg "is of the highest moral character," and is "absolutely truthful" in her opinion. Tr. 1081. Ms. Strand testified that Luxenberg "has the highest professional ethics," and "is extremely devoted to her clients." Tr. 1081-82. Ms. Strand also testified that Luxenberg has an excellent professional reputation. Tr. 1083.

381. Luxenberg has been named as a Top 50 SuperLawyers in D.C., and has been listed in Best Lawyers in America, Maryland SuperLawyers, the Washington Post Magazine, and Top Lawyers in D.C. Tr. 958-59. Since 1992, she has also been a Fellow of the American Academy of Matrimonial Lawyers. Tr. 966.

382. Luxenberg cooperated with Bar Counsel's investigation.

383. Luxenberg has no record of prior discipline. Tr. 952.

IV. PROPOSED CONCLUSIONS OF LAW AS TO RESPONDENT DICKENS IN THE HARRIS, O'BRIEN AND SELTZER MATTERS

For the reasons stated below, the Hearing Committee finds that Bar Counsel has proven by clear and convincing evidence that Dickens violated Rules 1.1(a), 1.1(b), 1.3(b)(1), 1.3(b)(2),

1.4(a), 1.4(b), 1.7(b)(4), 1.15(a) (misappropriation), 1.15(c), 8.1(b), 8.4(b), 8.4(d), and 8.4(d) in the Harris, O'Brien and Seltzer matters.

A. Rules 1.1 (a) and (b)

Bar Counsel charged Dickens with violations of Rules 1.1(a) and 1.1(b) in the Seltzer matter. These Rules address the competence, skill and care that lawyers must exercise when providing legal services to their clients. *In re Yelverton*, 105 A.3d 413, 416 (D.C. 2014) (Rules 1.1(a) and (b) "require professional competence in the representation of clients").

Rule 1.1(a) obligates every lawyer to "provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation."

The Board explained in *In re Nwadike*, BDN 371-00 (BPR July 30, 2004), *recommendation approved*, 905 A.2d 221 (D.C. 2006), that Rule 1.1(a) applies where (i) an attorney "fails to engage in the thoroughness and preparation reasonably necessary for the representation due to a lack of experience, skill, or knowledge ... [and those] failures constitute a serious deficiency in the representation" or (ii) "an attorney ... has the requisite skill and knowledge to provide competent representation, but … nonetheless fails to engage in the thoroughness and preparation reasonably necessary for the representation, while he is actively continuing the representation … [and] his or her failures constitute a serious deficiency in the representation." BDN 371-00 at 25.

The determination of what constitutes a "serious deficiency" is fact specific. It has generally been found in cases where the attorney makes an error that prejudices or could have prejudiced a client and the error was caused by a lack of competence. *See In re Schlemmer*, BDNs 444-99, 66-00 (BPR Dec. 27, 2002), *remanded on other grounds*, 840 A.2d 657 (D.C. 2004).

Mere careless errors do not rise to the level of incompetence. *See In re Ford*, 797 A.2d 1231, 1231 (D.C. 2002).

Rule 1.1(b) provides that a lawyer must serve his clients with skill and care commensurate with that generally afforded clients by other lawyers in similar matters.

The Comments to Rule 1.1 provide that the relevant factors for determining whether a lawyer employed the requisite knowledge and skill in a particular matter include the relative complexity and specialized nature of the matter, the lawyer's general experience, the lawyer's training and experience in the field in question, the preparation and study the lawyer is able to give to the matter, and whether it is feasible to refer the matter to, or associate with, a lawyer with established competence in the field in question. The Comments also provide that competent handling of a matter requires inquiry into and analysis of the factual and legal elements of the issue, using methods and procedures meeting the standards of competent practitioners, as well as adequate preparation and continuing attention to the needs of the representation.

While violations of Rule 1.1(b) usually require expert testimony to establish the standard of care, expert testimony is not required in every case. In some cases, the "conduct is so obviously lacking that expert testimony showing what other lawyers generally would do is unnecessary." *Nwadike*, BDN 371-00 at 25 (determining, without expert testimony, that the respondent violated 1.1(b) where she placed her clients' case in jeopardy by failing to adhere to a court-imposed deadline for filing a Rule 26(b)(4) statement); *see also Ontell*, BDN 228-96 (BPR June 11, 1998), *aff'd*, 724 A.2d 1204 (D.C. 1999) ("While there are some types of cases in which the lapses of a respondent might not be apparent to a hearing committee without expert testimony, this is not one of them."); *Schlemmer*, BDN 444-99 & 66-00 at 12-13 (BPR Dec. 27,

2002), *remanded on other grounds*, 840 A.2d 657, *reprimand ordered*, BDN 444-99 & 66-00 (June 16, 2004) (expressly rejecting Hearing Committee suggestion that Bar Counsel must necessarily provide evidence of the practice of other attorneys in order to establish a 1.1(b) violation).

In one sense, the bulk of Dickens' conduct was "seriously deficient" and "inconsistent with what other lawyers generally do," as the evidence presented at the hearing established that Dickens stole from three different estates for which he was trustee. Competent attorneys do not steal from their clients. Such conduct, however, seems best considered under other Rules. *See Nwadike*, BDN 371-00 at 25 (attorney who "has the requisite skill and knowledge but fails to utilize or exhibit it because he has utterly abandoned the client or case, is usually more appropriately subject to discipline under another rule, such as Rule 1.3, not Rule 1.1(a)); *Yelverton*, 105 A.3d at 423 (misconduct charged as violations of Rules 1.1(a) and 1.1(b) was "directly addressed by other rules"). To that end, we note that Bar Counsel has only alleged violations of Rules 1.1(a) and 1.1(b) in the Seltzer matter, even though all three matters involved theft of estate funds by Dickens, and does not argue that Dickens' theft from the Ms. Seltzer's Estate violated Rules 1.1(a) and 1.1(b). Instead, Bar Counsel's argument focuses on shortcomings in Dickens' lawyering, such as poorly prepared documentation, bad advice and poor execution. *See* Bar Counsel Br. at 119-21.

The evidence presented at the hearing established a number of deficiencies of the type that Rules 1.1(a) and 1.1(b) seem intended to address. We start with the conduct that, according to the undisputed expert testimony, fell below the standard of care.[50]

[50] The testimony of Bar Counsel's experts – both of whom were also fact witnesses and advocates for the Seltzer children – was often phrased in terms of "concerns" that they had with Dickens' representation of Ms. Seltzer. The Hearing Committee does not equate testimony that a witness had "concerns" with proof that a respondent's conduct fell below the standard of care. The Hearing Committee raised this distinction during the hearing, giving Bar Counsel

With respect to Dickens' work on amending the 1990 Trust, Bar Counsel's expert witnesses testified that when Dickens drafted a document with conflicting provisions – one providing for assets to be held in trust until the children reached the age of 45 and another providing for the trust to be terminated when the children reached the age of 25 – his conduct fell below the standard of care. Tr. 544, 779-80.

Dickens' conduct also fell below the standard of care when executing on Ms. Seltzer's estate plan. According to Bar Counsel's expert witness, a competent attorney would have advised Ms. Seltzer regarding the tax consequences of liquidating these CDs and accounts. Tr. 833. Moreover, if the real purpose of the Letter of Instruction were to facilitate the transfer of assets from the 1990 Trust to the 2009 Trust (rather than an element of a scheme to defraud), the letter should have so stated. Consequently, Dickens' drafting of the letter fell below the standard of care. *Id.*

Dickens' conduct was also deficient with respect to the filing of estate tax returns. He essentially had to be threatened by counsel for the beneficiaries before he even began to prepare returns. FF 279, 281, and 284. The returns he finally prepared omitted an individual retirement account, made arithmetic errors and attached schedules that did not add up – errors that, according to Bar Counsel's expert, fell below the standard of care. FF 285.

Finally, Dickens' conduct fell below the standard of care by signing a document as trustee for the 1990 Trust when, in fact, he was not the trustee. FF 326.

To the extent that these deficiencies were not part of Dickens' scheme to loot, conceal and misinform, we conclude that they were the result of his lack of skill, knowledge and/or

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an opportunity to rephrase its questions and elicit rephrased answers, and in some instances the Chair did so himself. *See* Tr. at 823-25. In connection with our analysis of the Rule 1.1(a) and 1.1(b) violations, the Hearing Committee will rely only on the experts' opinions addressing the standard of care, rather than their "concerns."

thoroughness and preparation. The record reflects that, with the possible exception of one other matter involving Ghanem's sister and Dickens' involvement in his own and his spouse's estates,[51] Dickens had no other experience or training in estate and trust practice as an attorney. To be sure, lack of prior experience is not necessary to handle legal problems in a new area of law. *See* Rule 1.1, Comment [2]. However, there is no indication here that Dickens ever obtained advice from a more experienced lawyer or put in the time and effort needed to learn enough trust and estates law to provide competent representation. The above shortcomings strongly suggest that he did not do so.

One example of Dickens' lack of knowledge and experience in the field of trusts and estates is found in his reply to an inquiry from Ms. Seltzer as to whether her condominium could be included in her trust. FF 174. Dickens advised that because the property had a mortgage it could not be included in her trust. However, Ms. Gelfeld and Mr. Altman testified that a condominium with a mortgage could easily be transferred to trust, and that putting real estate in trust made sense. Tr. 555 (Gelfeld), 808 (Altman). Moreover, when we consider as well that, on January 19, 2010, Ms. Seltzer asked Dickens whether her 2009 Trust was in effect and what she should do for her 2009 taxes, and that Dickens' response to Ms. Seltzer was that the 2009 Trust did not "begin functioning" until the beginning of 2010 and she should file her 2009 taxes, we are left to conclude that Dickens was not even familiar with the documents he drafted. There is nothing in the written instrument creating the trust which would have delayed the effective date of the trust.

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[51] No witness testified to having seen any document produced or work done by Dickens on his family's estate or Mr. Tolar's family estate but Dickens apparently told Luxenberg that this was so. FF 14. There is in fact no evidence in the record to indicate that his involvement with either of those estates was as an attorney. Further, while the Committee heard no direct evidence regarding Ghanem's sister's estate, the Ghanem family was not satisfied with his work. Tr. 414-16 (Luxenberg: knew of complaints about Dickens' work for Ghanem), Tr. 1113-14 (Ghanem: Dickens handled a trust for his sister and there was money missing from the trust account).

For the foregoing reasons, we conclude that Dickens violated Rules 1.1(a) and 1.1(b) in the Seltzer matter.

B. Rules 1.3(b)(1) and 1.3(b)(2)

Bar Counsel charged Dickens with violations of Rules 1.3(b)(1) and 1.3(b)(2) in the Seltzer matter.

Rule 1.3(b)(1) provides that "[a] lawyer shall not intentionally . . . [f]ail to seek the lawful objectives of a client through reasonably available means permitted by law and the disciplinary rules[.]" "Intent must ordinarily be established by circumstantial evidence, and in assessing intent, the court must consider the entire context." *In re Ukwu*, 926 A.2d 1106, 1116 (D.C. 2007).

Rule 1.3(b)(2) provides that "[a] lawyer shall not intentionally . . . prejudice or damage a client during the course of the professional relationship." To establish a violation of Rule 1.3(b)(2), Bar Counsel must demonstrate "actual prejudice or damage to the client." *In re Cohen*, 847 A.2d 1162, 1165, n.l (D.C. 2004). "[I]t is sufficient to establish a violation of [the predecessor to Rule 1.3(b)(2) by showing] that the lawyer was 'demonstrably aware' that prejudice or damage to the client would result from his conduct, and that such prejudice or damage did, in fact, result." *In re Robertson*, 612 A.2d 1236, 1250-51 (D.C. 1992) (appending Board Report) (by failing to prepare tax returns, respondent "knowingly created a grave risk" that his client would lose claims for refunds and would be financially damaged).

By stealing estate assets that were intended for Ms. Seltzer's beneficiaries, Dickens intentionally failed to seek Ms. Seltzer's objectives and intentionally prejudiced her and her beneficiaries. At least by the time Dickens presented the "Letter of Instruction" to Ms. Seltzer on February 23, 2010, it is clear that Dickens had determined to take advantage of Ms. Seltzer's infirmity and her impending passing to bilk her estate of more than $600,000. The Letter of Instruction gave Dickens unfettered authority to cash-in or liquidate all of the Certificates of

Deposit that Ms. Seltzer had in PNC Bank. There is no reference to the 2009 Trust or the beneficiaries for whom Ms. Seltzer had so carefully accumulated those assets. Through the Letter of Instruction and the scheme of which it was a part, Dickens was able to purloin the better part of the Seltzer Estate and flee the jurisdiction with it.

It is clear beyond peradventure that Dickens intentionally abandoned the lawful objective of his client in favor of his own scheme to bilk the trust, that Dickens must have been "'demonstrably aware' that prejudice or damage to the client would result from his conduct, and that such prejudice or damage did, in fact, result." *In re Robertson*, 612 A.2d at 1250-51. Such conduct unquestionably violates Rules 1.3(b)(1) and 1.3(b)(2).

C. Rules 1.4(a) and (b)

Bar Counsel charged Dickens with violations of Rules 1.4(a) and (b) in the Harris, O'Brien and Seltzer matters.

Rule 1.4(a) provides: "A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information." "[F]ull and complete communication with the client is an essential part of the attorney's role." *In re Stanton*, 470 A.2d 272, 278 (D.C. 1983). "The guiding principle for evaluating conduct under Rule 1.4(a) 'is whether the lawyer fulfilled the client's reasonable … expectations for information.'" *In re Hallmark*, 831 A.2d 366, 374 (D.C. 2003) (appending Board Report) (finding a Rule 1.4(a) violation); *cf. In re Edwards*, 990 A.2d 501, 522-23 (D.C. 2010) (appending Board Report) (no Rule 1.4(a) violation found where the Hearing Committee determined that respondent's level of communication was not unreasonable, given the nature of the case and the client's behavior). Under Rule 1.4(a), an attorney must not only respond to client inquiries, but must also initiate contact to provide information when needed. *Bernstein*, 707 A.2d at 376. The purpose of this rule is to enable clients

to "participate intelligently in decisions concerning the objectives of the representation and the means by which they are to be pursued." Comment [1] to Rule 1.4(a).

Rule 1.4(b) provides: "A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation." An attorney "must be particularly careful to ensure that decisions of the client are made only after the client has been informed of all relevant considerations." Comment [2] to Rule 1.4(b). The rule places the burden on the attorney to initiate and maintain the consultative and decision-making process if the client does not do so and [to] ensure that the ongoing process is thorough and complete." *Id.*

Both rules relate to communications about the status of a "matter." Rule 1.0 defines a "matter" as "any litigation, administrative proceeding, lobbying activity, application, claim, investigation, arrest, charge or accusation, the drafting of a contract, a negotiation, estate or family relations practice issue, or any other representation, except as expressly limited in a particular rule."

The evidence conclusively establishes that Dickens violated Rules 1.4(a) and 1.4(b) in the Harris, O'Brien and Seltzer matters.

1. The Harris Matter

At some point in his representation of Mr. Harris, Dickens determined to loot the Harris Estate for his personal benefit. His ability to do so was dependent on his insuring that Vernon Harris and the other heirs knew as little as possible about the Estate and its assets. In the few communications he had with them about the Estate, he concealed information he was obligated to disclose, lied, or both.

The following are among the most prominent examples of the Dickens' violations of Rules 1.4(a) and (b) in the Harris matter.

- In the petition for probate, Dickens did not disclose all of Gladys Harris' property

or family members. He listed only one of the three real properties Dickens knew Gladys Harris owned, and did not list the cash, stocks and other liquid assets she held. Dickens had Mr. Harris sign the petition without showing him all of the pages in the petition, including the list (with valuations) of Ms. Harris' property. FF 53, 54.

- Dickens did not tell Mr. Harris that he prepared and forged Mr. Harris' signature on a letter dated May 22, 2000. FF 58.

- Dickens was the sole signatory on the account he opened for the Harris Estate and he received the bank statements. He did not forward bank statements to Mr. Harris or tell him what funds were deposited in the account. FF 60.

- Dickens did not tell Mr. Harris that he was taking $10,000 in Estate assets and giving it to his firm in June 2000. FF 61.

- Dickens did not advise Mr. Harris that he was taking $4,000 in Estate assets and paying it to himself in August 2000, when he wrote two additional checks drawn on the Harris Estate account – one for $2,500 and another for $1,500 – both payable to himself. FF 62.

- Dickens never provided Mr. Harris any statements or bills reflecting the work he was doing on behalf of the Estate. FF 63.

- In February 2003, Dickens had Mr. Harris sign two letters directing the Barac Company to send the rental income for two rental properties to Dickens. Dickens never provided Mr. Harris an accounting or any information about the rental income he received or what he had done with it. FF 68, 69.

- Dickens did not tell Mr. Harris what he had done with the stock Mr. Harris' sister owned. When he asked Dickens about the stock, Dickens told him that he was accumulating and selling it. FF 69.

- Although Mr. Harris asked Dickens for an accounting of the Harris Estate funds, Dickens never gave him one. FF 79.

- Dickens never accounted for the other funds that he deducted from the sales proceeds of the 3rd Street property, including the $10,000 for taxes and $4,000 for additional legal fees. FF 78.

- In and after 2006, although Mr. Harris communicated with Dickens on occasion, Dickens never told him that he was continuing to receive funds on behalf of the Estate, much less that he was taking those funds for himself. FF 88.

- Dickens never told Mr. Harris about the $34,000 he received on behalf of Gladys Harris' estate in 2010. FF 89-93.

2. The O'Brien Matter

Dickens failed to keep Mr. Garrity, the executor of Dr. O'Brien's Estate, informed as to his actions on behalf of the Estate, the true amount to which it was entitled. Of course, he told neither Mr. Garrity nor the Foundation that he was stealing Estate funds for himself. The following are among the most prominent examples of the Dickens' violations of Rules 1.4(a) and (b) in the O'Brien matter:

- Dickens did not tell Mr. Garrity what he was doing with the O'Brien Estate funds. FF 115.
- Dickens received monthly statements from United Bank, but he did not share them with Mr. Garrity. FF 115.
- Dickens never prepared or provided Garrity an accounting or information about the funds he received on behalf of the O'Brien Estate and what he had done with them. FF 124.
- Bank records for the two O'Brien Estate accounts reflect that Dickens received at least $902,191.95 in funds belonging to the O'Brien Estate (not including interest earned on those funds), but used only $250,000 of those funds to pay the beneficiaries of the Estate, pay Dr. O'Brien's creditors, and cover expenses associated with the administration of the Estate. Dickens never told Mr. Garrity, that he (Dickens) had taken more than $650,000 in Estate funds for himself. FF 113-114.

3. The Seltzer Matter

Dickens' Rule 1.4 violations in the Seltzer matter were numerous and far-reaching. Dickens did not timely communicate with Ms. Seltzer about her estate plan and did not provide her with the information she needed to make informed decisions about that plan. At some point, he developed an intent to steal Estate funds,[52] which he concealed from Ms. Seltzer and her heirs.[53] Examples of his failures in the Seltzer matter include:

[52] Indeed, given his clear pattern established in the O'Brien and Harris matters, deceit may have been his intent from the beginning of his association with Ms. Seltzer.

[53] There are numerous instances in the record of Dickens' failures to communicate with Ms. Seltzer's children, the beneficiaries and heirs of the Seltzer Estate. Bar Counsel argues that after Ms. Seltzer's death, Dickens continued

- Although Ms. Seltzer engaged the Luxenberg firm in May 2009 to update her estate plan, Dickens did not respond to Ms. Seltzer's requests for information until August 12, 2009. FF 159, 162-168.

- On November 12, 2009, Ms. Seltzer wrote to Dickens asking him to include her cemetery plots and car in the 2009 Trust. When Dickens failed to respond, she sent him and the Luxenberg firm follow-up e-mails. Dickens still did not respond. FF 189.

- In December 2009, Dickens failed to show up for a meeting with Ms. Seltzer at PNC Bank in Potomac, Maryland and did not tell Ms. Seltzer that he would not be there. FF 195.

D. Rule 1.5(b)

Bar Counsel charged Dickens with a violation of Rule 1.5(b) in the O'Brien matter.

Rule 1.5(b) provides: "When the lawyer has not regularly represented the client, the basis or rate of the fee, the scope of the lawyer's representation, and the expenses for which the client will be responsible shall be communicated to the client, in writing, before or within a reasonable time after commencing the representation."

As noted above, although the Luxenberg firm had drafted Dr. O'Brien's will, Garrity had not previously been a client of the firm. Dickens told Garrity he would represent him for a fee of $30,000. However, neither Dickens nor the firm provided Garrity a retainer agreement or other writing setting forth the basis for the fee or the scope of the representation. FF 97, 101-02. During the representation, Dickens also did not generate any bills or statements reflecting the services he

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to violate Rules 1.4(a) and 1.4(b) when, as trustee of the 2009 Trust and personal representative of Ms. Seltzer's Estate, he failed communicate with Ms. Seltzer's children. However, Rule 1.4, by its clear terms, applies only to an attorney's obligation to communicate with *clients*. *In re Fair*, 780 A.2d 1106, 1107 n.1 (D.C. 2001), on which Bar Counsel relies, does not hold otherwise. Bar Counsel apparently recognizes the weakness of its argument, suggesting that an attorney-client relationship existed between Dickens and Ms. Seltzer's children, based solely on an email from Dickens to one of the children, in which he asserted "I don't ever mean for a client to suffer from feedback starvation." BX 126B at 3. Such a vague reference is not clear and convincing evidence of the existence of an attorney-client relationship. Accordingly, we decline Bar Counsel's invitation to expand the scope of Rule 1.4, especially when it would have no bearing on the existence of a violation or sanction. We conclude that Bar Counsel failed to prove a violation of Rule 1.4 based on Dickens' failure to communicate with Ms. Seltzer's children.

was providing to Garrity, or otherwise communicate the basis for the fees the firm was charging. FF 102. Accordingly, Dickens violated Rule 1.5(b) in the O'Brien matter.

E. Rule 1.7(b)(4)

Bar Counsel charged Dickens with a violation of Rule 1.7(b)(4) in the Seltzer matter.

Rule 1.7(b)(4) provides: "[A] lawyer shall not represent a client with respect to a matter if ... [t]he lawyer's professional judgment on behalf of the client will be or reasonably may be adversely affected by … the lawyer's own financial, business, property, or personal interests." Comment [19] to Rule 1.7 provides the following definition of "full disclosure":

> Adequate disclosure requires such disclosure of the parties and their interests and positions as to enable each potential client to make a fully informed decision as to whether to proceed with the contemplated representation. … Full disclosure also requires that clients be made aware of the possible extra expense, inconvenience, and other disadvantages that may arise if an actual conflict of position should later arise and the lawyer be required to terminate the representation.

The Court of Appeals has held that "'[f]ull disclosure' … includes a clear explanation of the differing interests involved in the transaction and the advantages of seeking independent legal advice. It also requires a detailed explanation of the risks and disadvantages to the client entailed in the agreement, including any liabilities that will or may foreseeably accrue to him." *In re James*, 452 A.2d 163, 167 (D.C. 1982). Such a disclosure might include (1) alternative courses of action that would be foreclosed, (2) interests of the lawyer that brought about the conflict, (3) the nature of the resulting representation, and (4) the consequences of a future withdrawal of consent. Charles W. Wolfram, Modern Legal Ethics 345-46 (2d ed. 1986). The adequacy of disclosure under Rule 1.7(c) is evaluated by a subjective standard, "meaning that more explanation may be required to satisfy the Rules."

As we have noted before, at some point Dickens' interest in the Seltzer matter became nothing more than looting the Estate for his personal benefit. While it seems odd that an attorney's

theft from a client would be charged and analyzed under a rule addressing conflicts of interest, there is no doubt that the interest of an attorney engaging in such reprehensible conduct is antithetical to the interests of his client. We can conclude that Dickens violated Rule 1.7(c) on that basis alone. All of his advice and actions in furtherance of his fraudulent scheme were thus tainted by this fundamental conflict.

Bar Counsel cites to several instances of conduct that it argues constitute conflicts of interest, such as Dickens' failure to disclose his intention to leave the firm and country before preparing estate planning documents in which he made himself trustee and personal representative, failing to explain the penalties or financial consequences of "cash[ing]-in or liquidat[ing]" the assets, and inducing Ms. Seltzer to sign the Letter of Instruction. *See* Bar Counsel Br. at 118. In our view, such matters are elements of Dickens' fraudulent scheme, and therefore constitute conflicts of interest for that reason. The record does not reveal any other, alternative ground for finding a conflict of interest.

Dickens' advice to Ms. Seltzer regarding the transaction by which she allegedly acquired a financial interest in two companies that Dickens formed, FRW Telecom and JECRAL, would constitute an alternative conflict of interest – and an independent basis for finding a Rule 1.7(c) violation – *if the transaction were legitimate*. However, given the manner in which this "investment" came to light and the total lack of documentation of the "investment" save for Dickens claim (*see* FF 311-13, 316-17 and 319), the Hearing Committee concludes that the "investment" was an invention of Dickens' larcenous imagination contrived to explain his theft from the Estate.[54]

[54] That Dickens' intent was to loot the Seltzer Trust and Estate for his own benefit is best evidenced by his actions on February 23, 2010, when he induced Ms. Seltzer to sign the Letter of Instruction, giving him access -- when she was alive – to more than $330,000 of her funds (or the funds of her 1990 Trust). Dickens knew that he would take those funds for himself -- as he had from the Harris and O'Brien Estates -- and his conduct confirmed this. On

F. Rule 1.15(a)

1. Commingling

Bar Counsel charged Dickens with violating Rule 1.15(a) by commingling in the Harris, O'Brien and Seltzer matters.

Rule 1.15(a) requires attorneys to preserve the separate identity of client funds. It provides, in relevant part:

> A lawyer shall hold the 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.

Commingling is a *per se* violation that does not require proof of any particular mental state. Instead, 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 Hessler*, 549 A.2d 700, 707 (D.C. 1988); *see also In re Smith*, 817 A.2d 196, 201 (D.C. 2003); *In re Moore*, 704 A.2d 1187, 1192 (D.C. 1997); *In re Millstein*, 667 A.2d 1355 (D.C. 1995); *In re Ross*, 658 A.2d 209 (D.C. 1995); *In re Micheel*, 610 A.2d 231, 233 (D.C. 1992).

Bar Counsel argues that Dickens commingled personal and entrusted funds when he deposited entrusted funds into his personal bank account. However, proving a commingling violation requires a further showing that personal and entrusted funds were on deposit in the account *at the same time*. *In re Smith*, 817 A.2d 196, 201 (D.C. 2003) (a commingling violation requires specific proof that "[Respondent's] personal bank account contain[ed] funds other than client funds" at the time entrusted funds were deposited); *In re Haar*, 698 A.2d 412, 416 (D.C. 1997) (commingling results when "a client's settlement check is deposited in the lawyer's personal

February 26, 2010, Dickens liquidated the CDs, Roth IRAs, and other assets and deposited them in an account he controlled, and he immediately started stealing them. FF 217.

bank account containing 'funds other than client funds'") (citing *In re Ingram*, 584 A.2d 602, 603-04 (D.C. 1991)).

We have reviewed the bank statements offered by Bar Counsel to prove commingling. They show multiple deposits of entrusted funds into Respondent's personal bank account. *See* FF 62, 89, 91-92, 119, 120, 226, 250, 258. They are insufficient, however, to prove the nature of the funds in Dickens' personal account just prior to each deposit of entrusted funds.

As Bar Counsel points out, the bank statements reflect five deposits of funds from the Luxenberg Firm into Dickens' personal account at Federal Credit Union between January and July 2009, and two deposits of funds from the Luxenberg Firm into Dickens' personal account at United Bank in September and October 2009. *See* BC Brief at 18 n.8. Even if such deposits were compensation to Dickens from the Luxenberg Firm,[55] that would explain only a small portion of the funds in the accounts. The bank statements also show numerous unexplained deposits into Dickens' personal accounts – some in very large amounts. There is no evidence in the record regarding the nature of those other deposits. Further, there is no evidence in the record regarding the nature of the funds on deposit at the start of the period covered by the bank statements.

We cannot presume the nature of the funds in Dickens' account when he made deposits of entrusted funds; Bar Counsel is required to prove by clear and convincing evidence that entrusted and non-entrusted funds were on deposit at the same time The record is insufficient to meet that burden. Accordingly, we do not find that Dickens committed the Rule 1.15(a) commingling violations with which he is charged.[56]

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[55] Luxenberg testified that Dickens was not being paid by the firm at the time of those deposits. BC Brief at PFF 39.

[56] In addition to prohibiting commingling, Rule 1.15(a) also requires that "funds of clients or third persons that are in the lawyer's possession (trust funds) shall be kept in one or more trust accounts[.]" Dickens' deposits of entrusted funds into his personal accounts would appear to violate this requirement. However, because Dickens was not charged with such an additional Rule 1.15(a) violation and Bar Counsel did not raise it at the hearing as a separate ground for discipline, we cannot consider whether Dickens committed it. *In re Smith*, 403 A.2d 296, 299-302 (D.C. 1979)

2. Misappropriation

Bar Counsel charged Dickens with intentionally 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 to 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. *Edwards*, 990 A.2d at 518; *In re Chang*, 694 A.2d 877, 880 (D.C. 1997) (per curiam) (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 Anderson*, 778 A.2d at 339 (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

(discussing due process considerations in attorney discipline proceedings); *In re Katz*, BDN 259-99 at 31-38 (BPR May 1, 2002) (Hearing Committee erroneously found a Rule 1.15(a) recordkeeping violation that was not charged and not within the scope of the charged violations).

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).

The evidence presented at the hearing conclusively establishes that Dickens misappropriated client funds in the Harris, O'Brien and Seltzer matters and that his misappropriations were intentional. As Bar Counsel points out, each time that Dickens wrote a check on the accounts he opened to hold entrusted funds and deposited it in his personal account, used funds to pay his own expenses, or gave funds to third parties who had no right to receive them, he engaged in a separate act of intentional misappropriation. He did so repeatedly and deliberately. He often took steps to cover his tracks, such as writing a check to the bank rather than to himself. In the Seltzer matter, his efforts to cover up his long-running scheme to loot the Estate culminated in his preposterous claim that Ms. Seltzer invested more than $650,000 in his two companies. FF 311-12, 314, 316-17 and 319. Indeed, absent a confession by a respondent, it is difficult to conceive of a more compelling case for intentional misappropriation.

Specific instances in the record establishing that Dickens misappropriated funds in the Seltzer matter include:

- On June 28, 2000, Dickens wrote a check to the Luxenberg firm for $10,000 drawn on the Estate account. Dickens did not tell Mr. Harris that he was taking $10,000 in Estate assets and giving it to his firm, and Mr. Harris never authorized him to do so. FF 61.

- In August 2000, Dickens wrote two additional checks drawn on the Harris Estate account – one for $2,500 and another for $1,500 – both payable to himself. Dickens did not advise Mr. Harris that he was taking another $4,000 in Estate assets and paying it to himself, and Mr. Harris never authorized him to do so. FF 62.

- In December 2003, Dickens wrote to Mr. Harris and the two other beneficiaries about the sale of the Rhode Island and T Street properties and claimed that he was retaining $8,000 to pay taxes. There is no evidence that Dickens ever filed a tax return or paid any taxes. FF 71.

- On November 7, 2005, Dickens sent Mr. Harris and the other heirs a letter enclosing a document entitled "Estate of Robinson Distribution." Dickens disclosed that he

had received $144,814.52 from the sale of the 3rd Street property, and stated he would pay each of the beneficiaries $21,710.86, and an additional $65,126.17 to Mr. Harris. Dickens never paid him the additional $65,126.17. FF 78.

- Dickens also never accounted for the other funds that he deducted from the sales proceeds of the 3rd Street property, including the $10,000 for taxes and $4,000 for additional legal fees. Because there is no evidence that Dickens ever prepared a tax return and in light of Dickens' pattern of theft demonstrated in this proceeding, the Committee concludes that Dickens took the $10,000 along with the rest of the funds for himself. FF 78-79.

- Bar Counsel could not obtain records for the Harris Estate account from November 2000 through July 2006.[57] The available bank records reveal that Dickens used the funds in the Harris Estate account to pay personal expenses. For example, Dickens wrote eight checks drawn on the account totaling $7,480 payable to himself or Billy Tolar, his friend and later spouse. Tolar had nothing to do with the Harris Estate. FF 83-85.

- Dickens used another $4,965.27 from the Harris Estate to pay his Capital One credit card. FF 86.

- Dickens used $3,995 in Harris Estate funds to pay AutoHaus, a store for auto parts for Audis and Volkswagens near his home. Dickens wrote the check to the bank and used it to purchase a bank check payable to AutoHaus. FF 86.

- On or about November 19, 2010, UPRR Securities, LLC, a company dealing with unclaimed property, sent a check to Dickens at the firm's Virginia office payable to "Estate of Gladys Eloise Harris" in the amount of $30,347.29. Dickens negotiated the check by depositing it in his personal bank account at United Bank on November 23, 2010. FF 89. There is no evidence that any of the funds Dickens withdrew from his personal account were used for anything relating to the Harris Estate; most of the funds were used to pay personal bills. FF 90.

- On December 21, 2010, Dickens deposited a check from UPRR Securities, LLC, payable to "Estate of Gladys Eloise Harris" in the amount of $3,851.52, into his personal bank account at United Bank. Before Dickens deposited the check, his account had a balance of $907.86. On the same day, United Bank paid a check for $1,281 dated December 14, 2010, that Dickens had written to pay a personal expense, leaving a balance of $3,478.38. By January 7, 2011, Dickens' personal account again had a negative balance of $1,666.97. None of the funds Dickens withdrew from his personal account were used for anything relating to the Harris

[57] Rule 1.15(a) and D.C. Bar R. XI, § 19(f) require that a lawyer maintain *complete* records of entrusted funds for five years after the representation ends. Because Dickens continued to receive funds on behalf of the Harris Estate through December 2010 (*see* FF 90, 92), he and his firm should have maintained complete records for the Harris Estate, including bank and other financial records, through at least December 2015.

Estate. FF 91-92.

Specific instances of misappropriation in the O'Brien matter include the following:

- Dickens used O'Brien Estate funds to pay for a storage unit used by himself and Ghanem. FF 107, 109-10.

- Bank records for the two O'Brien Estate accounts reflect that Dickens received at least $902,191.95 in funds belonging to the O'Brien Estate (not including interest earned on those funds). Those records reflect that Dickens used only $250,000 of those funds to pay the beneficiaries of the Estate, pay O'Brien's creditors, and cover expenses associated with the administration of the Estate. Dickens took the rest of the Estate funds for himself. FF 113.

- Dickens stole funds by writing checks on the Estate Accounts that were payable to United Bank. In an apparent effort to make his theft more difficult to trace, Dickens then used those checks to purchase bank checks payable to himself. Dickens wrote checks to United Bank for $12,500 and $50,000 in August 2008 and May 2009, which he used to purchase bank checks payable to himself in the same amounts, and deposited the bank checks in his personal account. Dickens stole hundreds of thousands of dollars more using this same technique. FF 120.

- Dickens also wrote a number of checks drawn on the O'Brien Estate Accounts payable to himself, including checks for $4,000, $1,800, $3750, and $1,750 that he negotiated between September and November 2008. FF 121.

- Dickens appropriated tens of thousands of dollars from the O'Brien Estate by writing checks to third parties for his own personal and business expenses having nothing to do with the O'Brien Estate. Those checks included: (i) payments of $10,000 to Executive Suites for the rent for the Luxenberg firm's Virginia office; (ii) an additional payment of $5,241.66 to Ghanem, having nothing to do with the O'Brien Estate; and (iii) $20,588.27 to Lindsay Volkswagen to buy a car for Ghanem's son who celebrated his 16th birthday in February 2009. FF 122.

- Dickens also took funds from the O'Brien Estate to pay his law firm. In addition to the $5,000 check that Dickens filled in and caused Garrity to sign, payable to his firm, in June 2008, Dickens wrote two additional checks to the Luxenberg firm on the 5098 Estate Account – one for $7,500 in December 2008, and another for $8,000 in March 2009. FF 123.

In the Seltzer matter, specific instances of misappropriation include:

- On February 26, 2010, having received the signed "Letter of Instruction," Dickens went to the PNC Bank in Potomac, Maryland, and caused the bank to liquidate or cash-out 47 CDs, eight ROTH IRAs, and two savings accounts that Ms. Seltzer held in her name or the name of her 1990 Trust. Dickens deposited the proceeds, which totaled $332,940.46, into another PNC Bank account, number xx-xxxx-

2943, titled "Michelle Seltzer Family TRT, Dorrance D. Dickens Trustee" (PNC Seltzer Trust Account). Dickens was the sole signatory on that account. He began misappropriating funds from the account the day he opened it. On February 26, 2010, Dickens wrote himself a check for $20,000, which he deposited in his personal account at United Bank. Between February and July 2010, Dickens took and used approximately $360,000 from the PNC Seltzer Trust Account for himself. FF 217, 218.

- Dickens stole another $60,000 by writing two checks on the Seltzer Trust Account for $30,000 each, payable to United Bank, which he deposited in his personal account and used to pay his credit card bills and other personal expenses. FF 221.

- On March 11, 2010, Dickens also wrote a check for $4,478 on the Seltzer Trust Account payable to the Luxenberg firm. The Luxenberg firm did not have any invoice or other records indicating that it was entitled to fees in this amount. FF 222.

- On April 22, 2010 Dickens misappropriated additional funds held in trust by depositing in his personal account a check from Montgomery County for $11,458.04 made payable to the Michelle Seltzer Family Trust. FF 226.

- In June 2010, Dickens transferred more than $50,000 from the PNC Seltzer Trust Account to a third party (James Frelk) having nothing to do with Ms. Seltzer, her trusts, or her Estate. FF 245.

- On July 14, 2010, the day after Luxenberg gave Dickens more than $33,000 belonging to the 1990 Trust, Dickens wrote a check on the PNC Seltzer Trust Account to PNC Bank for $43,719.05 (which Dickens mistakenly dated June 14, 2010), to purchase a cashier's check in the same amount payable to Audi of Tysons Corner. Dickens used the PNC cashier's check to purchase a Porsche Boxster on July 14, 2010, which he titled in both his and Tolar's name. FF 248.

- Dickens stole additional entrusted funds by depositing checks payable to the Seltzer Trust into his personal account. For example, on July 20, 2010, Dickens deposited a check from Montgomery County payable to the Seltzer Trust for $25,035.59 into his personal account. This check was for Ms. Seltzer's death benefit, minus the federal taxes. FF 250.

G. Rule 1.15(c)

Bar Counsel charged Dickens with a violation of Rule 1.15(c) in the Harris, O'Brien and Seltzer matters.

Rule 1.15(c) provides:

> (c) Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person.

> Except as stated in this rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property, subject to Rule 1.6.

The Comments to Rule 1.15 make clear that the Rule is intended to impose on all lawyers an obligation to "hold the property of others with the care required of a professional fiduciary." Rule 1.15, Comment 1. It is a basic principle of a fiduciary relationship that the fiduciary owes the principal (or those acting in the principal's stead) an accounting of the property, real or personal, in the fiduciary's care. Rule 1.15(c) is a clear and unequivocal statement of that principle when it requires that a lawyer "upon request by the client or third person, shall promptly render a full accounting regarding such property, subject to Rule 1.6." Thus Dickens owed a duty to Harris, Garrity, and the Seltzer heirs, to "render a full accounting" upon their requests, subject to Rule 1.6. *See* D.C. Ethics Opinion No. 296, "Joint Representation: Confidentiality of Information." Dickens breached this obligation in the Harris and Seltzer matters:

- Mr. Harris asked Dickens for an accounting of the Harris Estate funds, but never received one. In response to one of Mr. Harris' requests, Dickens lied and said that he already had sent him an accounting. There was never any response to Mr. Harris' follow-up request for an accounting. FF 79.

- On August 9, 2010, Eric Seltzer sent Dickens an e-mail asking for an accounting of the assets in Ms. Seltzer's trusts and information about where Dickens was holding them, Dickens did not provide an accounting or disclose where all the assets were. FF 257.

- On August 10, 2010, Falk asked told Dickens for a "full and accurate accounting of the assets that are supposed to be in trust." FF 262. Dickens failed to provide the requested accounting. FF 264.

- Dickens did not provide the requested accounting until their counsel suggested that he hire Ms. Shaw to prepare one, and he then provided incomplete and false information to Ms. Shaw. FF 299, 302, 307.

Much of the misconduct discussed in this report falls within the scope of more than one rule. That is particularly true of the conduct charged as violations of Rule 1.15(c). In the Harris,

O'Brien and Seltzer matters, each time Dickens misappropriated funds from the Estates in violation of Rule 1.15(a), he failed to deliver funds that a client or third party was entitled to receive in violation of Rule 1.15(c). *See supra* at 135-39. Accordingly, we incorporate the discussion of Dickens' misappropriations here.

The Committee finds that Dickens violated Rule 1.15(c) in the Harris, O'Brien and Seltzer matters.

H. Rule 5.5(a)

Bar Counsel charged Dickens with violating Rule 5.5(a) in the Seltzer matter by engaging in the unauthorized practice of law in Maryland.

Rule 5.5(a) prohibits a lawyer from "practic[ing] law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction." The Maryland Code defines the practice of law as

> (i) giving legal advice;
> (ii) representing another person before a unit of the State government or of a political subdivision; or
> (iii) performing any other service that the Court of Appeals defines as practicing law.

Maryland Code, Business Occupations and Professions, § 10-101(h)(1)(i)-(iii). The practice of law specifically includes:

> (i) advising in the administration of probate of estates of decedents in an orphans' court of the State;
> (ii) preparing an instrument that affects title to real estate;
> (iii) preparing or helping in the preparation of any form or document that is filed in a court or affects a case that is or may be filed in a court; or
> (iv) giving advice about a case that is or may be filed in a court.

Id. at § 10-101(h)(2)(i)-(iv).

Application of these statutory provisions makes it clear that Dickens practiced law "in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction," in violation of Rule 5.5(a).

Ms. Seltzer and her children, the intended beneficiaries of her trusts and Estate, lived in Maryland. When Ms. Seltzer called Luxenberg in April 2009 for assistance in revising her estate plan, the firm was in Maryland. FF 2-7. All Ms. Seltzer's meetings with Dickens were in the firm's Maryland office (FF 172, 177, 188, 192) or at Casey House, in Rockville, Maryland. FF 204. Further, Dickens made a number of filings in the Orphans' Court for Montgomery County, Maryland, including a Petition for Probate (FF 227), an Appointment of Resident Agent (FF 228), an inventory (FF 251), copies of tax returns (FF 284), and the accounting that Shaw had prepared for the Seltzer Estate. FF 305.

Dickens never was a member of the Maryland Bar. FF 7. And although Luxenberg, who was a member of the Maryland Bar and stayed somewhat involved in the representation by communicating with Ms. Seltzer and Dickens, she did not supervise his preparation of documents, the legal advice he provided, or his filings with the Orphans' Court. FF 10, 18, 33, 163, 228. Consequently, Dickens was not authorized to practice law in Maryland. Nonetheless, he did so in the Seltzer case by preparing legal documents, giving legal advice about the documents and probate of her Estate, and preparing forms or documents that were filed in the Orphans' Court or that affected the case filed in that court. *See Attorney Grievance Comm. of Maryland v. Hallmon*, 681 A.2d 510 (Md. 1996) (preparing legal documents, interpreting them, giving legal advice, and applying legal principles to problems of any complexity constitute the practice of law); *see also* Maryland Business Occupations and Professions, § 10-101(g)-(h) (defining "lawyer" and "practice

of law"). By engaging in these activities in Maryland where he was not licensed or acting under the supervision of a Maryland lawyer, Dickens violated Rule 5.5(a).

I. Rule 8.1(b)

Bar Counsel charged Dickens with violating Rule 8.1(b) in the Harris, O'Brien and Seltzer Matters.

Rule 8.1(b) provides that, in connection with a disciplinary matter, a lawyer shall not "knowingly fail to respond reasonably to a lawful demand for information from an admissions or disciplinary authority."

Whether Respondent acted "knowingly" is a question of fact. The terminology section of the Rules provides that "'[k]nowingly,' 'known,' or 'knows' denotes actual knowledge of the facts in question." However, "a person's knowledge may be inferred from circumstances." D.C. R. Prof. Cond. "Terminology" cmt. [6]. In *In re Starnes*, 829 A.2d 488, 500 (D.C. 2003) (per curiam) (adopting Board's findings), the Court noted that circumstantial evidence can be sufficient to prove a respondent's state of mind as "more direct proof, such as an outright assertion of an individual's intent, is rarely available."

Dickens failed to respond to the disciplinary authorities in all three matters that are the subject of this proceeding. The initial matter that came to Bar Counsel's attention was the Seltzer matter. In that matter, Dickens did not respond to Bar Counsel's two inquiry letters of July and December 2011 or to Bar Counsel's motion to compel that was filed with the Board on Professional Responsibility on December 23, 2011. FF 362-63. On January 9, 2012, the Board issued an order directing Dickens to respond to Bar Counsel's written inquiry in Bar Docket No. 2011-D271 (the Seltzer case) within 10 days of the date of the Board order He never did so. FF 364.

In January 2012, Bar Counsel opened two additional investigations of Dickens. The first, Bar Docket No. 2012-D010, concerned Dickens' conduct in the Harris matter. Dickens did not

respond to Bar Counsel's letters of inquiry or subpoena *duces tecum* in the Harris matter or seek additional time to do so. FF 366-67. The second additional investigation concerned Dickens' conduct in the O'Brien matter. Dickens likewise failed to respond to Bar Counsel's letter of inquiry in the O'Brien matter. FF 368-69.

The Hearing Committee finds that Dickens' failures to respond to disciplinary authorities were intentional. Given Bar Counsel's efforts to reach Dickens, which included U.S. mail, email, voicemail messages, publication, talking to his spouse and neighbors, and contacting the medical school in St. Kitts, *see* FF 370, we find that Dickens was aware of Bar Counsel's investigations. To that end, it is significant that following the reaction of Altman and Gelfeld to the publication of Shaw's final report, Dickens, in an April 1, 2011 letter, said that he would not "run from the Bar." FF 336. From this the Committee infers that Dickens knew that disciplinary action was possible, which buttresses our conclusion that Dickens "knowingly fail[ed] to respond reasonably to a lawful demand for information from an admissions or disciplinary authority." Indeed, the record strongly suggests that Dickens has fled the jurisdiction to avoid facing the consequences of his misconduct.

J. Rule 8.4(b)

Bar Counsel charged Dickens with violating Rule 8.4(b) by intentionally misappropriating entrusted funds in the Harris, O'Brien and Seltzers matters.

Rule 8.4(b) provides: "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 in other respects. . . ." To violate this rule, a lawyer does not have to be convicted, or even charged, with criminal conduct. *In re Slaughter*, 929 A.2d 433, 445 (D.C. 2007).

In *In re Gil*, 656 A.2d 303 (D.C. 1995), the Court stated that in construing the phrase "criminal act" for purposes of Rule 8.4(b), it "properly may look to the law of any jurisdiction that could have prosecuted respondent for the misconduct." *Id.* at 305. With respect to the Harris and O'Brien matters, both the D.C. and Virginia theft statutes could apply. In the Seltzer matter, the Maryland criminal statutes could also apply.

In the criminal justice system, conviction of a criminal offense ordinarily requires proof beyond a reasonable doubt. For purposes of Rule 8.4(b), however, Bar Counsel must only prove the criminal act by clear and convincing evidence. *See Slattery*, 767 A.2d at 207 ("A finding by clear and convincing evidence that the conduct at issue was a criminal act that merits disciplinary sanction is something altogether different than a finding beyond a reasonable doubt that the conduct merits conviction and criminal penalty.").

To violate Rule 8.4(b), a lawyer does not have to be convicted, or even charged, with criminal conduct. *In re Slaughter*, 929 A.2d 433, 445 (D.C. 2007). The conduct, however, does have to violate a criminal statute and reflect adversely on the lawyer's honesty, trustworthiness, or fitness as lawyer in other respects. Dickens' criminal acts of theft (and fraud in the Seltzer matter) clearly satisfy this requirement.

Dickens is licensed in the District of Columbia, the Harris and O'Brien Estates were probated in the D.C. courts, and Dickens dictated that District of Columbia law would govern the Seltzer 2009 Trust. When Dickens began representing Harris and stealing Estate funds, the Luxenberg law firm was still located in the District of Columbia.

Virginia is where Dickens lived and worked when he engaged in most all the criminal conduct, the location of the bank (United Bank) where he maintained the Estate and Trust accounts, and the location of his personal account into which stolen funds were deposited.

The Seltzer clients lived in Maryland, Dickens met with them in Maryland, the Seltzer Estate was probated in Maryland, and Dickens went to Maryland banks (including PNC in February 2010) to perpetrate his fraud and thefts.

Bar Counsel identified the following statutes that Dickens' conduct violated: D.C. Code § 22-3211 (theft); D.C. Code § 22-3221 (fraud); Va. Code § 18.2-95 (grand larceny); Va. Code § 18.2-178 (false pretenses); Md. Crim. Law Code § 7-105 (general theft). The statutes are attached as an appendix hereto. Although there are some differences in the applicable criminal statutes in each of the jurisdictions, the crux of each is that a person, without right, has deprived another of his or her property. The Virginia statute has the added element that the person's intent must be to *permanently* deprive the other person of his or her property. The differences among the statutes are without significance because evidence demonstrated that Dickens intentionally and without authority took more than $1.5 million of entrusted funds in the Harris, O'Brien and Seltzer matters with the intention to permanently deprive the intended beneficiaries, which would violate the above criminal statutes in all three jurisdictions.[58]

On numerous occasions, Dickens intentionally converted funds in the Harris, O'Brien, and Seltzer matters to his own use or that of third parties. There can be no reasonable doubt that his acts of theft were intentional, given that the thefts involved numerous separate acts and often complex activities. For example, in a practice that he repeated many times, he wrote checks payable directly to the bank and used those checks to purchase another check payable to himself or others. FF 120, 221, 248. This was clearly a scheme to make detection more difficult – since someone investigating any of the trust accounts would not find a direct path from the account to

[58] Dickens' conduct also likely violated one or more federal criminal laws (*e.g.*, some or all of Dickens' activity involved use of the wires and mails, which would violate the wire fraud and mail fraud statutes). *See* 18 U.S. Code §§ 1341 and 1343.

Dickens – and a clear indication of his criminal intent. He also directed the banks to send the monthly statements to his law office or home in Virginia so that they were not available to others; he failed to provide accountings or any information to his clients and the estate or trust beneficiaries about the funds he received and explain what he had done with them; and when he did communicate with them, he concealed information or lied or both. FF 83, 106, 217. Finally, the fact that he used estate funds for himself and others, over a long period of time, is further evidence of his intent to permanently deprive the rightful owners of the funds to which they were entitled. FF 245, 248, 250.

The lengths to which Dickens went to conceal his misconduct in the Seltzer matter are strong evidence of his criminal intent. As discussed above, Dickens had Ms. Seltzer sign the Letter of Instruction under false pretenses while she was near death. FF 204-12. When Ms. Seltzer's heirs retained experienced trust and estates attorneys who demanded an accounting, Dickens invented out of whole cloth the demand note by which he fraudulently claimed he had sold Ms. Seltzer a 1% interest in each of two companies. FF 311-14. Those companies existed solely on paper and had not one other proven asset. He forged that document and other documents he filed in court. FF 36, 228, 314, 321. He failed to provide accountings and information about the nature and whereabouts of Ms. Seltzer's assets and what he had done with them; and he lied and provided incomplete information when he did communicate with the Seltzer children and later their counsel. FF 225, 229-35.

In considering the Rule 8.4(b) charges, the Committee also relies on the facts set forth *supra* at 125-30, 135-39, which discuss Dickens' numerous instances of misappropriation and concealment of information. We conclude that clear and undisputed record evidence demonstrates

that Dickens engaged in criminal fraud and theft in the Harris, O'Brien and Seltzer matters, in violation of Rule 8.4(b).

K. Rule 8.4(c)

Bar Counsel charged Dickens with violating Rule 8.4(c) in the Harris, O'Brien and Seltzers matters.

Rule 8.4(c) provides that it is professional misconduct for a lawyer to: "[e]ngage in conduct involving dishonesty, fraud, deceit, or misrepresentation." Dishonesty is the broadest of these four terms, having been defined by the Court of Appeals as "conduct evincing 'a lack of honesty, probity or integrity in principle; [a] lack of fairness and straightforwardness…." *In re Shorter*, 570 A.2d 760, 767-68 (D.C. 1990) (quoting *Tucker v. Lower*, 434 P.2d 320, 324 (Kan. 1967)). Dishonesty includes not only affirmative misrepresentations but also failure to disclose information when there is a duty to do so. "Concealment or suppression of a material fact is as fraudulent as a positive direct misrepresentation." *In re Reback*, 487 A.2d 235, 239 (D.C. 1985) (citation omitted), *vacated on grant of pet'n for reh'g en banc*, 492 A.2d 267 (D.C. 1985), *adopted in relevant part*, 513 A.2d 226, 229 (D.C. 1986) (en banc); *see also In re Carlson*, 745 A.2d 257, 258 (D.C. 2000) (dishonesty may consist of failure to provide information where there is a duty to do so).

Rule 8.4(c) does not require that a respondent act intentionally. If a respondent acts in reckless disregard of the truth, he has violated Rule 8.4(c). *In re Ukwu*, 926 A.2d at 1113-14; *see also In re Cleaver-Bascombe*, 892 A.2d 396, 404 (D.C. 2006) ("*Cleaver-Bascombe I*"); and *see In re Rosen*, 570 A.2d 728, 729 (D.C. 1989). The rule contains no caveats or exemptions for conduct outside the practice of law. *In re Scanio*, 919 A.2d 1137, 1145 (D.C. 2007) (quoting *In re Jackson*, 650 A.2d 675, 677 (D.C. 1994)) ("A lawyer is held to a high standard of honesty, no matter what

role the lawyer is filling: acting as lawyer . . . or conducting the private affairs of everyday life."). Moreover, the Court of Appeals has said that "Rule 8.4(c) is not to be accorded a hyper-technical or unduly restrictive construction." *Ukwu*, 926 A.2d at 1113; *see also Hager*, 812 A.2d at 916 ; and *see Cleaver-Bascombe I*, 892 A.2d at 404.

There can be no doubt that Dickens engaged repeatedly in acts of "dishonesty, fraud, deceit, [and] misrepresentation" in violation of Rule 8.4(c). Over the course of almost a decade, he stole from the Harris, O'Brien and Seltzer Estates, lied about it, concealed material facts from clients, and covered up his actions. In the case of the Seltzer matter, he even created a fictitious investment to attempt to cover a large portion of the funds he had stolen from the Seltzer Estate. Although all of Dickens' conduct is shocking for an attorney, his deception of Ms. Seltzer shortly before her death, while in hospice care at Casey House, is particularly reprehensible.

In reaching its conclusion that Dickens violated Rule 8.4(c), the Committee relies principally on the facts set out in Sections C, G, H, I and J, *supra*. However, those facts – while more than adequate to establish multiple violations of Rule 8.4(c) – do not cover all of Dickens' dishonest conduct. Additional examples of dishonesty that are not already covered in prior sections include the following:

- Dickens' February 7, 2001 letter refers to a $60,000 check to Mr. Harris that Mr. Harris did not receive until more than four and a half years later. The letter represented that the Estate was closed in February 2001, when it was kept open for several more years, and stated that Dickens would take certain steps that were never taken. FF 64.

- In response to one of Mr. Harris' requests for an accounting, Dickens falsely stated that he already had sent him an accounting. FF 79.

- On April 23, 2010, Dickens filed a Petition for Probate in the Orphans' Court for Montgomery County, Maryland, stating that pursuant to Ms. Seltzer's 2009 Will, he was to act as personal representative of her Estate. FF 227. He falsely claimed that Ms. Seltzer had given him the Will in the presence of her two children who witnessed her signing it. In fact, neither of her children were present or had seen her Will. *Id*. He also falsely represented the value of Ms. Seltzer's Estate, claiming

an estimated value of $850,000, even though in a tax return he set the value at $1.6 million, and posted only a nominal bond of $5,000. *Id*.

- When Dickens met with Eric Seltzer on August 13, 2010, he sought to allay Eric Seltzer's concerns by falsely representing that he was the trustee of several prominent funds, controlled billions of dollars, and knew and worked with Bill and Melinda Gates. FF 269.

- Dickens wrote Gelfeld a letter dated December 3, 2010, in which he made a number of false representations, including: he had done "legal work" for Ms. Seltzer since 1995; he did not want the job as personal representative; that he had provided Falk a copy of Schedule A to the 2009 Trust; that he had discussed with Ms. Seltzer and her children that the 2009 Trust intentionally did not include provisions defining the interests of the beneficiaries; that Ms. Seltzer herself had transferred the PNC bank assets to her trust; that he had no control or knowledge of her investments; and that he had complied with the terms of the trust agreement. FF 283.

- Dickens wrote a letter to Gelfeld and Altman on January 6, 2011, in which he falsely claimed that Ms. Seltzer had made several amendments to the 1990 Trust, which he claimed not to know of until after her death. FF 293.

L. Rule 8.4(d)

Bar Counsel charged Dickens with violating Rule 8.4(d) in the Harris, O'Brien and Seltzers matters.

Rule 8.4(d) provides: "It is professional misconduct for a lawyer to ... (d) engage in conduct that seriously interferes with the administration of justice …." In order to violate Rule 8.4(d), the lawyer's conduct must (1) be "improper"; (2) "bear directly upon the judicial process (*i.e.*, the 'administration of justice') with respect to an identifiable case or tribunal"; and (3) "taint the judicial process in more than a *de minimis* way." *In re Hopkins*, 677 A.2d 55, 60-61 (D.C. 1996); *In re Uchendu*, 812 A.2d 933, 936 (D.C. 2002). A Rule 8.4(d) violation does not require an actual interference with judicial decision-making, but rather requires only that the conduct "taint" the process or "potentially impact upon the process to a serious and adverse degree." *Hopkins*, 677 A.2d at 61. Comment [2] provides: "The cases under paragraph (d) include acts by a lawyer such as: failure to cooperate with Bar Counsel; failure to respond to Bar Counsel's

inquiries or subpoenas; [and] failure to abide by agreements made with Bar Counsel[.]" Rule 8.4(d) is also violated if the attorney's conduct caused the unnecessary expenditure of time and resources in a judicial proceeding. *In re Cole*, 967 A.2d 1264, 1266 (D.C. 2009).

Improper conduct is not limited to conduct "prohibited by a statute, court rule or procedure, or other disciplinary rule." It includes conduct that, "considering all the circumstances in a given situation, the attorney should know that he or she would reasonably be expected to act in such a way as to avert any serious interference with the administration of justice." *Ukwu*, 926 A.2d at 1144 (appended Board report) (quoting *Hopkins*, 677 A.2d at 60-61); *see also In re Evans*, 902 A.2d 56, 69 (D.C. 2006) (Respondent engaged in improper conduct when he "took shortcuts and made mistakes without fully considering the propriety of such actions or the effect they might have in the probate proceeding").

In reaching its conclusion that Dickens violated Rule 8.4(d), the Committee relies on the facts set out in Section J, *supra*. Dickens' failure to respond to Bar Counsel's inquiries, required the expenditure of time and resources to obtain a Board order, and undermined the disciplinary system. But in addition to these impacts on the disciplinary system, his conduct also adversely affected the courts as well.

In the O'Brien matter, Virginia Tech Foundation did not learn that it was entitled to receive funds from the O'Brien Estate until after the Probate Court had closed the Estate in 2011. Consequently, the Foundation had to seek relief from the Probate Court. In September 2013, it filed a motion to reopen the O'Brien Estate so that it could investigate what happened to the residuary funds in the Estate and prosecute claims to recover the funds. The Probate Court denied the Foundation's initial motion to reopen, but without prejudice. The Foundation subsequently refiled the motion, posted a bond and, in March 2014, succeeded in having the Probate Court

reopen the Estate. The Probate Court also had to appoint a successor personal representative. FF 130. The Foundation has yet to recover any of the funds to which it is entitled that Dickens stole during the representation. FF 131.

With regard to the Harris Estate, in September 2004, more than four years after Gladys Harris died, Dickens forged Mr. Harris' signature on a request to extend his appointment as personal representative. FF 74. On October 5, 2004, the Probate Court granted the request and extended Mr. Harris' appointment as personal representative of the Estate, *nunc pro tunc*, from May 23, 2003, the third anniversary of his initial appointment. FF 75. When Mr. Harris was made aware of Dickens' dealings in his sister's Estate, he sought to correct what problems he could. The District of Columbia Office of Finance and Treasury, Unclaimed Property Division, instructed Mr. Harris and his daughters that they would have to reopen the Estate to claim the stock. After a couple of unsuccessful attempts, Mr. Harris was able on April 3, 2014, to get the Probate Court to accept his motion to reopen the Harris Estate. FF 96.

Dickens also made false statements in documents filed in the Orphans' Court for Montgomery County, Maryland in the Seltzer matter, when seeking appointment as the personal representative. In the April 23, 2010 Petition for Probate, he falsely claimed that Ms. Seltzer had given him the Will in the presence of her two children who witnessed her signing it, and falsely represented the value of Ms. Seltzer's Estate. FF 227. Dickens' misconduct as personal representative eventually resulted in Gelfeld and Altman filing a petition for his removal and for an accounting requiring additional action by the Orphans' Court.

Accordingly, based on the adverse impact of Dickens' conduct on the Probate Court, the Orphans' Court and the disciplinary system, the Committee concludes that Dickens' misconduct seriously interfered with the administration of justice.

M. Rule XI, § 2(b)(3)

Bar Counsel charged Dickens with violating D.C. Bar Rule XI, § 2(b)(3) in the Seltzer matter when he failed to comply with an order from the Board directing him to respond to Bar Counsel's inquiries. D.C. Bar R. XI, § 2(b)(3) provides that "[f]ailure to comply with any order of the Court or the Board issued pursuant to this rule" shall be grounds for discipline."

As set forth above, the record establishes that Dickens failed to respond to the January 9, 2012 order issued by the Board in the Seltzer matter. FF 364, 371. Such failure is a ground for discipline.

V. RECOMMENDED SANCTION AS TO RESPONDENT DICKENS

A. Respondent Dickens Should Be Disbarred.

In the District of Columbia, disbarment is the presumptive sanction for reckless or intentional misappropriation. *In re Addams*, 579 A.2d 190, 191 (D.C. 1990) (en banc). A lesser sanction may be appropriate only in "extraordinary circumstances," such as those found in *In re Kersey*, 520 A.2d 321 (D.C. 1987), where an attorney's alcoholism was taken to mitigate an intentional misappropriation committed during the period of alcoholism. *See In re Hewett*, 11 A.3d 279, 286 (D.C. 2011) (finding "extraordinary circumstances" for the first time in an intentional misappropriation case that did not involve *Kersey* mitigation).

Here, the Hearing Committee has found that Dickens' misappropriation was intentional, and there is no evidence of any extraordinary mitigating circumstances. Accordingly, pursuant to *Addams*, the Hearing Committee recommends that Respondent be disbarred.

Disbarment is also the sanction imposed for dishonesty "of the flagrant kind." *In re Pelkey*, 962 A.2d 268, 281 (D.C. 2008). The Court of Appeals has imposed disbarment for violations of Rules 8.4(b) and 8.4(c) in cases where the respondent engaged in "criminal conduct and 'extremely

serious acts of dishonesty'" and where the respondent was "in a position of trust," and took "fiduciary funds" for his own personal use. *Id.* (citing *Gil*, 656 A.2d at 304 and *Slattery*, 767 A.2d at 216).

We conclude that Dickens' conduct in this case constitutes flagrant dishonesty, which provides an alternative basis to support our recommendation that he be disbarred.

B. Restitution Should Be Ordered.

Dickens engaged in egregious acts of deception and theft that deprived numerous beneficiaries of their inheritances. While the amount is difficult to calculate with precision, we accept Bar Counsel's analysis, based upon its review of records of accounts held by each estate and Dickens' personal accounts, and other available evidence regarding expenditures made by Dickens, including the total amount that Dickens stole from the beneficiaries. FF 360.

Accordingly, as a condition of reinstatement, Dickens should be required to return all of the $1,434,298.50 he wrongfully took, with interest at the legal rate of 6%, to the intended beneficiaries.

VI. PROPOSED CONCLUSIONS OF LAW AS TO RESPONDENT LUXENBERG IN THE SELTZER MATTER

For the reasons stated below, the Hearing Committee finds that Bar Counsel has proven by clear and convincing evidence that Luxenberg violated Rules 5.1(a) and 5.1(c)(2) in the Seltzer matter, but did not prove by clear and convincing evidence that she violated Rules 1.3(a), 1.3(b)(1), 1.3(b)(2), 1.7(b)(4) and 8.4(a).

A. Procedural/Evidentiary Objection

The Board "consolidated for all purposes" the matters against Dickens and Luxenberg and assigned them to this Hearing Committee. *See* Order, *In re Dickens & Luxenberg*, Board Docket No. 13-BD-094 (BPR Nov. 27, 2013). Post-consolidation, the hearing was not divided into

separate Harris, O'Brien and Seltzer portions, with testimony being designated as pertaining to a particular matter or matters. Rather, each witness provided whatever testimony he or she had that related to any of the three matters. To ensure that there would be no misunderstanding regarding this procedure, the Committee made it clear to Luxenberg that any of the evidence admitted at the hearing could be used in consideration of the charges against Luxenberg in the Seltzer matter. *See* Feb. 14, 2014 Order; Tr. 899-900. To proceed in any other manner would have been impractical, inefficient and defeated the purpose of having a consolidated proceeding. It would have required introduction of redundant evidence and some witnesses to testify in multiple separate sessions.

Luxenberg attempts to state a due process violation by contending that she has been prejudiced by this procedure for handling evidence in this consolidated proceeding. Respondent's Br. at 100-02. However, as should be clear in the proposed findings of fact and conclusions of law that follow, the Committee has considered against Luxenberg only the charges against her in the Seltzer matter that are set forth in the Specification of Charges in which she is named. Moreover, to the extent that certain of those charges address Luxenberg's responsibility for Dickens' misconduct, the Committee has considered only whether she is responsible for Dickens' violations in the Seltzer matter, not whether she is responsible for Dickens' violations in the Harris or O'Brien matters. [59]

Luxenberg also urges the Committee to "reconsider" its order regarding consideration of evidence admitted at the hearing. Respondent's Br. at 101. Luxenberg misconstrues the

[59] Although we have ruled on Luxenberg's due process objection on the merits, waiver is an alternative basis for overruling the objection. Luxenberg did not oppose Bar Counsel's motion, filed with the Board at the outset of these proceedings, to assign all matters against Dickens (including the matter involving Luxenberg) to the same hearing committee. Although styled as a motion to assign (rather than to consolidate), the relief requested would have had the practical effect of exposing the same hearing committee to all the evidence of Dickens' misconduct, while simultaneously considering the charges against Luxenberg – which is what Luxenberg objects to now.

Committee's prior order. The Committee always intended to consider against Luxenberg only the evidence that was relevant to the charges against her. That is precisely what we have done. Indeed, all of the evidence on which we base our findings and conclusions as to Luxenberg could have been admitted even if the three matters had not been consolidated. That is particularly true with respect to the Rule 5.1(a) and 5.1(c)(2) charges against Luxenberg, both of which require examination of the administration of the Luxenberg firm, Luxenberg's relationship with Dickens, their respective roles at the firm, the nature of Dickens' practice and Luxenberg's knowledge thereof. For example, to prove that Luxenberg did not have in effect measures giving reasonable assurance that Dickens would conform to the Rules in the Seltzer matter, Bar Counsel could have introduced the fact that Dickens paid the rent for the Virginia office with funds from the O'Brien Estate (FF 20, 122) and that the firm cashed checks drawn on the O'Brien Estate account without a retainer agreement or supporting documentation (FF 123), even if the O'Brien matter had not been consolidated with the Seltzer matter. Stated differently, such evidence is not evidence from the O'Brien matter being improperly used in the Seltzer matter; it is evidence directly related to the Rule 5.1(a) charge in the Seltzer Matter.

Presented with an order from the Board consolidating these matters, the Hearing Committee held a hearing during which evidence relevant to any or all of the consolidated matters was presented. There is no prejudice resulting from our consideration of evidence that is relevant to the charges against Luxenberg simply because that evidence was presented during a consolidated hearing. To the extent that Luxenberg now asks the Committee to disregard relevant evidence simply because it was presented during a consolidated hearing (and may also be relevant to charges against Dickens), we reject that request.

B. Rule 1.3(a)

Bar Counsel charged Luxenberg with a violation of Rule 1.3(a) in the Seltzer matter.

Rule 1.3(a) requires a lawyer to "represent a client zealously and diligently within the bounds of law." Neglect of client matters is a violation of the obligation of diligence. Rule 1.3(a), Comment [7]. In *In re Reback*, the Court defined neglect as:

> indifference and a consistent failure to carry out the obligations which the lawyer has assumed to his client or a conscious disregard for the responsibility owed to the client. The concept of ordinary negligence is different. Neglect usually involves more than a single act or omission. Neglect cannot be found if the acts or omissions complained of were inadvertent or the result of an error of judgment made in good faith.

487 A.2d at 238. *See also In re Lewis*, 689 A.2d 561, 564 (D.C. 1997) (it is a violation of Rule 1.3(a) when a lawyer "[fails] to take action for a significant time to further a client's cause, whether or not prejudice to the client results.").

Bar Counsel argues that Luxenberg violated Rule 1.3(a) in four different ways. *See* Bar Counsel Br. at 140-41. As explained below, we disagree with Bar Counsel. Luxenberg's failings did not reflect the indifference and consistent failure to carry out her obligations to her client, necessary to prove neglect under Rule 1.3(a). *See Reback*, 487 A.2d at 238. At most, she made four bad decisions. Considered singly or *in toto*, these decisions may have violated different disciplinary rules, which were not charged, or be grounds for a civil malpractice claim, but are not the basis for a finding of neglect.

First, Bar Counsel argues that Luxenberg violated Rule 1.3(a) by delegating to Dickens the preparation of an estate plan for Ms. Seltzer in which Dickens would serve as a trustee and personal representative of her Estate. Law firm partners regularly refer matters to their colleagues, and Dickens claimed to have some relevant (albeit unverified) experience in the area of trust and estates. FF 14, 162. Luxenberg made the delegation with the full knowledge of Ms. Seltzer, who

had initially contacted Luxenberg about revising her estate plan. FF 133-36, 139. However, Luxenberg made it clear that she would not be providing any substantive advice regarding her estate plan. The record reflects that she told Ms. Seltzer that she could not assist her and that Dickens would be providing substantive trust and estate advice. FF 140, 157, 159, 164. The record also reflects that Ms. Seltzer ultimately made the decision to have Dickens help her. After first getting to know him, she selected him to be her trustee. FF 160. Ms. Seltzer later advised her daughter that she liked and felt comfortable with Dickens. *Id.* Dickens turned out to be an ill-fated referral. However, we cannot conclude that the act of referring the Seltzer matter to Dickens – a colleague who claimed to have relevant experience and was not yet known to be a thief – constitutes neglect by Luxenberg.

Second, Bar Counsel argues that Luxenberg violated Rule 1.3(a) when she did not refer Ms. Seltzer to another lawyer after Dickens failed to do any work for four months, which allegedly confirmed that he was unable or unwilling to perform the task of drafting the requisite documents in a timely fashion, and would not be dependable – or even available – to serve as the trustee of Ms. Seltzer's trust and personal representative of her Estate. Bar Counsel Br. at 140.

Dickens' failure to communicate with Ms. Seltzer between May and September 2009 was unacceptable and, as we conclude *supra* at 128-30, one of his many Rule 1.4 violations. But that does not mean that Luxenberg violated Rule 1.3(a) by failing to replace Dickens in September 2009. Moreover, the evidence is insufficient to show that Luxenberg should have acted at that time. When Luxenberg communicated with Dickens in August 2009 about the representation, she asked him: "I need to know if you can do this realistically. Otherwise, we need to get someone else to do it." FF 167. Dickens then immediately assured Ms. Seltzer that he would complete the work. *Id.* Thereafter, he met with Ms. Seltzer in September 2009 and again in November 2009 to

discuss trust documents and powers of attorney that he had drafted. FF 172, 176-79, 183, 187-88. Under the circumstances then known to Luxenberg, we cannot conclude that Luxenberg's failure to replace Dickens in September 2009 was improper.

Third, Bar Counsel argues that Luxenberg failed to assure herself and her clients about the provisions and purpose of the Letter of Instruction that Ms. Seltzer was induced to sign on her deathbed. Again, Luxenberg may have violated other disciplinary rules, but her conduct surrounding the Letter of Instruction did not constitute neglect.

The Letter of Instruction was an important part of Dickens' scheme to defraud Ms. Seltzer and her beneficiaries, and the circumstances under which she signed the Letter of Instruction – including Luxenberg's involvement – are alarming. Luxenberg had a role in the representation of Ms. Seltzer. FF 164-65, 167, 169, 189, 197. Had she read the letter, she should have at least questioned the unrestricted access it gave Dickens to a substantial portion of Ms. Seltzer's assets and/or noticed that the referenced attachments were not attached, which might have thwarted Dickens' theft of those assets. That said, Luxenberg was not at Casey House as a lawyer providing legal advice to Ms. Seltzer on trust and estates issues, and she did not sign the Letter of Instruction in that capacity. Rather, she was there to visit a dying friend and signed the document solely as a witness, similar to Ms. Hohlfeld (who also did not read the document). Indeed, it was happenstance that Luxenberg was present at Casey House when Dickens obtained the Letter of Instruction. She did not arrive with Dickens, did not even know that Dickens would be there, and only happened to meet Dickens there. FF 204.

Even assuming Luxenberg was acting in a legal capacity when she witnessed the signing of the letter, her failure to review the document is insufficient to establish neglect under Rule 1.3(a). At that point Dickens was not known to be a thief, the document involved estate planning

issues, and the lawyer who was providing substantive advice on those issues, Dickens, had drafted the document and was present. Of course, it would have been the better practice to review the document – if for no other reason than to see the kind and quality of work that Dickens was doing for Ms. Seltzer. And, had Luxenberg read the document, the substandard nature of the document should have been apparent. However, we cannot conclude that her decision not to do so constitutes "indifference and consistent failure to carry out [her] obligations" to Ms. Seltzer. *See Reback,* 487 A.2d at 238.

Fourth, Bar Counsel argues that Luxenberg failed to comply with her obligations as trustee (and lawyer) after Ms. Seltzer's death, including providing accountings of the assets and funds in the 1990 Trust for which she was sole trustee, and disbursing funds in accordance with the provisions of the trust. However, Bar Counsel did not prove by clear and convincing evidence that Luxenberg's failure to act was anything more than a good-faith misunderstanding of her obligations.

Luxenberg believed that once the 2004 Trust was in place, it effectively transferred assets from the 1990 Trust, for which Luxenberg was trustee, to the 2004 Trust, for which Dickens was the trustee. FF 208. She argues in her brief that this is correct,[60] and thus her actions were consistent with the law and Ms. Seltzer's intent. Bar Counsel argues that Luxenberg's belief was

[60] *See* Respondent's Br. at 106 ("The law in the District of Columbia is clear that the language in Schedule A of the 2009 trust was, in fact, sufficient to transfer title of the assets in the amended 1990 Trust to the 2009 Trust.") (citing *Ackerman v. Abbott*, 978 A.2d 1250, 1256 (D.C. 2009)).

incorrect.[61] Our research did not suggest a clear answer.[62] But even if Luxenberg is wrong and Bar Counsel is right, that just means Luxenberg was mistaken, not that she failed to zealously and diligently represent her client. Moreover, Luxenberg is not charged with a lack of competence, skill and care under Rule 1.1 and, in any event, there was no expert testimony that she made a mistake that fell below the standard of care.[63] We credit Luxenberg's testimony regarding her belief at the time, and therefore conclude that her failure to act based on her good faith but perhaps erroneous belief does not establish a violation of Rule 1.3(a).

C. Rule 1.3(b)(1) and 1.3(b)(2)

Bar Counsel charged Luxenberg with violating Rules 1.3(b)(1) and 1.3(b)(2) in the Seltzer matter. The relevant portions of the rules are set forth above at 123-24 in the conclusions of law relating to Dickens. The legal standards for conduct alleged to violate the rules are also set out there.

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[61] Bar Counsel contends that *Ackerman* is not controlling; thus, "[m]oving assets into the 2009 trust required actually transferring title to the accounts" and "attaching a list of assets to the 2009 Trust document and referring to it to show Ms. Seltzer intended to make a transfer, did not make it so." Bar Counsel Reply at 23. Bar Counsel is correct that *Ackerman* did not hold that delivery of trust assets is never required; rather, the relevant language – a parenthetical from a citation to a Maryland case, *Barker v. Aiello*, 581 A.2d 42 (Md. 1990) – was included to make an unrelated point. As support for its position, Bar Counsel seems to rely on opinion testimony from Ms. Gelfeld and Mr. Altman, both of whom were advocates for the Seltzer children in their dispute with the Luxenberg firm. We agree with Luxenberg that the effect of the 2004 Trust is an issue of law and therefore not a proper subject of expert testimony. *See* Respondent's Br. at 106.

[62] Under Maryland law, a revocable trust may be revoked (1) by compliance with a method of revocation described in the revocable trust, (2) creation of a subsequent "will or codicil that refers to the trust or specifically devises property that would have passed otherwise according to the terms of the trust," or (3) "[a]nother method manifesting clear and convincing evidence of the intent of the settlor." Md. Code Ann., Estates and Trusts § 14.5-602(c) (West 2015). Under District of Columbia law, certain types of trusts, including a written declaration of a "custodial trust," may operate as a transfer of title in the trust property to the trustee. D.C. Code § 19-1102(c) (2012). The District of Columbia Uniform Trust Act provides that real or personal property that is transferred to trust may be titled in the name of the trustee, but it is silent on the method of passage of title. *Id.* § 19-1304.18.

[63] Ms. Gelfeld and Mr. Altman gave standard of care testimony relating to Dickens' conduct, not Luxenberg's conduct. *See also* footnote 51, *supra*.

Unlike Rule 1.3(a), both Rules 1.3(b)(1) and 1.3(b)(2) require proof of *intentional* conduct. Having considered the evidence and Luxenberg's demeanor at the hearing, we cannot conclude that she acted with the intent necessary to violate Rules 1.3(b)(1) and 1.3(b)(2).

Bar Counsel's first argument is that Luxenberg acted contrary to Seltzer's interest by concealing Dickens' plans to leave the firm, while aware that Seltzer wanted a long-term plan in place and reassuring her that her matter was important to the firm. Bar Counsel Br. at 138. The record reflects, however, that Dickens announced his plans to move to Italy in early February 2010. FF 199. By that time, Ms. Seltzer's estate planning was well under way. She had met with Dickens and signed documents in September and November 2009. FF 172, 176-79, 183, 187-88. Moreover, Luxenberg understood that Dickens was not making a long-term move, that he would "be back and forth" between Italy and the United States, that his companion, Billy Tolar, would remain in Virginia, and that he would still be able to handle some client matters. FF 199, 200. Luxenberg may have exercised poor judgment by not confirming with Dickens his availability to handle the Seltzer matter, or to insist that Dickens discuss his availability with Ms. Seltzer, but the evidence clearly does not rise to the level of Luxenberg's intentionally failing to seek Ms. Seltzer's lawful objectives or intentionally prejudicing Ms. Seltzer.

Bar Counsel's remaining arguments are variations on the arguments it made in support of the Rule 1.3(a) charge: that Luxenberg violated Rule 1.3(b)(1) and 1.3(b)(2) by not being more diligent when asked to witness the Letter of Instruction, and by failing to carrying out her duties as trustee of the 1990 Trust according to its provisions. Bar Counsel Br. at 138-140. As explained above, although both situations are problematic, we find that Luxenberg acted in good faith – certainly not with the intention to prejudice her client or fail to seek her lawful objectives.

Accordingly, we conclude that Bar Counsel did not prove violations of Rule 1.3(b)(1) and 1.3(b)(2).

D. Rule 1.7(b)(4)

Bar Counsel charged Luxenberg with a violation of Rule 1.7(b)(4) in the Seltzer matter. The relevant portion of the rule is set forth above at 131-32 in the conclusions of law relating to Dickens. The legal standard for conduct alleged to violate Rule 1.7(b)(4) is set out there as well.

Bar Counsel's arguments regarding Rule 1.7(b)(4) are essentially the same as its arguments regarding Rule 1.3, recast as conflicts of interest. They fare no better here.

Bar Counsel's first argument is that Luxenberg had a conflict of interest when she took on the representation of Seltzer, suggesting that financial difficulties caused her to take on a matter that she should not have taken. Bar Counsel Br. at 141. That argument makes too much of an appropriate objective in the private practice of law. Law firms are businesses that hope to make money any time they represent a new client (apart from *pro bono* representations). The fact that the Luxenberg firm needed money in 2009 and hoped to be paid for services to be rendered to Ms. Seltzer and her estate does not mean that the firm had a conflict of interest. To find otherwise would be to suggest that any lawyer seeking to support his or her practice *prima facie* has a conflict – an untenable position. No other basis for a conflict is even suggested by the evidence.

Bar Counsel further argues that Luxenberg violated Rule 1.7(b)(4) when she witnessed the Letter of Instruction and when she "abdicated" her duties as trustee of the 1990 Trust. Bar Counsel Br. at 142. However, while Bar Counsel identifies what it believes to be shortcomings in Luxenberg's conduct (which are charged as violations of other rules), it does not identify any particular conflict of interest on which to rest a Rule 1.7(b)(4) violation. We find none in the record.

Accordingly, we conclude that Bar Counsel has not proven a violation of Rule 1.7(4)(b) by Luxenberg in the Seltzer matter.

E. Rule 5.1(a)

Bar Counsel charged Luxenberg with a violation of Rule 5.1(a) in the Seltzer matter.

Rule 5.1 (a) provides: "A partner in a law firm, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm … shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers in the firm … conform to the Rules of Professional Conduct."

Comment [1] provides that Rule 5.1(a) applies to lawyers who have managerial authority over the professional work of a firm or government agency, which "includes members of a partnership, the shareholders in a law firm organized as a professional corporation and members of other associations authorized to practice law" (emphasis added).

Comment [2] provides that partners must make "reasonable efforts" to implement policies and procedures that provide "reasonable assurance that all lawyers in the firm will conform to the Rules of Professional Conduct." It then goes on to say that:

> Such policies and procedures include those designed to [1] detect and resolve conflicts of interest, [2] identify dates by which actions must be taken in pending matters, [3] account for client funds and property and [3] ensure that inexperienced lawyers are properly supervised (emphasis added).

Comment [3] explains that the measures that may be required to fulfill the responsibility prescribed in Rule 5.1(a) may vary based upon the size of a firm and the experience of its attorneys. Regarding small firms, it states that "informal supervision and occasional admonition ordinarily might be sufficient." Comment [3] further explains that "the ethical atmosphere of a firm can influence the conduct of all its members and a lawyer having authority over the work of another may not assume that the subordinate lawyer will inevitably conform to the Rules."

Turning to the case law in the District of Columbia, we find two Court of Appeals decisions that guide our application of Rule 5.1(a). First, in *In re Cohen*, 847 A.2d 1162 (D.C. 2004), the respondent was a partner at a 12-lawyer firm. An associate of the firm, who was also the defendant's son, was responsible for filing a trademark application on behalf of one of the firm's clients. *Id.* at 1163-1164. The client instructed the associate to communicate with its U.S. distributor to coordinate the trademark application. *Id.* at 1164. When the client's and the distributor's interests became adverse, the associate continued to take instructions from the distributor against the client's wishes. *Id.* Ultimately, the associate withdrew the trademark application without even informing the client. *Id.* The Board found that respondent violated Rule 5.1(a) because the firm "had no requirement that a partner supervise the work of associates, no formal ethics training available to lawyers in the firm, nor any mechanism in place to assure that associates complied with ethical rules." Respondent did not contest this violation of Rule 5.1(a), so the bulk of the Court of Appeals' opinion addressed Rule 5.1(c), not Rule 5.1(a).

The respondent in *In re Robinson*, 74 A.3d 688 (D.C. 2013), was also ultimately found to have violated Rule 5.1(a). Robinson was the named partner of a small firm where he mainly practiced criminal defense law.[64] Robinson's son-in-law, Kourtesis, worked as an associate at the firm, but mainly handled personal injury cases. *Id*. at 691. Although Robinson was the only signatory on the firm's client trust accounts, Kourtesis had been delegated the task of maintaining the accounts on a day-to-day basis. *Id.* After the firm's bank was sold and new account numbers were issued by the acquiring bank, a deposit that Robinson had marked for the client trust account was mistakenly deposited in the firm's operating account, causing the trust account to be

[64] The exact size of the firm is not clear from the opinion. It mentions that Robinson had a partner who left the practice during the same year that the associate involved in this matter joined the firm. *See* 74 A.3d at 691. From the context, it seems that Robinson and the associate may have been the only attorneys at the firm.

overdrawn. *Id.* at 691-692. Robinson asked Kourtesis to look into the problem and make sure it was resolved. *Id*. at 692-693. However, Robinson did not follow up with Kourtesis about the account's status, and it was later overdrawn for a second time. *Id.* at 693. Because the trust account did not have sufficient funds, one of Kourtesis' clients was delayed in receiving settlement funds for three years. *Id.*

The Hearing Committee in *Robinson* had concluded that despite the trust account overdrafts, Robinson had not violated Rule 5.1 (a) because he had a system in place for "timely review and internal control" of subordinate lawyers, and he had fulfilled his own duties as sole signatory on the trust account by regularly reviewing bank statements and cancelled checks. *Id.* at 696. But the Board disagreed with the Hearing Committee, and the Court of Appeals affirmed the Board. *See In re Robinson*, 74 A.3d 688 (D.C. 2013). "We agree with the Board that prior to the first overdraft, the system respondent had in place, while perhaps rudimentary, was adequate to address the needs of his law firm. However, after that overdraft, respondent was on notice that matters relating to the trust account were awry… [O]nce the alarm bell of an overdraft rang, the matter was too important to be left to a subordinate without at least diligent follow-up of any investigation by the subordinate into the apparent flaw. Regrettably, a conclusion of ... a violation of Rule 5.1(a) necessarily follow[s]." *Id*. at 696-697.

Although *In re Cater*, 887 A.2d 1 (D.C. 2005), involved a violation of Rule 5.3(b)[65] rather than Rule 5.1(a), it is instructive here. In *Cater*, the Court of Appeals rejected the view that a lawyer's failure to supervise or review a nonlawyer employee's performance would not violate

[65] Rule 5.3(b) provides that "[a] lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer[.]"

Rule 5.3(b) absent evidence that the lawyer had reason to believe the employee was untrustworthy or incompetent. As the Court of Appeals explained:

> "[R]easonable efforts to ensure" that an employee's conduct is compatible with the lawyer's professional obligations is a proactive standard that requires more than careful selection and appropriate training of the employee … there must be some system of timely review and internal control to provide reasonable assurance that the supervising lawyer will learn whether the employee is performing the delegated duties honestly and competently or not. If no such system is in place, it will not do for a lawyer to profess ignorance of the employee's dishonesty or incompetence. Internal controls and supervisory review are essential precisely because employee dishonesty and incompetence are not always identifiable in advance.

887 A.2d at 15-16. We believe that the same can be said for Rule 5.1(a). Some proactive steps are necessary to ensure compliance, as lawyer dishonesty and incompetence are similarly not always identifiable in advance.

We have also identified three New York cases that discuss the comparable New York Rule of Professional Conduct 5.1(a) in the context of a small firm. Two of the New York cases resulted from the same underlying conduct: one partner at a three partner firm specializing in real estate transactions, Bellettieri, stole more than $17 million from the firm's escrow account. *See In re Fonte*, 75 A.D.3d 199, 200-201 (N.Y. App. Div. 2010); *In re Laudonio*, 75 A.D.3d 144, 145-146 (N.Y. App. Div. 2010). The two other partners, Fonte and Laudonio, maintained that they were completely unaware of Bellettieri's fraud and had no reason to suspect that he had misappropriated any funds. Nevertheless, they were both found to have violated New York's version of 5.1(a) (albeit with little analysis included in the opinion) because they failed to make an adequate effort to review or supervise the operations of the escrow account. *See Fonte*, 75 A.D.3d at 202-203; *Laudonio*, 75 A.D.3d at 147-148.

In the third New York case, in *Matter of Dahowski*, 103 A.D.2d 354, 354-355 (N.Y. App. Div. 1984), a partner in a small firm was found to have engaged in professional misconduct for failing to "oversee or review the record keeping of his law firm," which enabled another partner

to maliciously convert client funds, even though he "was in no way responsible for the conversions." *Id.* at 355. However, there is no discussion in the opinion addressing the size of the firm, role of the respondent partner in the firm, or the nature of the respondent's relationship with the other partner.

As an initial manner, we must reject Luxenberg's argument that Rule 5.1(a) cannot apply to her without an express finding that she was the managing partner of the firm or otherwise had supervisory authority over Dickens. *See, e.g.*, Respondent's Br. at 3, 117. By its terms, Rule 5.1(a) is not limited to situations where one lawyer is the supervisor of a subordinate lawyer. Nor is it limited to the "managing partner" of the firm. It covers partners. It also covers other lawyers who have comparable managerial authority in a firm.[66] Luxenberg was a partner, and whatever her title or lack thereof, she had managerial authority at her three-partner firm. For example:

- Luxenberg was a founding partner. FF 2, 6.
- At all times, Luxenberg was name partner. FF 2, 6.
- At all times, she had the controlling interest in the firm. FF 6.
- Luxenberg was responsible for originating most of the business of the firm. FF 8.
- By late 2007, Johnson no longer had an active practice, and Dickens apparently had few clients of his own. FF 16.
- Luxenberg determined which clients the firm would represent and which firm lawyer would handle their matters (although the extent to which Luxenberg had control over such matters was not clear). FF 12.
- Luxenberg hired Dickens. FF 3.
- Dickens was never a signatory on the firm's IOLTA account, even when a partner. FF 15.

[66] It appears that some level of managerial responsibility is necessary before a partner can be responsible under Rule 5.1(a). The rule speaks to a partner or other lawyer with *comparable managerial authority*. There may be situations, especially in big firms, when a law firm partner is a partner in name only and has little, if any, managerial authority. Clearly, that was not the situation at Respondent's law firm.

- Dickens never had any managerial responsibilities. FF 15.

Accordingly, based on her status as partner and her role at the firm, we have no difficulty finding that Rule 5.1(a) applies to Luxenberg.

Turning to the firm's procedures, we recognize that what is appropriate for a large firm will be different than what is appropriate for small firm, and that the appropriateness of the procedures can vary based on the circumstances of each firm. But as the case law and comments make clear, a partner cannot simply trust or assume that other lawyers will inevitably follow the Rules. Moreover, when a partner is on notice of compliance issues, more robust measures are needed to address such issues. Here, whatever the reasonableness of the firm's procedures in Luxenberg's two-lawyer firm prior to Dickens' arrival at the firm, they were plainly and repeatedly proven to be inadequate to ensure Dickens complied with the Rules of Professional Conduct.

The primary method that the Luxenberg firm used to monitor the administration of its practice was to hold staff meetings at which the lawyers reviewed the firm's list of open cases. FF 21. The case list was generated based on the firm's retainer agreements and "time slips" or the firm's billing records. FF 25. Accordingly, if retainer letters were not obtained and billing records were not kept regularly for certain client matters, the case list would not include those matters.

In fact, although the Luxenberg firm required that its attorneys prepare retainer or fee agreements for all clients, there is no evidence that Dickens ever did so during the entire period that he was with the firm. FF 25, 28-9, 30, 32, 102, 105. *But see* FF 56 (Dickens provided Harris with an "engagement letter," but there is no evidence that he shared it with the firm.) The firm apparently took no steps to enforce its policy or to try to achieve future compliance. Similarly, while the lawyers in the firm were supposed to keep contemporaneous records of their time, Dickens failed to record time for some of his clients, including Vernon Harris, William Garrity,

Samuel Ghanem, Courtney Stadd and, for the most part, Michelle Seltzer. FF 26. Again, the firm apparently took no steps to enforce its policy or to try to achieve future compliance.

Moreover, Dickens did not regularly attend the staff meetings that were the firm's primary method of monitoring client matters. After the firm moved its offices to Maryland in 2007, Dickens' participation "tailed off." FF 16, 22. Dickens would "fall off the record" for as much as a month at a time. FF 23. By 2009, "[i]t became hard to reach [Dickens]." FF 24. Yet the firm apparently took no steps to enforce his attendance at the staff meetings, the principal vehicle in place at the firm for Luxenberg to meet her obligations under Rule 5.1(a).

Other unenforced firm policies relate to maintenance of client files. Firm attorneys were required to keep complete client files that included e-mails. FF 33. Dickens was supposed to save electronic documents in the firm's computer server, but failed to do so. *Id*. As a result, other firm personnel did not have and could not find documents relating to the client matters on which Dickens worked. *Id*. The firm apparently took no steps to enforce this policy as to Dickens. Indeed, Luxenberg herself seemed oblivious to this firm policy when, in May 2011 after Dickens had fled the country, Luxenberg went to the firm's Virginia office and saw Stadd's wife shredding boxes of documents, but did not inquire of her or make any effort to stop her. FF 354.

In addition, the firm's financial controls were plainly inadequate, to the point where the firm received funds without any idea what those funds were for or whether the amount was appropriate. For example:

- In 2007, the firm paid off and "attempted" to close the credit card account used by Dickens because he had used it to pay personal expenses. Dickens, however, somehow continued to use the card to charge personal expenses and, by January 2011, accumulated charges of $25,000 – which Luxenberg knew. Dickens never paid the balance, despite promises to Luxenberg that he would. FF 44.

- Rent for the firm's Virginia office was paid (by Dickens) from client funds, including those from the O'Brien and Seltzer Estates. FF 20.

- The firm negotiated checks drawn on the O'Brien Estate account totaling more than $20,000, without receiving or requiring Dickens to provide any supporting documents, such as a retainer or bill indicating the firm was entitled to the fee – or that it indeed was a fee. FF 31.

- Although the record is not entirely clear, it appears that the firm received at least $25,000 for the Stadd case, without any idea of the billing arrangement for that matter. FF 32.

- Dickens wrote a check for $4,478 on the Seltzer trust account payable to the Luxenberg firm. The Luxenberg firm did not have any invoice or other records indicating that it was entitled to fees in this amount. The firm nevertheless negotiated the check and kept the money. FF 222.

With respect to some matters, the firm apparently had no policies or procedures whatsoever. For example, the Luxenberg firm did not take any steps to determine whether, by practicing in an office located in Virginia, where he was not licensed, Dickens would be violating the unauthorized practice of law rules of that jurisdiction or that the work Dickens performed in Maryland was not in violation of that state's UPL. FF 163, 228. And there is no evidence in the record of any policies or procedures to ensure that firm lawyers kept records of amounts transferred into and out of accounts containing entrusted funds.[67]

Finally, Luxenberg had actual knowledge that Dickens was not timely or adequately communicating with Ms. Seltzer and her family. Although she made inquiries of Dickens, the firm took insufficient steps to make sure that the communication issues were remedied.

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[67] With respect to the Seltzer matter, Luxenberg argues that the firm had no legal right to monitor or inspect the accounts of the Seltzer Estate because Dickens was the named personal representative and therefore had the sole legal responsibility to protect and safeguard the assets of the Estate. Respondent's Br. at 114, 120. As support for that position, Luxenberg cites to District of Columbia Code provisions giving personal representatives the right to control estate assets and the standard of care applicable to personal representatives. Respondent's Br. at 114. The Code sections that Luxenberg cites relate to the representative's investment and management decisions as a fiduciary. The violation of Rule 5.1(a) with which Luxenberg is charged does not relate to such activities. Rather, it relates to reasonable efforts to ensure that funds entrusted to a firm lawyer are handled in accordance with the Rules of Professional Conduct. We cannot accept Luxenberg's remarkable contention that because Dickens was the named personal representative for the Seltzer Estate, the law firm is thereby completely absolved of its Rule 5.1(a) responsibility in that regard. Indeed, Ms. Seltzer hired the Luxenberg firm to handle her trust and estates matters and the firm collected fees from Seltzer. Luxenberg herself set the hourly fee, with the expectation that Ms. Seltzer would pay the firm, not Dickens personally. FF 165.

Based on the text of the Rule, the Comments, the case law, and the facts that we have found, we conclude that Bar Counsel has proven a Rule 5.1(a) violation. We agree that more was required of Luxenberg and her firm, and that her *laissez-faire* approach to ensuring that lawyers in the firm complied with the Rules of Professional Conduct was insufficient and not reasonable given the circumstances present in this case. Indeed, throughout the course of Dickens' association with the firm, there were clear signals that the firm's practices and procedures were not sufficient to deal with Dickens' almost total disregard for them. Luxenberg knew this. She also should have known that the status quo was plainly not sufficient. But nothing changed. No additional policies or procedures were ever implemented, and those that were in place were never enforced.

In her Brief, Luxenberg argues that we cannot find a Rule 5.1(a) violation unless we conclude that her shortcomings proximately caused Dickens' misconduct. She isolates each compliance measure that Bar Counsel alleges as nonexistent or inadequate, then argues that she cannot be responsible for a violation of Rule 5.1(a) unless the record demonstrates that the particular measure, if implemented or strengthened, would have prevented Dickens' theft of estate funds in the Seltzer matter. *See, e.g.*, Respondent's Br. at 116 ("Bar Counsel failed, however, to demonstrate … that, had Mr. Dickens attended the Firm meetings more often, it would have prevented Mr. Dickens from stealing from Ms. Seltzer"); *see also id*. at 119-120, 131, 134.

We disagree that such a finding is required. As an initial matter, causation is not mentioned in Rule 5.1. The Rule is intended to encourage lawyers to take prophylactic steps to ensure compliance. A partner or lawyer with comparable managerial authority fails in that regard when reasonable measures are not in place, not when harm is proximately caused. In that sense, a violation of the Rule is different from a civil tort cause of action, for which proximate cause is an essential element. Moreover, Respondent's argument disregards the overall effect that a lax ethical

environment can have on lawyers practicing at the firm. To some extent, the firm's failure to enforce compliance measures, or strengthen internal controls after issues became apparent, may have emboldened Dickens and/or permitted his misconduct to occur, even if those failures were not the proximate cause of the harm that Dickens caused.

Accordingly, the Hearing Committee concludes that Bar Counsel has proven that Luxenberg violated Rule 5.1(a) in the Seltzer matter. To be clear, we do not impute Dickens' misconduct to Luxenberg and do not find a violation of Rule 5.1(a) based on vicarious liability. Rather, we conclude that Luxenberg violated Rule 5.1(a) based on her own failures as a name partner in a law firm with managerial responsibility.

F. Rule 5.1(c)(2)

Bar Counsel charged Luxenberg with a violation of Rule 5.1(c)(2) in the Seltzer matter.

Rule 5.1(c)(2) provides: "A lawyer shall be responsible for another lawyer's violation of the Rules of Professional Conduct if: … (2) The lawyer has direct supervisory authority over the other lawyer or is a partner or has comparable managerial authority in the law firm … in which the other lawyer practices, and knows or reasonably should know of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action."

Comment [5] explains the "knows or reasonably should know" portion of the Rule. First, it states that whether there was actual knowledge is a question of fact. It then goes on to explain that whether a lawyer should have known of another attorney's misconduct is "an objective standard based on evaluation of all the facts." These facts include:

- the size and organizational structure of the firm,
- the lawyer's position and responsibilities within the firm,
- the type and frequency of contacts between the various lawyers involved,
- the nature of the misconduct at issue, and

- the nature of the supervision or other direct responsibility (if any) actually exercised.

Finally, Comment [5] notes that "[t]he mere fact of partnership or a position as a principal in a firm is not sufficient, without more, to satisfy this standard."

The Court of Appeals addressed Rule 5.1(c)(2) in *Cohen*. The respondent had argued that it was unfair to subject him to discipline for the dishonesty or misrepresentations of another attorney of which he had no knowledge. But the Court disagreed, noting that Rule 5.1(c)(2) reflects what this jurisdiction has determined to be a fair and necessary balance:

> On the one hand, it is not a rule of imputed liability for underlying conduct … On the other hand, Rule 5.1(c)(2) in this jurisdiction represents a judgment that attorneys supervising other lawyers must take reasonable steps to become knowledgeable about the actions of those attorneys in representing clients of the firm. As the Board explained, the "reasonably know" provision was carefully crafted to encourage – indeed to require – supervising attorneys to reasonably monitor the course of a representation … denying them the ostrich-like excuse of saying, in effect, "I didn't know and I didn't want to know."

847 A.2d at 1166. The Court of Appeals adopted the Board's conclusion that although respondent did not personally violate any rules, he was responsible for his associate's conduct nonetheless. *Id.* at 1167.

The supervisory relationship between the respondent, a partner in the firm, and an associate, who was respondent's son, was addressed in more detail in the Board report that the Court adopted. The Board considered factors that included "the [discrete] nature of the case, the extended length of the representation, the small size of the firm, and of course, the degree of supervision or lack thereof." *Id*. 1166-67. The Board emphasized that it was not finding a violation of 5.1(c)(2) based merely on the respondent's status. *Cohen*, Bar Docket No. 280-97 at 40. Rather, it did so based on the totality of the circumstances, particularly his connection with the client matter in which the misconduct occurred and his "hands off" reaction to the conflict of interest situation that arose. *Id.* at 38-40. The Board also noted that, in seeking a legal ethics opinion about the

propriety of the firm's representation of MRF, a reasonably prudent attorney would have inquired about the status of MRF's trademark application and included that information in the ethics opinion request. *See Id.* at 25-26. Thus, although the respondent was not the associate's "direct supervisor" for the trademark application, *Id.* at 33, his involvement in the related cancellation proceeding placed him in a position where he reasonably should have known that the trademark application had been withdrawn. *See Id.* at 38-39.

The only other case in this jurisdiction involving a Rule 5.1(c)(2) violation under the "reasonably should know" standard was *In re O'Duden*, Bar Docket Nos. 403-95, 72-95 & 73-95 (BPR June 19, 2001). O'Duden, the general counsel of the National Treasury Employees Union, supervised attorneys who violated the rule requiring settlement funds to be kept in a separate trust account. *Id.* at 16. There, as in *Cohen*, the defendant was the supervising attorney on the matters that gave rise to the violation. *Id.* Although the case involved a general counsel's office, the Board analogized it to a small law firm:

> We would not hesitate to sanction the managing partner of a small law firm who allowed attorneys in the firm to commingle client funds with law firm funds. O'Duden stands in no different position. He was responsible for having a trust or escrow account in place when client funds came into his firm's possession, and he was responsible for taking reasonable efforts to ensure that his attorneys utilized such escrow accounts when handling client moneys.

Id. at 17.

The only additional case cited by either party is *In the Matter of Mandelman*, 714 N.W.2d 521 (Wisc. 2006). Mandelman involved an alleged violation of Wisconsin's version of Rule 5.1(c), which requires actual knowledge of misconduct before an attorney is subject to discipline under the rule.[68] As to one of the matters under review, the Wisconsin court concluded that the

[68] Wisconsin SCR 20:5.1(c)(2).

respondent was not responsible for his colleague's misconduct under the rule. Although the client had retained the respondent to represent him in a personal injury case, the record indicates that the client dealt exclusively with the colleague on the separate collection action, and it was the colleague who assured the client that he would take care of that matter. Under those circumstances, the Wisconsin court concluded that the record did not support a finding that the respondent knew of his colleague's failure to take care of the collection matter at a time when its consequences could have been avoided or mitigated. *Mandelman* simply does not address this jurisdiction's "should have known" standard or the requisite relationship between the associated attorneys before the rule is triggered.

We find that Rule 5.1(c)(3) can apply to Luxenberg on either of two independent grounds: (a) she "is a partner or has comparable managerial authority in the law firm" and/or (b) she "had direct supervisory authority over the other lawyer." The first ground is evident from the discussion up to this point. As for the second ground, we conclude that Luxenberg had enough of a supervisory role for the obligations of Rule 5.1(c)(3) to apply to her. It was Luxenberg, not Dickens, who had the long-standing attorney-client relationship with Ms. Seltzer. FF 133-136. When Ms. Seltzer wanted to update her estate plan in 2004, she contacted Luxenberg. FF 139. Luxenberg delegated the matter to Dickens. Although Luxenberg made it clear that she would not be providing substantive advice, she did maintain some involvement in the representation. FF 140. For example, Ms. Seltzer conveyed information about her Estate to Luxenberg (FF 164) and communicated with Luxenberg about Dickens' progress on drafting her will and trust documents. FF 167, 169, 172. Luxenberg followed up with Dickens (FF 167, 169), responded to Ms. Seltzer about Dickens' whereabouts (FF 195), received copies of emails between Ms. Seltzer and Dickens (FF 189), determined how much the firm would charge Ms. Seltzer (FF 165), and sent her a bill.

FF 197. Based on this evidence, we conclude that Luxenberg had at least some supervisory authority over Dickens and role in the representation of Ms. Seltzer.

Bar Counsel argues that Luxenberg should have been aware of Dickens' misconduct based on the number of "red flags" or warning signs about his behavior. Bar Counsel Br. at 132-137. We agree, in part, but believe that Bar Counsel's argument is too broad. It does not make any distinction among the different types of misconduct in which Dickens engaged. As Comment [5] explains, "the nature of the misconduct at issue" is one of the factors to be considered when determining whether a lawyer "should have known" about misconduct. We think this factor is critical here, and conclude that Luxenberg should have known about certain of Dickens' violations but not others.

We do not believe that Luxenberg should have been aware of Dickens' thievery. Although there were red flags, those red flags did not signal such egregious conduct. Rather, they relate to issues such as Dickens' competence, responsiveness and compliance with firm procedures. As we said in the Rule 5.1(a) context, they should have caused Luxenberg to tighten the firm's procedures in response to the red flags. But is it far different to say that those red flags should have put Luxenberg on notice that Dickens was a thief. Accordingly, we conclude that Luxenberg is not responsible pursuant to Rule 5.1(c)(2) for Dickens's violations that relate to his thievery (i.e., Rules 1.3(b)(1) and 1.3(b)(2) (intentionally failing to seek the lawful objectives of client or prejudice client)), 1.15(a) (commingling and misappropriation), 1.15(c) (failure to render an accounting) 8.4(b) (criminal conduct) and 8.4(c) (dishonesty)).

Dickens' violations of Rules 1.1(a) and (b) (lack of competence, skill and care) required expert testimony from witnesses who had experience with trust and estates law; they did not involve the kind of errors that were so obvious that no expert testimony was necessary to prove a

violation. *See supra* at 118-22. Luxenberg did not have any such expertise, and the standard of care testimony from Bar Counsel's experts addressed Dickens' conduct, not Luxenberg's conduct. Accordingly, we cannot say that she should have known about Dickens' violations of Rules 1.1(a) and 1.1(b).

Finally, there is no way that Luxenberg could have known that after Dickens was no longer a member of the firm, he would not respond to Bar Counsel's inquiries or to an order of the Board. Accordingly, Luxenberg is not responsible pursuant to Rule 5.1(c)(2) for Dickens' violations of Rules 8.1(b) (failure to respond reasonably to a lawful demand for information from a disciplinary authority) and 8.4(d) (serious interference with the administration of justice).

There are other violations, however, about which Luxenberg was aware or should have been aware and therefore bears some responsibility. She was on notice that Dickens was not communicating with sufficient promptness and completeness with Ms. Seltzer. Given her role in the representative of Ms. Seltzer, she should have taken steps to increase the adequacy of the communications by Dickens, the lawyer at her firm who she had designated to handle the representation of this firm client. Accordingly, we find pursuant to Rule 5.1(c)(2) that Luxenberg bears responsibility for Dickens' Rule 1.4 violations.

Luxenberg was also aware that Dickens was a member of the District of Columbia Bar (FF 7), but working on the Seltzer matter for a Maryland resident. Moreover, it would be reasonable for Luxenberg to assume that the Seltzer matter, a trust and estates matter, would involve a Maryland court. For these reasons, supervision of Dickens by a Maryland lawyer would be necessary, yet Luxenberg argues in her papers that she did not supervise him (Luxenberg Br. at 120-25), and there is no evidence that the need for such supervision or a *pro hac vice* application

for the Seltzer matter was ever discussed. We find that Luxenberg should have known about Dickens' Rule 5.5(a) violation.

G. Rule 8.4(a)

Bar Counsel charged Luxenberg with violating Rule 8.4(a) in the Seltzer matter.

Rule 8.4(a) prohibits a lawyer from knowingly assisting another lawyer in violating the ethical rules. Accordingly, Luxenberg's mental state is critical. As we stated previously, whether a lawyer acted "knowingly" is a question of fact and denotes "actual knowledge of the facts in question." D.C. R. Prof. Cond. "Terminology" cmt. [6]. Just as we found that Luxenberg did not act intentionally with respect to any of the charges against her (*see supra* at 162-163), we similarly find that she did not knowingly assist Dickens in violating the rules.

VII. RECOMMENDED SANCTION AS TO RESPONDENT LUXENBERG

The discipline imposed in a matter, although not intended to punish the lawyer, should serve to maintain the integrity of the legal profession, protect the public and courts, and deter future or similar misconduct by the respondent-lawyer and other lawyers. *In re Hutchinson*, 534 A.2d 919, 924 (D.C. 1987) (*en banc*); *Reback*, 513 A.2d at 231. Further, the sanction imposed must not "foster a tendency toward inconsistent dispositions for comparable conduct or . . . otherwise be unwarranted." D.C. Bar R. XI, § 9(h)(1) (2008).

Specific factors to be considered when determining an appropriate sanction include, but are not limited to: (1) the seriousness of the conduct at issue; (2) the prejudice, if any, to the client which resulted from the conduct; (3) whether the conduct involved dishonesty and/or misrepresentation; (4) the presence or absence of violations of other provisions of the disciplinary rules[;] (5) whether the attorney had a previous disciplinary history; (6) whether or not the attorney

acknowledged his or her wrongful conduct; and (7) circumstances in mitigation of the misconduct. *In re Pelkey*, 962 A.2d 268, 281 (D.C. 2008).

A. Discipline Imposed in Other Rule 5.1 Cases

Sanctions for violations under Rule 5.1 have varied substantially. As we read the Board's guidance, however, the sanctions in such cases should bear some relationship to the underlying misconduct. *See Cohen*, Bar Docket No. 280-9 at 48 ("Rule 5.1 is designed to ensure that senior attorneys discharge their obligations to supervise their subordinates and the sanctions should necessarily be heavily influenced by the seriousness of the misconduct resulting from their failure to supervise"); *O'Duden*, Bar Docket Nos. 403-95, 72-95 & 73-95 at 24 ("Sanctions for violations of 5.1(b) and 5.1(c) are in large measure based on the underlying misconduct caused by the lack of supervision or based on the nature of the misconduct subsequently ratified by not being corrected.")

In *Cater*, all parties agreed that respondent should receive a 90-day suspension for three instances of failure to cooperate with Bar Counsel in three different disciplinary investigations, but disagreed on how much to increase that suspension for her further violation of failure to supervise. Because that violation resulted in theft from client trust accounts, Bar Counsel argued that her suspension should be increased by six months, analogizing her failure to supervise to negligent misappropriation – a violation that normally carries a six month suspension. *Id.* at 18. However, the Court of Appeals rejected this analogy:

> The salient and distinguishing feature of this case is the intervention of a dishonest third party who, disobeying respondent's directions and violating respondent's trust, used the entrusted funds for her own purposes. Moreover, respondent did not derive any personal gain or benefit from her inattentiveness to her employee's defalcations … Since respondent's Rule violations were not trivial or merely technical, and since they were damaging enough to her vulnerable clients, we are satisfied that a suspension of some duration is warranted.…

Id. at 18-19. Ultimately, the Court approved a total suspension of 180 days, which meant that the respondent essentially received a 90-day suspension for her failure to adequately supervise. *Id.*

In *Cohen*, the Court of Appeals approved the Board's recommendation that respondent be suspended for 30 days. 847 A.2d at 1167. The respondent's firm had no requirement that a partner supervise the work of its associates, no formal ethics training available to lawyers in the firm, and no mechanism to assure that associates complied with ethical rules." *Id.* at 1166. That failure to supervise resulted in respondent's associate improperly withdrawing a trademark application based on instructions from an individual who was not authorized to speak on behalf of the corporate client.

In *Robinson*, the respondent's failure to address a misappropriation by a firm associate resulted in a second misappropriation. That second misappropriation was considered to be a violation by respondent of both Rule 1.15(a) and 5.1. The Court of Appeals approved the Board's recommendation that respondent be suspended for seven months. On the one hand, given that six months is the normal suspension for a negligent misappropriation, the seven-month suspension can be seen as adding one month for the Rule 5.1 violation. On the other hand, given that the same set of facts constituted both negligent misappropriation and a violation of Rule 5.1, the seven-month suspension can be seen as an indication of the seriousness with which violations involving client funds are viewed in this jurisdiction.

In *In re Roxborough*, 675 A.2d 950 (D.C. 1996) (per curiam), the Court of Appeals suspended the respondent for 30 days, with the requirement that he prove fitness to practice law prior to reinstatement, for failing to act with reasonable promptness, to keep his client reasonably informed, to supervise an associate, or to provide competent representation.

In *O'Duden*, Bar Docket Nos. 403-95 at 72-95, 73-95 (BPR June 20, 2001), the respondent's failure to supervise resulted in commingling and failure to deposit client funds in escrow/trust accounts. Respondent subsequently set up detailed procedures to avoid repetition. As a sanction, the Board ordered that the respondent be reprimanded.

In re Osborne, 713 A.2d 312 (1998) (per curiam), also involved commingling. The Court of Appeal approved a public censure, which the Board had selected as the appropriate sanction instead of reprimand because the commingling resulting from respondent's failure to supervise extended over a long period of time.

B. Specific Factors to Be Considered

1. Seriousness of the Misconduct

While we certainly do not equate a respondent's violation of Rule 5.1 with the resulting misconduct by his or her law firm colleague, the above opinions demonstrate that violations of Rule 5.1 are considered less serious when the underlying misconduct is less serious (such as commingling) and are considered more serious when the resulting misconduct is more serious (such as misappropriation). The conduct in the Seltzer matter is extremely serious. Accordingly, we must consider Luxenberg's Rule 5.1 violations to be serious as well.

2. Prejudice to Clients

Ms. Seltzer and her heirs were unquestionably and seriously prejudiced. We recognize that Dickens, not Luxenberg, is primarily responsible for that prejudice. However, our Rules reflect a judgment that lawyers who violate Rule 5.1 also bear some responsibility for the underlying violations of their law firm colleagues. Accordingly, Luxenberg also bears some responsibility for the prejudice to Ms. Seltzer and her heirs.

3. Dishonesty

Bar Counsel makes the argument that although it did not even charge Luxenberg with a dishonesty violation, we should nonetheless sanction her as if she had committed a dishonesty violation. *See* Bar Counsel Br. at 146 ("Although Luxenberg was not charged with dishonesty, her conduct came perilously close."). While we do not understand that logic, we disagree with Bar Counsel's characterization of Luxenberg's conduct. The record reflects no conduct amounting to "a lack of honesty, probity or integrity in principle." *Shorter*, 570 A.2d at 767-78. Rather, the violations we have found stem from Luxenberg's being too trusting and insufficiently attentive to her obligations as a partner in a law firm, not from anything approaching dishonesty.

4. Number of Violations

Although we find that Luxenberg violated two different Rules, the conduct underlying those violations is essentially the same: failure to take steps designed to provide reasonable assurance that Dickens' conduct conformed to ethical norms. Accordingly, we do not find that the number of violations in this case constitutes an aggravating factor.

5. Previous Disciplinary History

After more than 38 years of practice, Luxenberg has no record of prior discipline.

6. Acknowledgement of Wrongdoing

Bar Counsel argues that Ms. Luxenberg's failure to acknowledge any misconduct is an aggravating factor in this case. Luxenberg argues that her failure to admit a violation should not be considered an aggravating factor, as she has the right to defend herself against the charges brought by Bar Counsel. We agree with Luxenberg, and certainly do not hold that against her. What the Committee finds somewhat troubling, however, is the complete lack of recognition that she had *any* obligation whatsoever regarding the ethical conduct of other lawyers in her firm.

7. Aggravating and Mitigating Circumstances

Bar Counsel presented no aggravating circumstances. The mitigating circumstances, on the other hand, are significant. FF 372.

Luxenberg presented evidence regarding her professional accomplishments and her long history of service to the Bar, to the community and to clients. Over her career as a lawyer, she has not only provided effective representation to her clients, but also made significant contributions to ensuring that children, families, and domestic abuse victims are adequately represented and cared for in the District of Columbia. FF 373-376, 381.

The Committee also heard character and reputation evidence from distinguished witnesses, including a Superior Court Judge, a Magistrate Judge, and members of the Bar, each of whom testified to Luxenberg's honesty, moral character and devotion to her clients. FF 377-380.

Finally, we note that Luxenberg cooperated fully with Bar Counsel in this matter.

C. Summary

Luxenberg is a well-respected and accomplished member of the Bar who has contributed significantly to the community and, by all accounts, is honest and ethical. Furthermore, we agree with Luxenberg that she is, to some extent, also a victim of Dickens' duplicitous behavior. However, when balancing the mitigating circumstances against the prior disciplinary decisions from the Court of Appeals and the Board, the seriousness of the violations resulting from her Rule 5.1 violations, the length of time over which the violations occurred, the special rigor with which the disciplinary system treats protection of client funds, and the need to deter future violations of this nature, we conclude that a suspension of 45 days is the necessary and appropriate sanction.

VIII. CONCLUSION

For the foregoing reasons, the Hearing Committee finds that Bar Counsel has proven by clear and convincing evidence that Dickens violated Rules 1.1(a), 1.1(b), 1.3(b)(1), 1.3(b)(2), 1.4(a), 1.4(b), 1.7(b)(4), 1.15(a)(misappropriation), 1.15(c), 8.1(b), 8.4(b), 8.4(c), and 8.4(d) in the Harris, O'Brien and Seltzer matters, and therefore should be disbarred. We further recommend restitution of $1,434,298.50 as a condition of reinstatement, with interest at the legal rate. We draw Dickens' attention to the requirements of D.C. Bar R. XI, § 14, and their effect on eligibility for reinstatement. *See* D.C. Bar R. XI, § 16(c).

The Hearing Committee further finds that Respondent Luxenberg violated Rules 5.1(a) and 5.1(c)(2) in the Seltzer matter, and should be suspended for 45 days. We also draw Luxenberg's attention to the requirements of D.C. Bar R. XI, § 14, and their effect on eligibility for reinstatement. *See* D.C. Bar R. XI, § 16(c).

HEARING COMMITTEE NUMBER TWELVE

/RAS/
Robert A. Salerno, Chair

/JK/
Jean Kapp, Public Member

/WJO/
William J. O'Malley, Attorney Member

Dated: April 20, 2015