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

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

REPORT AND RECOMMENDATION OF AD HOC HEARING COMMITTEE

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

I. PROCEDURAL BACKGROUND

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

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

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 By this time, Respondent's counsel had withdrawn and he has since proceeded *pro se*.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

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

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

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

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

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

II. FINDINGS OF FACT

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

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

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

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

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

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

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

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

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

Angela Hammie-Bonner

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Joe Bonner

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Property Damage Claim

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

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

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

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

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

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

Personal Injury Claim

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

III. CONCLUSIONS OF LAW

A. Disciplinary Charges Related to Representation of the Bonners

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

Rule 1.15: Misappropriation

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

violations of Rules 1.3(c) and 1.4.

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

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

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

Rule 1.5(a): Unreasonable Fees

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

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

Rules 8.1 and 8.4: Dishonesty

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Rule 1.4: Failure to inform client

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

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

Rule 1.5(a): Unreasonable Fees

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

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

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

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

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

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

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

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

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

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

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

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

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

DX 3-B at 7.

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

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

R. Br. at 22.

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

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

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

D. Respondent's General Defenses

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

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

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

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

E. Conclusion

In summary, we find that Respondent:

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

IV. RECOMMENDATION AS TO SANCTION

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

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

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

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

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

V. CONCLUSION

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

AD HOC HEARING COMMITTEE

By: /MJZ/
Michael J. Zoeller
Chair

/RB/
Dr. Robin J. Bell
Public Member

/EL/
Edward Levin
Attorney Member