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

| | | |
|---|---|---|
| In the Matter of: | : | |
| | : | |
| LEICESTER B. STOVELL, | : | |
| | : | Board Docket No. 16-BD-046 |
| Respondent. | : | Bar Docket Nos. 2014-D136, |
| | : | 2014-D196, 2014-D205, & |
| A Member of the Bar of the | : | 2014-D129 |
| District of Columbia Court of Appeals | : | |
| (Bar Registration Number 488149) | : | |

REPORT AND RECOMMENDATION
OF THE AD HOC HEARING COMMITTEE

## I. OVERVIEW

The essence of this case is allegations that Respondent Leicester B. Stovell violated his ethical obligations to his clients and the legal system. According to Disciplinary Counsel, Respondent failed to competently represent a client; failed to diligently and zealously represent a client; intentionally failed to seek the lawful objectives of two of his clients; did not act with reasonable promptness; intentionally prejudiced a client; failed to effectively communicate with one of his clients; and failed to protect his client's interests when terminating the representation in two instances. Disciplinary Counsel further alleges that Respondent intentionally or recklessly misappropriated funds; commingled funds; failed to deposit funds into an IOLTA account; and failed to keep complete records of client funds.[1] Disciplinary

[1] "Rules" refers to the Rules of Professional Conduct for the District of Columbia. Here, the Specification of Charges alleges that Respondent violated Rules 1.1(a), 1.1(b), 1.3(a), 1.3(b)(1), 1.3(b)(2), 1.3(c), 1.4(a), 1.4(b), 1.15(a), 1.15(b), 1.15(e), 1.16(d), 8.4(c), and 8.4(d), of the District

Counsel also alleges that Respondent breached his professional obligations by engaging in acts of dishonesty and seriously interfering with the administration of justice. We find that the evidence clearly and convincingly demonstrates that Respondent violated multiple Rules of the District of Columbia Rules of Professional Conduct, including Rule 1.15(a) (intentional misappropriation). As a result, the Ad Hoc Hearing Committee ("Hearing Committee") recommends that Respondent be disbarred, as no extraordinary mitigating circumstances exist to warrant a lesser sanction. *See In re Addams*, 579 A.2d 190, 199 (D.C. 1990) (en banc) (disbarment is the presumptive sanction when an attorney "knowingly used his client's money as if it were his own").

Respondent made the acquaintance of the four clients at issue in this case through the online services "Legal Match" and "Craigslist" or the client's own internet search for an attorney. Admitted to practice by the District of Columbia Court of Appeals since 2004, by at least 2013-2014, Respondent had a solo law practice that he ran out of his home and from an office in the District of Columbia. His practice appeared to be quite broad in that, as demonstrated by the four clients at issue in this matter, he handled matters from family court disputes to litigation before the U.S. Supreme Court.

---

of Columbia Rules of Professional Conduct (the "Rules"), arising from his representation of Karen Simmons-Beathea in a child support matter (Count I); Scott A. Schrader in a refiling of a Kentucky complaint in the District of Columbia (Count II); Marilyn Howard in a civil matter (Count III); and George Lutfi in the filing of a petition for certiorari before the U.S. Supreme Court (Count IV).

The client named in Count I of the Specification of Charges, Karen Simmons-Beathea, sought Respondent's legal counsel because she was facing sanctions for failing to pay child support in a Family Court proceeding in the D.C. Superior Court. Disciplinary Counsel alleges that the essence of Respondent's ethical breaches in his representation of Ms. Simmons-Beathea relates to his relationship both with Ms. Simmons-Beathea and the court. In his relationship with Ms. Simmons-Beathea, although Respondent took on her case and accepted her payment, he failed to appear at a scheduled hearing of which he had notice, failed to provide Ms. Simmons-Beathea with relevant documents that opposing counsel had given to him, and failed to inform her of hearing dates.

As for the court, Disciplinary Counsel alleges that Respondent misrepresented his reasons for withdrawing from Ms. Simmons-Beathea's case. Respondent falsely stated that she had not communicated with him, when in fact, she had tried repeatedly to do so but was unsuccessful in getting Respondent's attention.[2] Disciplinary Counsel further alleges that Respondent also failed in his obligations to the court by seriously interfering with the administration of justice through failing to appear at a scheduled hearing in this case.

At Count II, Disciplinary Counsel alleges that Scott A. Schrader, having learned that a legal matter he was pursuing in Kentucky had to be filed in the D.C. courts, engaged Respondent to file a civil case for him in the D.C. Superior Court.

[2] Disciplinary Counsel, however, did not charge Respondent in the Specification of Charges with a violation of Rule 3.3(a)(1) (knowingly making a false statement of fact to a tribunal).

Disciplinary Counsel alleges that Mr. Schrader paid Respondent a retainer in the case, but Respondent failed to protect these funds and, instead, misappropriated the unearned fees by taking those fees before they were earned. Further, Disciplinary Counsel alleges that similar to his performance in the Ms. Simmons-Beathea case, Respondent failed to seek his client's lawful objective. Respondent failed in that mandate by never properly serving the defendants. As a result, Mr. Schrader's case was dismissed by the court, prejudicing Mr. Schrader's ability to have the matter adjudicated.

In Count II, Disciplinary Counsel also alleges that Mr. Schrader retained Respondent and paid advance legal fees, based on Respondent's promises not only to meet the very short deadlines he faced but to continue pursuing their legal objectives beyond the immediate deadlines. However, after the initial filing of the complaint in the D.C. Superior Court for Mr. Schrader, with the bulk of the work outstanding, Respondent ceased working on the case.

Disciplinary Counsel further alleges that when Mr. Schrader did not pay the additional legal fees requested by Respondent, Respondent did not take steps to protect Mr. Schrader's interests but, instead, remained counsel of record while intentionally failing to undertake any legal measures to pursue Mr. Schrader's objectives. Specifically, Disciplinary Counsel alleges that Respondent refused to file an amended complaint and serve the correct parties in Mr. Schrader's case. According to Disciplinary Counsel, Respondent abandoned his client, ignoring his obligations to protect Mr. Schrader's interests and his obligations to the court.

At Count III, Disciplinary Counsel alleges that Marilyn Howard had similar experiences with Respondent. Ms. Howard sought Respondent's counsel to execute on her plan to file charges against certain government agencies. Additionally, Disciplinary Counsel alleges that Ms. Howard paid Respondent in advance, and, just as he had with Mr. Schrader, Respondent did not secure Ms. Howard's funds but instead misappropriated the funds by taking fees before they were earned. Even after admitting that he owed her a refund, Respondent again misappropriated entrusted funds by not maintaining sufficient funds in his account to cover the refund check he purportedly sent to Ms. Howard. Disciplinary Counsel alleges that Respondent's failure to segregate and protect the initial entrusted funds and then the refund due to Ms. Howard – even after admitting to Disciplinary Counsel he owed her a refund of $312.50 – demonstrates his intentional misappropriation of client funds.

Finally, at Count IV, Disciplinary Counsel alleges that George Lutfi retained Respondent to file a petition for certiorari before the U.S. Supreme Court. Disciplinary Counsel alleges that when Respondent took Mr. Lutfi's money in advance of any legal work, Respondent did not deposit them into in an IOLTA account, commingled Mr. Lutfi's funds with his own personal funds, and did not keep complete records of the funds.

The Hearing Committee finds that evidence furnished to Disciplinary Counsel, by Respondent and his former clients, has established that Respondent did not even have a trust account. It also showed that in many instances, he spent entrusted funds for his own personal benefit, paying for restaurant meals and other

personal bills. Further, the record showed that Respondent kept no records to account for how much money he should have been holding for each client at any given time. Indeed, during Disciplinary Counsel's investigation, Respondent could not even produce records that accurately stated how much his clients had paid him, let alone track when he earned and withdrew money from those entrusted funds he held. In Ms. Howard's case, even after admitting to Disciplinary Counsel that he owed her a refund, Respondent did not set aside that amount so it would be available to her if she ever received and deposited the refund check he purportedly sent. Instead, he wrote the refund check on an account that was overdrawn and thereafter repeatedly allowed that account to fall below the amount required to cover the refund check. Respondent's failure to segregate and hold refund money due to Ms. Howard – even after admitting to Disciplinary Counsel he owed an amount and would refund it – further demonstrates Respondent's intentional use of funds that did not belong to him.

The Hearing Committee finds that these facts, taken together with Respondent's cavalier remarks at the hearing that he did not know what an IOLTA account was, *see, e.g.*, Tr. 763 ("I was not aware that all client funds[,] or any[,] had to have been submitted into an IOLTA account"), clearly show that his misappropriations were intentional and not negligent. Further, given Respondent's failure to appear before the Hearing Committee on time – at least once showing up over an hour late and often without notice to the Hearing Committee; his failure to comport himself with appropriate court decorum; his failure to litigate this matter

with acceptable procedures (Respondent did not submit any exhibits, stipulate to many obvious facts, or submit a post-hearing brief despite asking for three continuances to do so); and his unfounded accusations that former clients were lying, the Hearing Committee finds that Respondent's behavior and remarks throughout this proceeding diminished his credibility in his defense of Disciplinary Counsel's complaint. As further outlined below, the Hearing Committee concludes that the appropriate sanction for the proven Rule violations is disbarment.

## II. PROCEDURAL BACKGROUND

On April 29, 2016, Disciplinary Counsel submitted to the Board on Professional Responsibility (Board) a proposed four-count Specification of Charges against Respondent. DX B.[3] On July 6, 2016, a Contact Member approved the charges, and Disciplinary Counsel filed the charges with the D.C. Court of Appeals on July 14, 2016, and served them on Respondent, by certified mail, on July 19, 2016. DX C.

Respondent did not file an Answer within the time-frame allotted by the Board Rules. *See* Board Rule 7.5. A telephonic prehearing conference was held on November 17, 2016, before Margaret Cassidy, Esquire, the Chair of the Hearing Committee, with the Office of Disciplinary Counsel represented by Senior Staff Attorney Jelani Lowery, Esquire,[4] and Respondent representing himself, *pro se*. On

[3] "DX" refers to Disciplinary Counsel's exhibits. "Tr." refers to the transcript of the hearing held on February 15, 16, 21, and 28, 2017. "FF" refers to the factual findings made by this Hearing Committee.

[4] Mr. Lowery's current title is Assistant Disciplinary Counsel.

November 23, 2016, the Chair issued an order requiring: 1) Respondent to file his Answer on or before November 28, 2016, and 2) both Disciplinary Counsel and Respondent to file statements as to witness availability on or before November 28, 2016.

On November 28, 2016, Respondent filed his Answer, admitting some of the allegations but denying that he had violated any of the Rules charged, and answering "neither admit nor deny" to most of the allegations. DX D. On that same date, Respondent filed an untitled pleading that identified the witnesses he intended to cross-examine or call as a witness, and his available dates for the evidentiary hearing.[5]

On December 19, 2016, the Chair issued an order setting the hearing dates and deadlines for filing stipulations, exhibits, and witness lists. Disciplinary Counsel filed and served its proposed exhibits and witness list on February 3, 2017. Respondent did not file any additional documents.

The evidentiary hearing was held on February 15, 16, 21, and 28, 2017, before a Hearing Committee composed of Ms. Cassidy, the Chair, Trevor Mitchell, the public member, and Patricia Millerioux, Esquire, the attorney member.[6] On

---

[5] In the pleading, Respondent reserved his right to cross-examine the complainants and any additional witnesses called by Disciplinary Counsel. Respondent further reserved his right to call Mr. Lowery and Joseph Perry, Esquire, of the Office of Disciplinary Counsel as witnesses in his case.

[6] Hearing Committee member Ms. Millerioux was unable to attend the hearing on February 21 and 28. However, both Respondent and Disciplinary Counsel agreed that she could participate in the decision of the Hearing Committee upon review of the transcript of the proceedings and any recording of the proceedings. Tr. 814-15; s*ee also* Board Rule 7.12.

February 15, Respondent showed up one hour late for his hearing. Tr. 47. Given that Respondent had notice of the start time for the hearing, the Hearing Committee began the case without him. On February 16, Respondent again showed up late; this time he was approximately one half-hour late and without any notice to the Committee. Tr. 335-36. On February 21, after the hearing had proceeded without him for approximately 40 minutes, Respondent contacted the Hearing Committee by telephone and asked that the matter be continued as he was not feeling well. Tr. 599-601. The hearing was continued to February 28, and Respondent subsequently arrived one-half hour late to the hearing on that date. Tr. 644.

Disciplinary Counsel called as witnesses Respondent's former clients: Scott Schrader, Karen Simmons-Beathea, Marilyn Howard, and George Lutfi. Disciplinary Counsel also called Charles Anderson, an investigator for the Office of Disciplinary Counsel; Andrew Levy, a representative from Bank of America; Philip Medley, Esquire, a D.C. Assistant Attorney General; and Respondent. Disciplinary Counsel offered documentary evidence, DX A-D and 1-38, all of which was admitted into evidence. Tr. 745.

Respondent testified on his own behalf, but did not offer documentary evidence or call any witnesses. After the Committee made a preliminary nonbinding finding that Disciplinary Counsel had proved by clear and convincing evidence at least one of its charges, the hearing proceeded to the sanction phase. Tr. 791-92. Disciplinary Counsel offered no evidence in aggravation. Respondent offered his own additional testimony in mitigation. Tr. 792-801.

Disciplinary Counsel submitted its Proposed Findings of Fact, Conclusions of Law, and Recommendation as to Sanction ("ODC PFF") on March 31, 2017. Respondent filed three motions for an extension of time in which to file Respondent's Response to Disciplinary Counsel's Proposed Findings and Recommendation. Respondent, however, ultimately never filed any response to Disciplinary Counsel's brief.

## III. FINDINGS OF FACT

The following findings of fact are based on the testimony and documentary evidence admitted at the hearing, and these findings of facts are established by clear and convincing evidence. *See* Board Rule 11.6.

1. Respondent is a member of the Bar of the District of Columbia Court of Appeals, having been admitted by motion on July 9, 2004, and assigned Bar number 488149. Respondent was also licensed in the states of Ohio and Illinois. DX A.

2. From mid-2013 through the end of 2014, Respondent did not maintain a trust account – an account held at an "approved depository" in compliance with the District of Columbia's Interest on Lawyers' Trust Account (IOLTA) program. Tr. 727-28, 739 (Respondent). In his opening statement Respondent stated that he did not understand that "a proper trust account was for client funds," and he operated without one. Tr. 57 (Respondent).

3. Respondent did not give clear testimony regarding his maintenance of a trust account. Respondent testified that he attempted to set up a trust account in

2012, but he was not sure if it was an IOLTA account; there was a problem with the account and it was closed. Tr. 728, 740 (Respondent). Respondent claimed that he opened another IOLTA account but was not sure when he opened it. Tr. 728, 739-40 (Respondent). The Hearing Committee notes that Respondent never produced, in his responses to Disciplinary Counsel's subpoenas and inquiries, *any* records demonstrating he possessed a trust account during the relevant time period of 2013-2014. Tr. 741-42 (Respondent).

4. Respondent did not deposit the entrusted funds he received from Mr. Schrader, Ms. Howard, and Mr. Lutfi into a trust account. Tr. 739 (Respondent). Instead, he deposited these funds into business and personal checking accounts at PNC Bank ending in 7428 and 6855. *See* FF 33, 57, 71. Respondent also wrote a refund check to Ms. Howard against an account ending in 3009. *See* FF 65. None of those accounts was a trust account. Tr. 540-41, 741 (Respondent); Tr. 471-72 (Anderson). Respondent used these accounts to pay personal expenses such as restaurant purchases, ATM withdrawals, cable bills, and gas station purchases. Tr. 504, 519 (Anderson).

5. Respondent did not have any accounting or recordkeeping system in his offices for keeping track of client funds. He stated that he just kept track of the "things that were in [his] mind." Tr. 743 (Respondent).

COUNT I – 2014-D136
Karen Simmons-Beathea

6. In early November 2013, Karen Simmons-Beathea attempted to renew her passport so that she could make a family trip to South Africa scheduled for February 2014. Tr. 169, 173 (Simmons-Beathea). The passport office informed Ms. Simmons-Beathea that it could not renew her passport because of an issue related to child support and referred her to the D.C. child support office. Tr. 192 (Simmons-Beathea).

7. Ms. Simmons-Beathea contacted the D.C. child support office and eventually was advised in the *pro se* clinic that she needed to move to modify her child support order. Tr. 173 (Simmons-Beathea). On November 25, 2013, Ms. Simmons-Beathea moved *pro se* to amend/modify the child support order in D.C. Superior Court case number 2003-DRB-2002, styled *Karen Simmons-Beathea vs. Robert Louis Beathea Jr*. DX 6 at 3.

8. As a result of her motion, a child support hearing was scheduled for January 7, 2014. DX 6 at 2-3.

9. Although Ms. Simmons-Beathea had filed a *pro se* motion to amend/modify her support obligations, she wanted an attorney to represent her in the matter. Tr. 166 (Simmons-Beathea). She sought legal representation by searching the internet and eventually located Respondent. *Id.*

10. In early January, Ms. Simmons-Beathea spoke to Respondent about representing her in the child support matter and assisting in getting her passport renewed. Ms. Simmons-Beathea informed Respondent that she had already filed a

motion to modify the child support order and that a hearing in the matter was scheduled for January 7, 2014. DX 5 at 55; Tr. 169-170. Ms. Simmons-Beathea never met Respondent in person. Tr. 168 (Simmons-Beathea). All of their communication occurred via e-mail, phone, and text. *Id.*

11. On January 2, 2014, Respondent sent Ms. Simmons-Beathea a retainer agreement that she signed and returned to him that day. Tr. 168 (Simmons-Beathea). The agreement required Ms. Simmons-Beathea to pay an initial retainer of $400 to be drawn down at Respondent's hourly rate of $150 as services were rendered. DX 5 at 55-56. Ms. Simmons-Beathea wanted Respondent to obtain a continuance of the January 7 hearing and pursue her longer-term goals of resolving the child support issue and obtaining her renewed passport. Tr. 169-171 (Simmons-Beathea).

12. In a January 6, 2014 email, Ms. Simmons-Beathea asked Respondent if she could pay $125 instead of the full $400 retainer because she could not afford to pay the full amount at that time. DX 5 at 8-16. Respondent agreed to attend the hearing if Ms. Simmons-Beathea could transfer the $125 to his PNC bank account ending in number 6855, and she did so that evening. DX 5 at 8-16; DX 2 at 14. The 6855 account was a non-IOLTA checking account. Tr. 471-72 (Anderson).

13. The next day, January 7, 2014, Respondent filed a praecipe entering his appearance and attended the hearing on behalf of Ms. Simmons-Beathea, who did not attend due to health issues. Tr. 172-73 (Simmons-Beathea); DX 6 at 2; DX 7 at 2.

14. During the January 7 proceedings, the Assistant Attorney General for the District of Columbia, Philip A. Medley, Esquire, moved for a hearing to show cause why Ms. Simmons-Beathea should not be held in contempt for failing to pay child support. DX 6 at 2-3; DX 7 at 19; Tr. 324 (Medley). Mr. Medley served Respondent in person at the hearing with a copy of the show cause motion. DX 6 at 2-3; DX 7 at 19; Tr. 324 (Medley).

15. Respondent told the court he was not familiar with the facts of the case because he had only been retained the night before and had not conferred with Ms. Simmons-Beathea about the substantive issues of her case. DX 7 at 11; Tr. 324 (Medley). Respondent requested a continuance, and the court rescheduled the case for an evidentiary hearing on March 26, 2014 – making clear that it expected to resolve Ms. Simmons-Beathea's motion to modify the child support order and the District's show cause motion on that date. DX 7 at 19-21.

16. On or about January 10, 2017, Ms. Simmons-Beathea spoke to Respondent on the phone. Tr. 174-76 (Simmons-Beathea). Respondent informed her that the hearing had been rescheduled to March. Tr. 173-76 (Simmons-Beathea). He also told Ms. Simmons-Beathea that he would follow up with the child support office, with the Attorney General, and with her ex-husband. *Id.* Respondent did not notify Ms. Simmons-Beathea of the District's show cause motion and did not provide her with a copy of it. Tr. 173-76, 180 (Simmons-Beathea); Tr. 330 (Medley).

17. Thereafter, Respondent's only communications with Ms. Simmons-Beathea centered around collecting the remainder of his initial retainer fee. Tr. 177-79. Ms. Simmons-Beathea managed to make one more payment – $150 on February 5, 2017. DX 2 at 15, 24. Respondent only communicated with Ms. Simmons-Beathea on one occasion after the February 5 payment. Tr. 178 (Simmons-Beathea). During that conversation, she stated that she was unable to pay the full $400 before the March 26 hearing, but assured Respondent that she would bring the money by the March 26 hearing. Tr. 177, 180-81 (Simmons-Beathea).

18. When Respondent heard that Ms. Simmons-Beathea could not make the full payment, he threatened to withdraw from the case. DX 5 at 3; Tr. 179 (Simmons-Beathea). Respondent berated her and accused her of lying to him about her ability to pay, claiming she could be "one of those people that wrote [him] bad checks," even though Ms. Simmons-Beathea had previously paid by wire transfer. Tr. 178 (Simmons-Beathea). In the meantime, Respondent had done nothing to advance her interests since the January 7 hearing; he had not communicated with opposing counsel, Mr. Medley, or the court about the case, and did not provide Ms. Simmons-Beathea a copy of the audit of her child support payments that Mr. Medley had sent to him. Tr. 180-82 (Simmons-Beathea), 328-29 (Medley). Respondent also did not prepare Ms. Simmons-Beathea for the March 26 evidentiary hearing. DX 5 at 3; Tr. 184-86 (Simmons-Beathea).

19. Yet, Respondent remained counsel of record in Ms. Simmons-Beathea's case and did not move to withdraw. DX 6 at 2; Tr. 185 (Simmons-Beathea); Tr. 335 (Medley).

20. Leading up to the March 26, 2014 hearing, Ms. Simmons-Beathea tried but could not reach Respondent. Tr. 184-86 (Simmons-Beathea). Worried that Respondent would not appear to represent her at the March 26 hearing, Ms. Simmons-Beathea went back to the *pro se* clinic (the Self-Help Center) at the D.C. Superior Court to get assistance with her case. *Id.* The Center told her they could not help because Respondent had not withdrawn from the case. *Id.*

21. On March 21, 2014, Ms. Simmons-Beathea filed a complaint with the Office of Disciplinary Counsel, alleging that Respondent had abandoned her case and failed to withdraw. DX 2 at 2-4.

22. On March 25, 2014, the day before the scheduled hearing, Ms. Simmons-Beathea sent a fax to Disciplinary Counsel reporting her concern that she had still not heard from Respondent. DX 2 at 1. Ms. Simmons-Beathea provided additional documentation that supported her complaint against Respondent. DX 2 at 5-24.

23. On March 26, 2014, Ms. Simmons-Beathea attended the hearing at D.C. Superior Court. DX 8 at 1-2. Although he was still Ms. Simmons-Beathea's attorney of record, Respondent did not appear. DX 6 at 2; DX 8 at 1. Ms. Simmons-Beathea described feeling "stranded" and "devastated" by Respondent's refusal to communicate with her and his failure to appear at the hearing. Tr. 202 (Simmons-

Beathea). She proceeded *pro se* and – without legal advice or preparation from Respondent – withdrew her motion to modify the child support order. DX 8 at 4-7. Assistant Attorney General Medley decided not to proceed on the show cause motion at that time because Ms. Simmons-Beathea had never received notice of it from Respondent. DX 8 at 3; Tr. 332 (Medley). The judge continued the show cause hearing to May 7, 2014. DX 8 at 15; Tr. 198 (Simmons-Beathea).

24. Over the next several weeks, Respondent still did not move to withdraw and remained the attorney of record in Ms. Simmons-Beathea's case. DX 6 at 1; DX 9 at 2-3; Tr. 335-340 (Medley). During this time, despite Ms. Simmons-Beathea's efforts to reach him, Respondent did not communicate with her and did no work on her case. Tr. 198-200 (Simmons-Beathea).

25. Two days before the hearing, on May 5, 2014, Respondent filed a motion to withdraw, accompanied by a motion to continue the show cause hearing in the event his motion to withdraw was denied. DX 5 at 30, 40-48. As grounds for these motions, Respondent falsely stated that Ms. Simmons-Beathea had refused to communicate with him for months, making it impossible to continue representing her. DX 5 at 40-41, 44-45.

26. Respondent's motion to withdraw did not comply with Super. Ct. Civ. R. 101, in that he failed to serve Ms. Simmons-Beathea with a copy of the motion and a notice advising her to either obtain new counsel or notify the clerk within ten days if she intended to proceed *pro se*. DX 9 at 3; *see* Super. Ct. Civ. R. 101.

Respondent also did not have authorization from Ms. Simmons-Beathea to move to continue the hearing. DX 9 at 3.

27. By this time, Ms. Simmons-Beathea had already retained new counsel who appeared at the May 7, 2014 hearing to represent her. DX 9 at 1-3. Although the court had not ruled on his motions, Respondent did not appear at the hearing. *Id.* Nevertheless, the court granted Respondent's motion to withdraw because Ms. Simmons-Beathea no longer wanted him to represent her. *Id.* The court also denied Respondent's motion for a continuance. *Id.*

COUNT II – 2014-D196
Scott Schrader

28. On September 30, 2010, Scott Schrader filed a complaint in the Circuit Court of Franklin County, Kentucky. The case was ultimately dismissed by that court on June 6, 2013, for lack of personal jurisdiction and improper venue. DX 18D. Mr. Schrader's counsel from the Kentucky litigation advised him that he had 90 days to refile the complaint in the proper venue, which the Kentucky court had determined to be the District of Columbia. Tr. 14-15 (Schrader); DX 18D at 11.

29. Thereafter, Mr. Schrader posted a request for legal assistance on a website, Legal Match, and on July 28, 2013, Respondent replied to Mr. Schrader's post saying he was interested in taking the case. Tr. 15-16 (Schrader).

30. Over the next few weeks, Respondent and Mr. Schrader exchanged emails about the case and the proposed terms for a retainer agreement. Tr. 17-18 (Schrader); DX 14 at 30-80. Mr. Schrader informed Respondent that he would be seeking outside funding from a third-party lender and Mr. Schrader suggested a 10%

contingency fee, a $1,000 retainer fee, and a $150 hourly rate. DX 14 at 69. Mr. Schrader included the caveat that if the funding sources did not materialize in the next 60 days, they could renegotiate the contingency portion of the retainer. DX 14 at 70, 80-81.

31. Respondent and Mr. Schrader ultimately agreed to a $1,200 initial retainer, to be drawn down at an hourly rate of $100 as services were rendered, and a 15% contingency fee. DX 11 at 15-16; DX 14 at 216-18.

32. On August 23, 2013, Mr. Schrader met with Respondent at his office on K Street, N.W. in Washington, D.C., where Mr. Schrader again explained the circumstances of the case and emphasized that his primary objective was refiling the case in D.C. to keep the claims alive. Tr. 19, 23 (Schrader). The only discussion Mr. Schrader had with Respondent about the statute of limitations issue was Mr. Schrader explaining his understanding based on his own research and what other attorneys had told him. Tr. 22 (Schrader).

33. During the August 23, 2013 meeting, Mr. Schrader gave Respondent a $1,320 cashier's check representing the $1,200 initial retainer and a $120 advance for the complaint filing fee. DX 19 at 8; Tr. 21 (Schrader). Although the $1,320 cashier's check was an advance of unearned legal fees and unincurred costs, Respondent did not deposit the money into a trust account. Tr. 489-490 (Anderson); Tr. 502 (Respondent stipulating that 7428 account was not a trust account). Instead, at 2:24 pm that afternoon, Respondent cashed the $1,320 cashier's check at the Bank of America Financial Center located at 1090 Vermont Avenue, N.W., Washington,

D.C. 20005. Tr. 485, 489 (Anderson); Tr. 399-403 (Levy); Tr. 731 (Respondent agreeing that he cashed the check on August 23, 2013). Less than one hour later, Respondent deposited only a portion of those funds – $1,000 cash – into his PNC bank account ending in number 7428. Tr. 489-490 (Anderson); DX 21 at 3; *see also* Tr. 729-730 (Respondent) (conceding the $1,000 of cash was put into the account ending in number 7428). No record exists to explain the disposition of the remaining $320 in cash, but we find that the evidence is clear and convincing that $1,000 of the funds were deposited into the account ending in number 7428.

34. From their initial consultation, through August 29, 2013, Respondent spent only 0.5 hours working on Mr. Schrader's case. DX 14 at 5 (Respondent's Time Notes); Tr. 491 (Anderson). On that date, based on the agreed upon $100 hourly rate, Respondent had earned $50. Tr. 491, 495-96 (Anderson). Based on Mr. Schrader's initial $1,200 retainer payment toward future legal services, Respondent still should have held $1,150 of Mr. Schrader's money at the time. Tr. 495-96 (Anderson).

35. Mr. Schrader never authorized Respondent to use the retainer money for any purpose other than legal fees (Tr. 48 (Schrader)), but by August 29, 2013 the balance in Respondent's account ending in number 7428 had fallen to $589.24, well below the amount he was required to hold in trust for Mr. Schrader ($1,150). DX 20A at 7; Tr. 500 (Anderson).

36. On August 29, 2013, Mr. Schrader emailed Respondent a list of the defendants, complete with their then-current addresses. DX 14 at 174-77.

37. Also, on August 29, 2013, Respondent emailed Mr. Schrader a retainer agreement, reducing to writing the terms they had previously agreed on: a $1,200 initial retainer, to be drawn down at an hourly rate of $100 as services were rendered, and a 15% contingency fee. DX 14 at 179-181 (email and retainer agreement); *see* FF 30.

38. On August 30, 2013, pursuant to Respondent's request, Mr. Schrader emailed Respondent copies of both the original and amended Kentucky complaints in Word format. Respondent copied and pasted the contents of the original and amended Kentucky complaints into a consolidated complaint to be filed in the D.C. Superior Court. Tr. 33-34 (Schrader). *Compare* DX 17B, *with* DX 18B and 18C. Respondent made only minor edits such as changing the words "Schrader and Schrader & Associates" to "Plaintiffs." Tr. 33-34 (Schrader). *Compare* DX 17B, *with* DX 18B and 18C. Despite the up-to-date information sent by Mr. Schrader the previous day, Respondent (1) did not list addresses for individual defendants Patrick Herda or Fred Frisco, and (2) incorrectly listed Nuclear Solutions, Inc. (which by that time was operating under a different name, U.S. Fuel Corporation, at a different address), and Fuel Frontiers, Inc., which had been dissolved in 2012. DX 14 at 190; DX 17B at 4-6.

39. On August 31, 2013, Respondent emailed Mr. Schrader the "barebones initial complaint" he intended to file with the D.C. Superior Court. DX 14 at 188. Respondent advised Mr. Schrader that the clerk's office would close at noon and that any edits should be returned to him by 10:00 a.m. *Id.* In the email, Respondent

claimed that he had already worked "somewhat over 8 hours" on the case and asked Mr. Schrader to "replenish the retainer account at this time via an express mail check." *Id.* According to Respondent's handwritten Time Notes (provided in the course of Disciplinary Counsel's investigation after June 2014), Respondent had worked 11 hours on Schrader's complaint by August 31, 2013. *See* DX 14 at 5. Respondent then filed the complaint in the D.C. Superior Court. DX 17B.

40. Later that day, Mr. Schrader replied to Respondent's email, indicating edits to the complaint that he wanted Respondent to make. DX 14 at 190; Tr. 27-29 (Schrader). Mr. Schrader was concerned about serving the defendants at their proper addresses and pointed out the inaccuracies in identifying the parties to the lawsuit. DX 14 at 190; Tr. 27-29 (Schrader). Mr. Schrader had already provided Respondent with the correct address information in the defendant list he emailed on August 29, 2013. Tr. 29 (Schrader); *see* FF 36.

41. Respondent replied to Mr. Schrader's request, indicating that the complaint had been filed earlier that day, but an amended complaint could be filed the next week. DX 14 at 191; Tr. 29-30 (Schrader). Respondent also reminded Mr. Schrader to execute and return the engagement agreement and again asked him to pay additional money for legal fees – to "replenish the retainer." DX 14 at 191; Tr. 34 (Schrader).

42. On September 6, 2013, Mr. Schrader emailed Respondent and posed several questions about serving the defendants at the proper addresses. DX 14 at 200. Hours later, Respondent replied to Mr. Schrader's inquiry and informed him

that they had 60 days to effect service on the defendants, and that he intended to serve them when the amended complaint was ready to be filed. DX 14 at 202; Tr. 30-31 (Schrader).

43. On September 7, 2013, Mr. Schrader signed the retainer agreement that Respondent had previously sent to him and returned it to Respondent via email. DX 14 at 219; Tr. 36 (Schrader).

44. On Thursday, September 12, 2013, Respondent emailed Mr. Schrader asking for an update on replenishing the retainer – *i.e.*, asking Mr. Schrader to pay additional money toward legal fees and stating that he wanted to "schedule filing the amended complaint." DX 14 at 221. Mr. Schrader responded that he would know by Monday and update Respondent at that time. DX 14 at 223.

45. On Monday, September 16, 2013, Respondent emailed Mr. Schrader saying that they needed to move forward "asap." DX 14 at 224. Mr. Schrader reported that he was still waiting for funding and asked about the deadline for filing the amended complaint. DX 14 at 225. Respondent replied stating that, "We should be doing it this weekend. I don't want to drag it out until we're at all time pressed [sic]." DX 14 at 226.

46. As of September 27, 2013, Mr. Schrader still expected to obtain funding from a third-party and intended to send those funds to Respondent as soon as he received them. DX 14 at 229. At that time, Respondent communicated to Mr. Schrader that he still intended to serve the defendants, assuring him "I'm rolling with

you. We'll get it done." DX 14 at 230. Respondent knew that if the defendants were not served, the case would be dismissed. DX 12 at 6.

47. Mr. Schrader did not send any additional money to Respondent. Tr. 48 (Schrader). Respondent did no further work on the case, and never filed an amended complaint or served the defendants. Tr. 37-40 (Schrader). Respondent also did not move to withdraw from the case, or take any steps to protect Mr. Schrader's interests, such as moving to extend the time to serve the defendants. DX 17A.

48. On November 6, 2013, due to Respondent's failure to serve the defendants within the 60-day period, the D.C. Superior Court dismissed Mr. Schrader's complaint without prejudice, for failure to comply with Super. Ct. Civ. R. 4(m). DX 17C; Tr. 41 (Schrader).

49. Thereafter, Respondent told Mr. Schrader of the dismissal by leaving a voicemail or sending a text message. Tr. 41 (Schrader). Mr. Schrader then spoke to Respondent on the phone in what turned into a "pretty heated conversation" consisting mainly of Mr. Schrader "venting." Respondent, however, never gave any explanation as to why he did not serve the defendants. Tr. 42-45 (Schrader). Respondent did not further communicate with Mr. Schrader and made no attempt to restore Mr. Schrader's case, such as by moving to reinstate it. DX 17A; Tr. 44-45.

50. On June 30, 2014, Mr. Schrader filed a complaint with the Office of Disciplinary Counsel. DX 11. When he responded to the complaint, Respondent did not know how much money Mr. Schrader had paid him. DX 12 at 4 (Respondent attempting to explain why Mr. Schrader paid him $1,500). *But see* FF 33 (in fact

Mr. Schrader paid $1,320). Thereafter, Disciplinary Counsel subpoenaed a copy of Respondent's client file in the Schrader matter, including but not limited to any bills, invoices, accountings, financial records, and time sheets. DX 13; Tr. 477-78 (Anderson).

51. When Respondent produced his client file, he included only handwritten Time Notes showing the dates and amount of time spent on the Schrader matter. DX 14 at 5-9. The entries on these Notes confirmed that he had only earned $50 by August 29, 2013. *See* FF 34. Respondent did not produce any records that demonstrated how he handled Mr. Schrader's funds. DX 14; DX 15; DX 16; Tr. 478-79 (Anderson); Tr. 731, 743 (Respondent could not recall the account where he deposited Mr. Schrader's money, and admitted he had no accounting or recordkeeping system in his office during the time he represented Mr. Schrader).

52. In July 2015, Disciplinary Counsel sent a follow-up inquiry to Respondent, specifically requesting information about the bank account where he deposited Mr. Schrader's funds. DX 15; Tr. 480 (Anderson). In response, Respondent stated that he called his bank, which informed him that the deposit closest in time and amount was a $1,000 deposit into his #7428 account at PNC Bank. DX 16; Tr. 481 (Anderson).

COUNT III – 2014-D205
Marilyn Howard

53. In late April 2014, Marilyn Howard contacted Respondent through Legal Match about the possibility of retaining him to represent her in a civil matter. Tr. 592 (Howard).

54. On May 1, 2014, Ms. Howard met with Respondent at his home in Capitol Hill. DX 22 at 7; DX 23 at 3; Tr. 592-93, 679-81 (Howard). Ms. Howard decided to retain Respondent with the understanding that he would follow up on FOIA (Freedom of Information Act) requests she had previously filed; she thought that an attorney might have more success than she had in navigating the FOIA process and obtaining the information she wanted. Tr. 593, 634-36 (Howard).

55. Respondent and Ms. Howard executed a retainer agreement providing for an hourly fee of $175. DX 26 at 13-14. Ms. Howard agreed to pay an initial $750 retainer that would be drawn down at the hourly rate as services were rendered, and to replenish the retainer as needed. DX 13 at 14; Tr. 594-95 (Howard). The retainer agreement provided that "Attorney shall charge for his services at the rate of $175.00 per hour for time actually devoted to rendering services to Client." DX 13 at 14. The agreement also stated that "Attorney will commence services upon receipt of such initial retainer." DX 13 at 14.

56. Ms. Howard did not have the $750 retainer fee with her at the initial meeting and, because Respondent demanded that she pay him immediately, she agreed to cash her paycheck and use those funds to pay Respondent's fee. Tr. 595 (Howard). Ms. Howard drove Respondent to her bank where she cashed her paycheck and gave Respondent $750 in cash. Tr. 596 (Howard). Because Respondent did not have a copier at his home, Ms. Howard then drove Respondent to Kinko's, where Ms. Howard made copies of the documents she intended to leave with Respondent so that he could follow up on the FOIA requests. Tr. 596, 623

(Howard). She made the copies herself and paid for them with her own money. Tr. 623 (Howard).

57. Ms. Howard then drove Respondent to PNC bank where Respondent deposited Ms. Howard's funds into a non-IOLTA checking account. Tr. 596, 623 (Howard). Respondent could not recall *which* non-IOLTA account he had used to make the deposit, but agreed the deposit of the $750 was made on May 1, 2014 when Ms. Howard drove him to his bank. *See* Tr. 732, 737-38 (Respondent testifying that the deposit would have been made into one of his three accounts – accounts ending in number 7428, 6855, or 3009). The Committee has reviewed the bank statements as well as Mr. Anderson's hearing testimony; we conclude that clear and convincing evidence exists to show that Respondent's May 1, 2014 deposit of Ms. Howard's $750 cash was made into the account ending in number 6855. *Compare* DX 30A at 4 and DX 30B at 19-20 (record of a total $900 cash deposit on May 1, 2014 into 6855 account), *with* DX 30C at 29 and DX 30E at 1 (no deposit made into 3009 or 7428 accounts on May 1, 2014); *see also* Tr. 511-16 (Anderson).

58. After Respondent made the deposit into his account ending in number 6855, Ms. Howard drove him home. Tr. 623-24 (Howard). Although Ms. Howard expected to continue discussing the case, Respondent told her that he had another engagement and would have to call her to reschedule. *Id.*

59. Thereafter, Respondent did not contact Ms. Howard for approximately one month. Tr. 624-25 (Howard). When Respondent eventually spoke with Ms. Howard in June 2014, Respondent asked for instructions even though she had

explained everything during their initial meeting and had given him the documents necessary to follow up on her FOIA requests. Tr. 625-26 (Howard). At that point, realizing Respondent had done nothing on her case and did not even know what he had agreed to do, Ms. Howard determined that Respondent was not the right attorney for the job. Tr. 626 (Howard). She terminated the representation and asked for her money back. *Id.*

60. Respondent did not refund Ms. Howard's money. Tr. 626 (Howard).

61. On July 9, 2014, Ms. Howard filed a complaint with Disciplinary Counsel. DX 22.

62. In July 2015, Disciplinary Counsel sent a follow-up inquiry to Respondent and specifically requested information about the bank account where he deposited the $750 in cash he had received from Ms. Howard. DX 27 (July 1, 2015 letter from Office of Disciplinary Counsel to Respondent); Tr. 512 (Anderson). In response, Respondent wrote that he called his bank, which informed him that a deposit for $525 was recorded on May 5, 2014 for his 6855 account at PNC Bank. DX 28 (July 10, 2015 email from Respondent to Disciplinary Counsel); Tr. 512 (Anderson). This response, however, was incorrect as Respondent had deposited Ms. Howard's funds on May 1, 2014. Tr. 513-16 (Anderson); *see* FF 57.

63. On or about August 13, 2014, the same day Respondent replied to Disciplinary Counsel's inquiry about Ms. Howard's complaint, Respondent purportedly sent to Ms. Howard a "Statement of Professional Services Rendered" accounting for time he spent working on her case. *See* DX 23 at 7-8. When shown

the document at the hearing, Ms. Howard testified that she could not recall if she had ever received the "Statement of Professional Services Rendered" which was dated August 13, 2014. Tr. 628.

64. In the "Statement of Professional Services Rendered," Respondent claimed he had earned a total of $437.50 for: 1) the initial meeting, which he claimed lasted 90 minutes, 2) review of client information requests, which he stated took 40 minutes, and 3) efforts to contact Ms. Howard in late May 2014, which he calculated at 20 minutes. DX 23 at 7-8. The Statement provides no dates of service. *Id.* at 7. Having been provided no evidence to the contrary, the Hearing Committee assumes that 2.5 hours of work was completed by Respondent and that the claimed time corresponds with a calculated total attorney fees of $437.50 based on the $175 hourly rate. *Id.* at 8.

65. In his August 13, 2014 reply to Disciplinary Counsel, Respondent acknowledged that he owed Ms. Howard $312.50 and that he would send her a refund check in the amount of $312.50, representing the balance of the funds he had not earned in her case. DX 23 at 7-9. Rather than write the refund check from the 6855 account where he had originally deposited Ms. Howard's funds, however, Respondent wrote it from the account number ending in 3009. DX 23 at 9 (copy of August 13, 2014 check payable to Ms. Howard). Ms. Howard never received or deposited the refund check Respondent claimed to have sent. DX 30D at 1 (PNC Bank stating that "Requested check dated August 13, 2014 in the amount of $312.50 ha[d] not been negotiated as of 12/19/2016"); Tr. 627-28 (Howard). There is

insufficient evidence in the record to determine whether the check was lost in the mail, or was never sent to Ms. Howard.

66. When Respondent wrote the refund check to Ms. Howard from his 3009 account, however, the balance in that account was negative ($-41.01). DX 30C at 40. Over the next four months, the 3009 account fell below the $312.50 that belonged to Ms. Howard on numerous occasions. *See* DX 30C at 68, 71-72, 77.

67. On multiple occasions after May 1, 2014, when Respondent had deposited Ms. Howard's funds in his account ending in 6855, the balance in that account fell below the $312.50 that he admitted he had never earned and, accordingly, should have continued to hold in trust for Ms. Howard. Tr. 518-19 (Anderson); *see* DX 30A at 5-17 (balance in 6855 account falling below $312.50 during May 8 to 12, May 14, May 19, May 20, May 30 to June 2, June 17, June 19 to 22, June 25 to July 29, August 6, and August 12). Ms. Howard never authorized Respondent to use those advanced fees for any purpose other than legal services he provided. Tr. 631 (Howard).

COUNT IV – 2014-D129
George Lutfi

68. On November 20, 2013, George Lutfi retained Respondent to represent him in connection with filing a petition for writ of certiorari with the United States Supreme Court. DX 33; Tr. 408 (Lutfi).

69. The parties executed a retainer agreement on November 20, 2013. The agreement provided:

> Client agrees to pay Attorney for services rendered out of an initial retainer transmitted to Attorney by Client in the amount of $2,500 immediately. Client also agrees to pay Attorney $2,500 upon completion of the *writ of certiorari* filing on November 22, 2013.

DX 33 at 1-2; Tr. 409 (Lutfi). Mr. Lutfi paid Respondent $2,500 in cash that day. DX 31 at 8; Tr. 410-11 (Lutfi).

70. The retainer agreement also stated, "Attorney *will commence work* upon receipt and deposit of the initial retainer in Attorney's client trust fund." DX 33 at 2-3 (emphasis added). Respondent did not discuss with Mr. Lutfi the client trust fund or how he intended to handle the $2,500 payment. Accordingly, Mr. Lutfi did not authorize Respondent to do anything other than treat the $2,500 as payment for legal services as they were to be rendered. *See* DX 33 (retainer agreement); Tr. 411-14 (Lutfi).

71. Respondent did not deposit the $2,500 cash initial retainer into a trust account. Tr. 537-41 (Anderson); Tr. 781-82 (Respondent admitting that he did not deposit the funds into an IOLTA account); DX 37A at 2. Nor did he deposit the entire $2,500 of cash. Respondent deposited $2,200 in cash into his non-IOLTA PNC checking account ending in number 6855. Tr. 537-541 (Anderson); *see also* DX 35 (July 8, 2015 letter from Disciplinary Counsel asking where Respondent deposited the $2,500 fee); DX 36 (July 10, 2015 email from Respondent replying that the bank informed him that $2,200 was deposited into the 6855 account). No evidence in the record shows what happened to the remainder of $300 in cash.

72. On the afternoon of November 22, 2013, Respondent emailed Mr. Lutfi the petition for writ of certiorari. Tr. 418-19 (Lutfi). Mr. Lutfi was not pleased with Respondent's work product or the level of communication over the previous two days. Tr. 418-22 (Lutfi). In fact, Mr. Lutfi testified that the petition that he had paid Mr. Stovell to draft was in fact essentially the same document, but for minor changes, that Mr. Lutfi had given to Mr. Stovell. Tr. 440-41 (Lutfi). He therefore was unwilling to make the second payment of $2,500 unless Respondent executed an amended retainer agreement detailing and agreeing to complete additional work required to correct the petition as well as to specific communication clauses. DX 34; Tr. 420-21 (Lutfi).

73. That same day, Respondent and Mr. Lutfi executed an amended retainer agreement expanding the scope of representation to include "any necessary corrections and re-filings so it may be accepted by the United States Supreme Court." DX 34 at 1-2. Although at that time Mr. Lutfi did not believe Respondent had earned even the first $2,500 he had paid, Mr. Lutfi agreed to pay Respondent an additional $2,500. Tr. 420-22 (Lutfi).

74. That evening, Mr. Lutfi filed the petition for writ of certiorari with the U.S. Supreme Court. Tr. 415-17 (Lutfi); DX 38.

Sanction Phase Testimony

75. During the sanctions phase of the hearing, Respondent testified that he was a National Merit Scholar and had attended Princeton University and University of Chicago Law School. Tr. 793. He worked in a large corporate law firm in

Cleveland and Chicago before being employed at the Securities and Exchange Commission. Tr. 793-94. As a result, Respondent claimed that he had an "unfamiliarity with the practice management issues." Tr. 795. Respondent further asserted that because he charged very small amounts as retainers, he would exhaust the retainer by the time he received the check and sought to make a deposit. Tr. 795-97. Respondent testified that any violation of the D.C. Rules of Professional Conduct was inadvertent and due to inexperience. Tr. 799.

## IV. CONCLUSIONS OF LAW

Across four matters, clear and convincing evidence proves that Respondent violated numerous D.C. Rules of Professional Conduct.

Respondent failed to diligently and zealously represent Ms. Simmons-Beathea and ultimately abandoned her case. Respondent also intentionally failed to seek the lawful objectives of Ms. Simmons-Beathea and Mr. Schrader, and he did not act with reasonable promptness or inform or explain matters to Ms. Simmons-Beathea, and intentionally damaged the interests of Mr. Schrader. Further, Respondent intentionally misappropriated client funds of Mr. Schrader and Ms. Howard; failed to keep complete records of Mr. Schrader's and Ms. Howard's funds; failed to deposit their funds into an IOLTA account; and failed to protect Ms. Howard's interest in connection with the termination of representation. Respondent also failed the legal system by engaging in dishonest acts and seriously interfering with the administration of justice when representing Ms. Simmons-Beathea.

As a result, the Hearing Committee recommends Respondent be disbarred for violating the following Rules of Professional Conduct:

Count I (Simmons-Beathea)

- Rule 1.3(a), by failing to represent his client diligently and zealously;
- Rule 1.3(b)(1), by intentionally failing to seek the lawful objectives of his client;
- Rule 1.3(c), by failing to act with reasonable promptness;
- Rule 1.4(a), by failing to keep his client reasonably informed about the status of her case;
- Rule 1.4(b), by failing to explain the matter to his client;
- Rule 8.4(c), by engaging in conduct involving dishonesty; and
- Rule 8.4(d), by engaging in conduct that seriously interferes with the administration of justice.

Count II (Schrader)

- Rule 1.1(a) and (b), by not providing competent representation or with skill commensurate to that afforded to others in similar matters;
- Rule 1.3(b)(1), by intentionally failing to seek the lawful objectives of his client;
- Rule 1.3(b)(2), by intentionally damaging or prejudicing his client;
- Rule 1.15(a), by intentionally misappropriating client funds and failing to keep complete records of his client's funds, and failing to treat unearned fees as property of his client as required by Rule 1.15(e)[7]; and

[7] Rule 1.15(e) provides that "[a]dvances of unearned fees and unincurred costs shall be treated as property of the client pursuant to paragraph [1.15](a) until earned or incurred unless the client gives informed consent to a different arrangement." On the facts of this case, Respondent's misappropriation in Counts II and III and failure to keep records in Counts II, III, and IV, all in violation of Rule 1.15(a), were proven by Disciplinary Counsel because the advance payments

- Rule 1.15(b), by failing to deposit client funds into a D.C. IOLTA account.

Count III (Howard)

- Rule 1.15(a), by intentionally misappropriating client funds and failing to keep complete records of his client's funds, and failing to treat unearned fees as property of his client as required by Rule 1.15(e);

- Rule 1.15(b), by failing to deposit client funds into a D.C. IOLTA account; and

- Rule 1.16(d), by not protecting his client's interests in connection with the termination of representation.

Count IV (Lutfi)

- Rule 1.15(a) by failing to keep complete records of his client's funds, and failing to treat unearned fees as property of his client as required by Rule 1.15(e); and

- Rule 1.15(b) by failing to deposit client funds into a D.C. IOLTA account.

As explained *infra*, the Hearing Committee, however, finds that the Disciplinary Counsel has not proven an additional violation of Rule 1.16(d) in the Simmons-Beathea representation (Count I) and has not proven commingling in violation of Rule 1.15(a) in the Schrader, Howard, and Lutfi representations (Counts II, III, and IV).

---

received by Respondent constituted client property under Rule 1.15(e). Under such circumstances, the same conduct violated both rules.

A. Rule 1.1(a) and (b) Violation: Respondent Incompetently Represented Mr. Schrader.

Disciplinary Counsel alleges that Respondent was incompetent in representing Mr. Schrader because although he had assured Mr. Schrader that he would serve the defendants in the matter, he never served the complaint on the defendants. The trial court, acting consistent with Super. Ct. Civ. R. 4(m) (time limit for service), ultimately dismissed the complaint. DX 17C. Respondent failed to respond to Disciplinary Counsel's charge but, instead, his presentation at the disciplinary hearing consisted of meandering questions and statements suggesting that Mr. Schrader's case lacked merit, so it was of no moment that the case was dismissed as a result of Respondent's failure to act. *See, e.g.*, Tr. 82-97. Given that the evidence clearly and convincingly establishes that Mr. Schrader's case was dismissed because Respondent failed to comply with the time limits for service of the complaint, the Hearing Committee finds that Respondent violated Rule 1.1(a) and (b).

Rule 1.1(a) requires that a lawyer provide competent representation, which includes not only legal knowledge and skill, but also the "thoroughness and preparation" reasonably necessary for the representation. Rule 1.1(b) requires that a lawyer serve the client with the "skill and care commensurate with that generally afforded to clients by other lawyers in similar matters." Comment [5] to Rule 1.1 reiterates that competent representation includes "adequate preparation and continuing attention to the needs of the representation to assure that there is no neglect of such needs[,]" and states that "[t]he required attention and preparation are

determined in part by what is at stake[.]" Additionally, an attorney who actually possesses the requisite skill and knowledge to represent a client may still offend their professional obligations if the attorney failed to apply that skill and knowledge in the client matter. *See In re Drew*, 693 A.2d 1127, 1132 (D.C. 1997) (per curiam). Furthermore, when the "attorney's conduct is so obviously" unprofessional, Disciplinary Counsel need not present expert testimony to show how the skillful and competent lawyer would have handled the matter. *In re Hargrove*, Bar Docket No. 2013-D127, at 12 (BPR April 26, 2016) (internal quotation marks omitted), *aff'd*, 155 A.3d 375 (D.C. 2017); *see also In re Nwadike*, Bar Docket No. 371-00, at 28 (BPR July 30, 2004), *aff'd*, 905 A.2d 221 (D.C. 2006) (Hearing Committee may find a violation of the standard of care without expert testimony when an attorney's "conduct is so obviously lacking that expert testimony showing what other lawyers generally would do is unnecessary").

To prove that an attorney violated Rule 1.1(a) by incompetently representing a client and Rule 1.1(b) by undertaking the representation without the skill and care generally provided by the attorneys, Disciplinary Counsel must prove that the attorney failed to deploy their skill and knowledge and, that the failure amounted to a "serious deficiency" in representing the client. *In re Evans*, 902 A.2d 56, 69-70 (D.C. 2006) (per curiam) (appended Board Report); *see also In re Yelverton*, 105 A.3d 413, 421-22 (D.C. 2014) (applying "serious deficiency" requirement to Rule 1.1(b)). Courts have held that determining whether an attorney's representation was "seriously deficient" is a factually specific analysis. *See Evans*, 902 A.2d at 70.

When the facts demonstrate that the attorney's error has either prejudiced the client or could have prejudiced the client, the attorney acted incompetently. *Id.*

Here, Respondent never served the defendants in the lawsuit as required by the Superior Court's rules of procedure, and as a result, consistent with the rules of procedure, the trial court dismissed Mr. Schrader's complaint. After filing the complaint and incorrectly identifying the defendants, Respondent delayed serving the correct defendants while telling Mr. Schrader that it would be more efficient to effect service after submitting the amended complaint they planned on filing. FF 42, 46. Respondent, however, never filed an amended complaint nor did he serve the defendants with the original complaint that was already filed. FF 47. But, not only did Respondent fail to serve the defendants, he also listed in the complaint incorrect addresses for certain defendants, the wrong defendants, and a company that no longer existed. FF 38.

Given that service of process is a basic procedural rule, that is so obviously a part of the rules that guide any type of litigation, the Hearing Committee does not need expert testimony to conclude that Respondent acted incompetently in representing Mr. Schrader in violation of Rule 1.1(a) and clearly failed to use the "skill and care commensurate with that generally afforded to clients by other lawyers in similar matters" in violation of Rule 1.1(b). *See, e.g.*, *In re Sumner*, 665 A.2d 986, 989 (D.C. 1995) (despite counsel's awareness of risk that the appeal could be dismissed, counsel's lack of competence resulted in the failure to make the required

filings). Accordingly, the Hearing Committee finds that Respondent violated Rules 1.1(a) and 1.1(b).

B. Rule 1.3(a) and 1.3(c) Violation: Respondent Neglected Ms. Simmons-Beathea's Case.

In early January, when Ms. Simmons-Beathea hired Respondent to resolve the child support issue that kept her from renewing her passport, her immediate concern was that Respondent attend a hearing scheduled for January 7, 2014 and obtain a continuance. FF 6-11. Thereafter, Ms. Simmons-Beathea expected Respondent to continue working toward resolving the child support and passport issues by following up with the child support office, the D.C. Attorney General, and her ex-husband. FF 16. Respondent agreed to do so. *Id.* Disciplinary Counsel claims that instead of furthering his client's interests, however, Respondent failed to take appropriate steps to advance Ms. Simmons-Beathea's interests in violation of Rule 1.3. *See* FF 18-24.

Respondent's defense to this charge seems to be that Ms. Simmons-Beathea was untruthful. Tr. 70 (Respondent). However, Mr. Simmons-Beathea presented as a credible witness to the Hearing Committee. She directly answered the questions that were posed to her by each party. She had clear recollection of the events and when in doubt, she said she could not remember. *See, e.g.*, Tr. 174, 189, 199. Further, Ms. Simmons-Beathea's testimony was corroborated not only by documentary evidence but also by Assistant Attorney General Medley, who was opposing counsel in the child support matter. Thus, Respondent's assertions regarding her credibility are unfounded.

Rule 1.3(a) requires a lawyer to represent his clients zealously and diligently within the bounds of the law. Rule 1.3(c) requires a lawyer to act with reasonable promptness in representing his clients. When an attorney consistently fails to execute their responsibilities in the course of representing a client or consciously disregards their obligations in the course of representing a client, the attorney has neglected their duties in violation of Rule 1.3. *In re Wright*, 702 A.2d 1251, 1254-55 (D.C. 1997) (citing *In re Reback*, 487 A.2d 235, 238 (D.C. 1985), *adopted in relevant part*, 513 A.2d 226 (D.C. 1986) (en banc) ("*Reback II*")); *see also In re Reback*, 487 A.2d 235, 238 (D.C. 1985) (quoting ABA Comm. on Ethics and Prof'l Responsibility, Informal Op. 1273 (1973)), *adopted in relevant part*, 513 A.2d 226 (D.C. 1986) (en banc).

To prove that an attorney did not zealously and diligently represent a client in violation of Rule 1.3(a), Disciplinary Counsel need not prove the attorney's intent but must demonstrate "that the attorney has not taken action necessary to further the client's interests, whether or not legal prejudice arises from such inaction." *In re Bradley*, Bar Docket Nos. 2004-D240 & 2004-D302, at 17 (BPR July 31, 2012), *adopted in relevant part*, 70 A.3d 1189, 1191 (D.C. 2013) (per curiam); *see also In re Lewis*, 689 A.2d 561, 564 (D.C. 1997) (per curiam) (appended Board Report). Similarly, whether or not the client is prejudiced, Disciplinary Counsel must establish that an attorney did not act with "reasonable promptness in representing a client" in violation of Rule 1.3(c) by proving the attorney failed to act in the client's

interest for a significant period of time. *See In re Dietz*, 633 A.2d 850 (D.C. 1993) (per curiam).

In this case, Disciplinary Counsel established both that Respondent failed to take necessary actions to further his client's interest in violation of Rule 1.3(a) and that he did not act with "reasonable promptness in representing" Ms. Simmons-Beathea in violation of Rule 1.3(c). The facts demonstrate that when Respondent perceived he was not being paid, Respondent simply chose not to do any work for Ms. Simmons-Beathea. FF 17-24. His position – that he would not work on the case if she did not pay – culminated in his failure to appear at the March 26, 2017 hearing. FF 23. Even after the March 26 hearing, Respondent remained counsel of record but continued not to provide any legal services for Ms. Simmons-Beathea. FF 24. Nevertheless, he blamed Ms. Simmons-Beathea both during the representation and the hearing rather than carrying out his responsibilities. Finally, Respondent did not engage with opposing counsel in any meaningful manner in an effort to obtain relief for his client. *See Wright*, 702 A.2d at 1255 (appended Board Report).

For these reasons, the Hearing Committee finds that clear and convincing evidence shows that Respondent violated Rules 1.3(a) and (c). *See, e.g.*, *In re Chapman*, Bar Docket No. 055-02, at 19-20 (BPR July 30, 2007) (respondent violated Rule 1.3(a) where he did not perform any work on the client's case during the eight-month term of the representation and failed to conduct any discovery), *recommendation adopted*, 962 A.2d 922, 923-24 (D.C. 2009) (per curiam); *In re*

*Ukwu*, 926 A.2d 1106, 1135, 1139 (D.C. 2007) (appended Board Report) (respondent violated Rules 1.3(a) and (c) when he repeatedly failed to inform his clients about the status of their cases, did not prepare his clients for hearings, did not prepare himself for court appearances, and allowed almost three weeks to elapse before notifying his client of a court ruling, and even then, not explaining the significance of the court's decision).

C. Rule 1.3(b)(1) and (2) Violations: Respondent Violated Rule 1.3(b)(1) in Mr. Schrader's and Ms. Simmons-Beathea's Cases and Violated Rule 1.3(b)(2) in Mr. Schrader's Case.

Disciplinary Counsel urges that Respondent's failure to file an amended complaint and serve the defendants in Mr. Schrader's case (FF 47), as well as his failure to pursue Ms. Simmons-Beathea's child support issues and appear at her March 26, 2017 hearing (FF 16, 23), were deliberate decisions not to continue seeking his clients' lawful objectives, thus violating Rules 1.3(b)(1). In addition, Disciplinary Counsel alleges that Respondent intentionally prejudiced Mr. Schrader during the representation in violation of Rule 1.3(b)(2). As discussed earlier, Respondent's defense at the hearing was that he had not violated any Rules because Mr. Schrader's case lacked merit, and Ms. Simmons-Beathea was not truthful. Tr. 70, 82-97.

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[.]" The Court has explained the showing required under Rule 1.3(b) as follows:

> [W]hile the hallmark of a Rule 1.3(b) violation is that the neglect was intentional, the Rule does not require proof of intent in the usual sense of the word. Rather, neglect ripens into an intentional violation when the lawyer is aware of his neglect of the client matter, or, put differently, when a lawyer's inaction coexists with an awareness of his obligations to his client.

*In re Ukwu*, 926 A.2d 1106, 1116 (D.C. 2007) (internal citations and quotations marks omitted) (quoting *In re Mance*, 869 A.2d 339, 341 n.2 (D.C. 2005)). A lawyer's intent "must ordinarily be established by circumstantial evidence, and in assessing intent, the [fact-finder] must consider the entire context." *Id.* "Neglect of a client's matter, often through procrastination, can 'ripen into . . . intentional' neglect in violation of Rule 1.3(b) 'when the lawyer is aware of his neglect' but nonetheless continues to neglect the client's matter." *In re Vohra*, 68 A.3d 766, 781 (D.C. 2013) (appended Board Report) (quoting *In re Mance*, 869 A.2d 339, 341 n.2 (D.C. 2005) (per curiam)). Unlike Rule 1.3(b)(2), a Rule 1.3(b)(1) violation does not require proof of actual prejudice to the client. *See, e.g.*, *In re Lewis,* 689 A.2d 561, 563 (D.C. 1997) (per curiam) (appended Board Report) (finding a violation of Rule 1.3(b)(1) where there was no "material prejudice" other than delay); *In re Landesberg*, 518 A.2d 96, 96-97 (D.C. 1986) (per curiam) (applying DR 7-101(A)(1) (intentional failure to seek client's lawful objectives and finding a violation for neglect that did not result in prejudice)).

Rule 1.3(b)(2) provides that "[a] lawyer shall not intentionally . . . prejudice or damage a client during the course of the professional relationship." "[A]ctual

intent to harm . . . is not necessary to . . . violat[e] . . . Rule 1.3(b)(2); but [Disciplinary] Counsel must establish that the attorney 'knowingly created a grave risk' that the client would be financially harmed and understood that financial damage was 'substantially certain to follow from his conduct.'" *In re Wright*, Bar Docket Nos. 377-99. 10-00, 294-00, & 20-01, at 24-25 (BPR Apr. 14, 2004) (quoting *In re Robertson*, 612 A.2d 1236, 1250 (D.C. 1992) (appended Board Report) (finding intentional damage to a client where the respondent failed to file a client's tax returns before the deadline, thus forfeiting the client's requests for tax refunds)), *findings and recommendation adopted*, 885 A.2d 315, 316 (D.C. 2005) (per curiam). In addition, violation of Rule 1.3(b)(2) cannot be sustained "unless there is actual prejudice or damage to the client." *In re Cohen*, 847 A.2d 1162, 1165 n.1 (D.C. 2004) (per curiam).

The record evidence demonstrates that Respondent was aware of his obligations when representing both Mr. Schrader and Ms. Simmons-Beathea. Despite knowing these obligations, he failed to act in either client's case, to the detriment of each client. Specifically, in Mr. Schrader's case, Respondent only emailed Mr. Schrader a few times about the representation, usually in conjunction with his requests for additional legal fees, and otherwise failed to communicate with his client. FF 41, 44-46. Mr. Schrader's claims were nearing the statute of limitations when Respondent filed the complaint in D.C. Superior Court, but despite this filing, Respondent did not keep the case alive which resulted in Mr. Schrader losing the ability to present his claims in court and get a decision. *Id.* Specifically,

even though Respondent knew that the case would be dismissed if he did not timely serve the defendants, Respondent did not serve the defendants, and as a result the case was dismissed due to Respondent's inaction. FF 48-49. Clearly, Respondent's actions resulted in prejudice to Mr. Schrader since Mr. Schrader was unable to pursue his case. Respondent's misconduct was similar to that of the attorney in *In re Francis*, who refused to file a motion to extend the time for filing a response to a motion to dismiss, and instead "did nothing when he knew that inaction could cause his client's case to be dismissed." *In re Francis*, 137 A.3d 187, 191 (D.C. 2016).

In Ms. Simmons-Beathea's case, Respondent knew about Ms. Simmons-Beathea's March 26, 2014 evidentiary hearing where the court intended to resolve her motion to modify the child support order and resolve the Office of Attorney General's motion to show cause. FF 14-15. Yet, when he did not get paid, rather than follow through on his obligations to Ms. Simmons-Beathea, he waited until the last moment to withdraw from her case without protecting her interests. FF 18, 21, 23-25.

Clear and convincing record evidence demonstrates that Respondent violated Rules 1.3(b)(1) when representing Mr. Schrader and Ms. Simmons-Beathea and that he knew his intentional inaction would prejudice Mr. Schrader in violation of Rule 1.3(b)(2).[8]

[8] Disciplinary Counsel did not charge a violation of Rule 1.3(b)(2) as to the Simmons-Beathea representation; Ms. Simmons-Beathea retained new counsel to represent her, and the court took no adverse action against her as a result of Respondent's failures.

D. Rules 1.4(a) and (b) Violations: Respondent Failed to Adequately Communicate with Ms. Simmons-Beathea.

Disciplinary Counsel argues that Respondent violated Rules 1.4(a) and 1.4(b) because he failed to keep Ms. Simmons-Beathea reasonably informed about her case and he failed to provide her sufficient legal counsel so she could make informed decisions. Disciplinary Counsel's argument rests on the fact that Ms. Simmons-Beathea testified that for the most part, Respondent failed to communicate with her at all and failed to provide her necessary information about her case. Through his questions and statements, Respondent defended this claim by suggesting that Ms. Simmons-Beathea was inaccurate because he did communicate with her. As discussed above, the facts clearly demonstrate that Respondent failed in his responsibilities to communicate with Ms. Simmons-Beathea.

Rule 1.4 sets forth the fundamental requirement that a lawyer communicate with the client. Rule 1.4(a) provides that "[a] lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information." "The guiding principle for evaluating conduct under Rule 1.4(a) is whether the lawyer fulfilled the client's 'reasonable . . . expectations for information.' To meet that expectation, a lawyer not only must respond to client inquiries but also must initiate communications to provide information when needed." *In re Hallmark*, 831 A.2d 366, 374 (D.C. 2003) (citations omitted). Rule 1.4(b) provides that "[a] lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation." As Comment [1] to Rule 1.4 explains, the lawyer must provide the

client with "sufficient information to participate intelligently in decisions concerning the objectives of the representation and the means by which they are to be pursued . . . ." Comment [2] further explains that "[t]he lawyer must be particularly careful to ensure that decisions of the client are made only after the client has been informed of all relevant considerations." Rule 1.4 imposes a duty on the lawyer to "initiate and maintain the consultative and decision-making process" even in the absence of requests for information from a client. *Id.* Also, "[a] lawyer may not withhold information to serve the lawyer's own interests or convenience." Rule 1.4, cmt. [5].

The facts show that after Ms. Simmons-Beathea made a second payment to Respondent, she heard from him only once. FF 17. Essentially, Respondent did not initiate substantive communications with Ms. Simmons-Beathea, and certainly did not do so after mid-February 2017. Despite her repeated attempts to contact Respondent by phone and text message, he refused to answer. FF 20-23. During the one conversation they had, Respondent demanded more money, told her he did not have to represent her, and threatened to withdraw from the case. FF 17-18.

More specifically, when he did speak with her after the January 7, 2017 hearing, Respondent did not tell Ms. Simmons-Beathea about the show cause motion the District had filed against her, or provide her a copy. FF 16. In fact, Respondent never told Ms. Simmons-Beathea about the show cause motion and she learned about it for the first time when she appeared in court on her own at the March 26, 2017 hearing. FF 23. Respondent also did not prepare Ms. Simmons-Beathea for the March 26 hearing, he did not communicate to her a recommended legal strategy

for navigating the evidentiary hearing to achieve the goal of modifying the child support order; he did not provide her the audit of her child support that the OAG had given to him. FF 18, 20.

By failing to communicate with Ms. Simmons-Beathea about these issues, Respondent did not keep Ms. Simmons-Beathea "reasonably informed" about the status of her case and denied her the opportunity to make informed decisions. *See Hallmark*, 831 A.2d at 374 (citations omitted). Indeed, Respondent did not explain any of the relevant considerations to Ms. Simmons-Beathea before she appeared at the March 26 hearing *pro se*, and without advice of counsel, elected to withdraw her motion for modification. FF 18-23.

Clear and convincing record evidence demonstrates that Respondent violated Rules 1.4(a) and (b) when representing Ms. Simmons-Beathea.

E. Violation of Rule 1.16(d): Failing to Promptly Refund Ms. Howard's Advance Payment

Disciplinary Counsel also claims that Respondent did not protect his clients' interests in connection with the termination of representation as required by the Rules. While we agree that Respondent violated Rule 1.16(d) by not promptly refunding Ms. Howard after the termination in representation, we do not find that Rule 1.16(d) was violated in the Simmons-Beathea matter. Rule 1.16(d) provides:

> In connection with any termination of representation, a lawyer shall take timely steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers

> and property to which the client is entitled, and refunding any advance payment of fee or expense that has not been earned or incurred.

In addition to these explicit requirements, the Comment to Rule 1.16 further states that upon termination of the representation, an attorney "must take all reasonable steps to mitigate the consequences to the client." *See* Rule 1.16, cmt. [9].

Respondent did not promptly refund unearned fees to Ms. Howard. Respondent admitted in his August 2014 response to Disciplinary Counsel that he had not earned the entire $750 retainer Ms. Howard paid him. FF 63-64. Yet, two months earlier when the representation ended, Respondent had refused to provide a refund to Ms. Howard. FF 59-60. In addition, after he purportedly sent the "Statement of Professional Services" to Ms. Howard along with the partial refund check from account ending in number 3009, Respondent did not ensure that sufficient funds remained in that account to pay Ms. Howard. FF 66-67. Ms. Howard never received any refund from Respondent. FF 65. For these reasons, clear and convincing record evidence demonstrates that Respondent violated Rule 1.16(d) when, after his representation of Ms. Howard ended, he failed to promptly return fees that were not yet earned or used.

However, Disciplinary Counsel has not proven a violation of Rule 1.16(d) as to the representation involving Ms. Simmons-Beathea. While Respondent did not keep Ms. Simmons-Beathea informed about the status of her case or the pending motion to show cause, and intentionally failed to seek her objectives in the representation, that misconduct involves violations of Rule 1.3(a), 1.3(b)(1), 1.3(c), and 1.4(a) and (b) as discussed *supra*, but not Rule 1.16(d). Rule 1.16(d) does not

cover an attorney's failure to withdraw but is focused on the protection of a client's interests *after* a motion to withdraw has been granted *or* an attorney has been discharged. The court granted Respondent's motion to withdraw on May 7, 2014, and, accordingly, the termination of representation occurred then. Here, Disciplinary Counsel has not met its burden of presenting evidence of misconduct after the termination in Ms. Simmons-Beathea's representation that is sufficient for proving a violation of Rule 1.16(d).

F. Rule 8.4(d) Violation: Respondent Seriously Interfered with the Administration of Justice.

Respondent's failure to appear at the scheduled show cause hearing and failure to notify Ms. Simmons-Beathea of the show cause motion seriously interfered with the administration of justice in violation of Rule 8.4(d). Rule 8.4(d) states: "It is professional misconduct for a lawyer to engage in conduct that seriously interferes with the administration of justice." The elements of a Rule 8.4(d) violation are: (1) improper conduct, (2) that bears directly upon the judicial process with respect to an identifiable case or tribunal, and (3) taints the judicial process in more than a *de minimis* way, that is it must have potentially had an impact upon the process to a serious and adverse degree. *In re Hopkins*, 677 A.2d 55, 60-61 (D.C. 1996). Rule 8.4(d) is violated if the attorney's conduct causes the unnecessary expenditure of time and resources in a judicial proceeding. *See In re Cole*, 967 A.2d 1264, 1266 (D.C. 2009). The purpose of Rule 8.4(d) is "to encompass derelictions of attorney conduct considered reprehensible to the practice of law." *Hopkins*, 677 A.2d at 59. (citation omitted).

The facts in this case clearly demonstrate that Respondent violated Rule 8.4(d). In this case, the facts establish that Respondent acted improperly. First, Respondent's failure to appear at the March 26, 2014 hearing, where the court had made clear that it intended to resolve the show cause motion and the motion to modify child support, was improper because he was counsel of record and thus was required to appear to keep the case moving toward resolution. FF 15, 19, 23, 26; *see, e.g.*, *In re Lyles*, 680 A.2d 408, 417 (D.C. 1996) (Respondent violated Rule 8.4(d) by missing a scheduled court hearing); Rule 8.4, cmt. [2] (violations of Rule 8.4(d) include "failure to appear in court for a scheduled hearing" and "failure to obey court orders"). Second, Respondent's failure to inform Ms. Simmons-Beathea of the show cause motion also improperly interfered with the court's functioning because she was effectively unprepared to defend her case. *See* FF 23. As a result, the court was unable to resolve the show cause motion resulting in a continuance of the hearing – an unnecessary expenditure of judicial resources solely because of Respondent's improper behavior. FF 23. Clearly given these facts, Respondent acted in a wrongful manner, that is he engaged in "improper" conduct as defined by 8.4(d). Respondent's actions also "taint[ed] the judicial process in more than a *de minimus* way" because he failed to appear at a scheduled hearing which caused the judge, court staff, and opposing counsel to expend unnecessary time and resources on the matter, which had more than a *de minimus* impact on the judicial system. *See, e.g.*, *Hopkins*, 677 A.2d at 61; *Lyles*, 680 A.2d at 416-17.

Finally, since Respondent's conduct was specific to an active case, Ms. Simmons-Beathea's matter in the D.C. Superior Court, Disciplinary Counsel has proven the third element for a Rule 8.4(d) violation that his conduct bore directly on the judicial process with respect to an identifiable case or tribunal. *In re White*, 11 A.3d 1226, 1230 (D.C. 2011) (quoting *In re Owusu*, 886 A.2d 536, 541 (D.C. 2005)). For these reasons, clear and convincing evidence establishes that Respondent violated Rule 8.4(d).

G. Rule 8.4(c) Violation: False Statements in Motions Filed in the Simmons-Beathea Matter

Respondent was dishonest when he claimed, in his Motion to Withdraw and Motion to Continue in the Simmons-Beathea child support case, that Ms. Simmons-Beathea had refused to communicate with him for months. FF 25. These false statements were designed to cover up Respondent's earlier failures to communicate with Ms. Simmons-Beathea, and lack of diligence in working on the case. The facts clearly and convincingly establish Disciplinary Counsel's contention that Respondent was dishonest with the court in violation of Rule 8.4(c).

Rule 8.4(c) prohibits a lawyer from engaging "in conduct involving dishonesty, fraud, deceit, or misrepresentation." "Rule 8.4(c) is not to be accorded a hyper-technical or unduly restrictive construction." *In re Ukwu*, 926 A.2d 1106, 1113 (D.C. 2007); *see also In re Hager*, 812 A.2d 904, 916 (D.C. 2002); *In re Cleaver-Bascombe*, 892 A.2d 396, 404 (D.C. 2006) ("*Cleaver-Bascombe I*").

Dishonesty is "fraudulent, deceitful or misrepresentative behavior [and] conduct evincing a lack of honesty, probity or integrity in principle; [a] lack of

fairness and straightforwardness . . . . Thus, what may not legally be characterized as an act of fraud, deceit or misrepresentation may still evince dishonesty." *In re Shorter*, 570 A.2d 760, 767-68 (D.C. 1990) (per curiam) (internal quotation marks and citation omitted); *see also In re Scanio*, 919 A.2d 1137, 1142-43 (D.C. 2007); *In re Carlson*, 745 A.2d 257, 258 (D.C. 2000) (per curiam) (dishonesty may consist of failure to provide information where there is a duty to do so). Dishonesty also includes concealing or suppressing material facts when there is a duty to disclose. *In re Reback*, 487 A.2d 235, 239-40 (D.C. 1985), *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). When the dishonest conduct is "obviously wrongful and intentionally done, the performing of the act itself is sufficient to show the requisite intent for a violation." *In re Romansky*, 825 A.2d 311, 315 (D.C. 2003).

In this case, Respondent's dishonesty occurred in the form of misrepresentations to the court that portrayed his client in a negative light. *See* FF 25. Falsely claiming in the motion to withdraw that Ms. Simmons-Beathea had refused to communicate with him gave the impression that Respondent did everything he could to fulfill his obligations – to his client and the court – but because of her refusal to cooperate, he was forced to withdraw. FF 25. This was, in fact, not the case at all. Rather, Ms. Simmons-Beathea's testimony establishes that she had repeatedly tried to engage with Respondent through a series of

communications, but he failed to respond to her but for demanding additional money for his services. FF 17-18, 20, 22.

Clear and convincing record evidence demonstrates that Respondent's statement to the court for his reasons to withdraw demonstrate a "lack of honesty, probity, or integrity in principle; [a] lack of fairness and straightforwardness" which violates Rule 8.4(c). *See, e.g.*, *Hager*, 812 A.2d at 916 (alteration in original) (quoting *Shorter*, 570 A.2d at 767-68 (citations omitted)).

H. Rule 1.15: Disciplinary Counsel Has Proven Intentional Misappropriation, IOLTA Violations, and Incomplete Records, But Not Commingling.

Disciplinary Counsel proved by clear and convincing evidence that Respondent violated Rule 1.15 by intentionally misappropriating client funds, failing to deposit entrusted funds into an IOLTA account, and failing to maintain adequate books and records of his firm's finances. Rule 1.15(e) provides that advances of unearned fees and unincurred costs must be treated as property of the client until earned or incurred, unless the client gives informed consent to a different arrangement. Here, it is undisputed that Respondent's clients did not give such consent. Accordingly, as defined, the advance payments that Respondent received were "entrusted funds."

1. Commingling

Disciplinary Counsel contends Respondent violated Rule 1.15(a) by commingling funds in the Schrader, Howard, and Lutfi representations. *See* ODC PFF at 32. Rule 1.15(a) requires attorneys to preserve the separate identity of client funds: "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." *In re Dickens*, Board Docket No. 13-BD-094, at 130 (HC Rpt. Apr. 20, 2015).

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). Although Respondent conceded that he deposited entrusted funds into non-IOLTA accounts, non-entrusted funds must be in the account at the same time to establish a commingling violation. *See, e.g.*, *In re Rivlin*, 856 A.2d 1086, 1088 (D.C. 2004) (appended Board Report) (identifying six deposits of personal funds made into the account that also held entrusted funds).

Here, Disciplinary Counsel contends in Counts II, III, and IV that Respondent commingled personal and entrusted funds when he deposited Mr. Schrader's, Ms. Howard's, and Mr. Lutfi's funds into his personal bank accounts. However, a commingling violation requires evidence 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). Neither during cross-examination of Respondent nor during direct examination of its investigator did Disciplinary Counsel establish that Respondent's

banking accounts held non-client funds at the time of Respondent's deposits of Mr. Schrader's, Ms. Howard's, or Mr. Lutfi's retainers into the accounts ending in numbers 7428 and 6855. The bank statements, admitted into evidence, also do not establish any deposits of personal funds as opposed to client funds. The expenditure of funds for a personal use, *see, e.g.*, FF 4, does not constitute clear and convincing evidence that the *origin* of the funds was personal.

Accordingly, we cannot assume the nature of the funds in these accounts when Respondent made deposits of the entrusted funds. Because Disciplinary Counsel is required to prove commingling by clear and convincing evidence that entrusted and non-entrusted funds were in an account at the same time, we do not find that Respondent committed the Rule 1.15(a) commingling violations with which he is charged.

2. Incomplete Records of Client Funds in violation of Rule 1.15(a) and Failing to Deposit Client Funds into an IOLTA Account in Violation of Rule 1.15(b)

"[Rule 1.15(a)] requires that an attorney maintain complete records of all client funds in his possession." *In re Choroszej*, 624 A.2d 434, 436 (D.C. 1992). The purpose of the requirement of "complete records is so that 'the documentary record itself tells the full story of how the attorney handled client or third-party funds' and whether, for example, the attorney misappropriated or commingled a client's funds." *In re Edwards*, 990 A.2d 501, 522 (D.C. 2010). "Financial records are complete only when an attorney's documents are 'sufficient to demonstrate [the attorney's] compliance with his ethical duties.'" *Id.* The reason for requiring

complete records is so that any audit of the attorney's handling of client funds by Disciplinary Counsel can be completed even if the attorney or the client, or both, are not available. *In re Clower*, 831 A.2d 1030, 1034 (D.C. 2003) (quoting Board Report).

Rule 1.15(b) provides that "[a]ll trust funds shall be deposited with an 'approved depository,'" which is titled as an IOLTA account, "Trust Account" or "Escrow Account." None of Respondent's PNC accounts were "an approved depository and in compliance with the District of Columbia's Interest on Lawyers' Trust Account (DC IOLTA) program" as required by Rule 1.15(b). FF 4, 33, 57, 71.

Respondent kept incomplete records of his client funds. He also testified, "I did not place [client funds] into an IOLTA trust fund . . . these [receipt] documents were not constantly updated for accuracy." Tr. 782. He could not even tell Disciplinary Counsel what he had done with the funds Mr. Schrader, Ms. Howard, and Mr. Lutfi paid him, and he incorrectly recalled the specific amounts paid. FF 50-52, 65. Since he had such limited records, Respondent relied on his bank to determine when and where he deposited those funds, and the bank could only approximate based on time and amount of deposit. *See* FF 50-52, 65. To the extent Respondent kept time records or created bills, the hours he claimed to have worked on the cases and the amounts he had earned based on his hourly rates did not match up with the monies he had already taken for himself. FF 35, 66, 70, 71. Accordingly, Respondent violated his ethical duty as defined in Rules 1.15(a) and 1.15(b).

3. Intentional Misappropriation of Mr. Schrader's and Ms. Howard's Funds

Although Rule 1.15 does not use the word "misappropriation," it proscribes the conduct that constitutes misappropriation – *i.e.*, the "unauthorized use of client's 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 Anderson*, 778 A.2d 330, 335 (D.C. 2001) (alteration in original); *see also In re Midlen*, 885 A.2d 1280, 1286 (D.C. 2005). A misappropriation occurs whenever the balance in the lawyer's trust account falls below the amount due to the client. *Edwards*, 990 A.2d at 518.

"[M]isappropriation is essentially a *per se* offense, and 'proof of improper intent is not required.'" *In re Cloud*, 939 A.2d 653, 660 (D.C. 2007) (quoting *Anderson*, 778 A.2d at 335); *see also In re Evans*, 578 A.2d 1141, 1151 (D.C. 1990) (misappropriation where personal representative had "objectively reasonable, albeit erroneous, belief that his actions were proper").

Here, Mr. Schrader and Ms. Howard each paid Respondent advance legal fees, and they never authorized Respondent to treat their advances of unearned fees and costs as his own before he earned them. FF 35, 56-57, 70-71. Yet, Respondent deposited Mr. Schrader's money into his account ending in number 7428 and deposited Ms. Howard's funds into his account ending in number 6855. FF 33, 67. As explained *supra*, neither account was "an approved depository and in compliance with the District of Columbia's Interest on Lawyers' Trust Account (DC IOLTA) program" as required by Rule 1.15(b). FF 4, 33, 57, 71. Respondent then failed to

protect his client funds but, instead, took them before his fees were earned. The record clearly shows that Respondent intended to treat the money he received from Mr. Schrader and Ms. Howard as his own from the moment he received it. Respondent knew he did not have a trust account, deposited the entrusted client funds into checking accounts, and immediately began using the clients' funds for his own purposes – without regard to whether and how much he had earned. FF 33-35, 66.

Respondent deposited $1,000 in cash of Mr. Schrader's $1,320 cashier's check into the PNC account ending in 7428, a non-trust account, on August 23, 2013. FF 33. It is undisputed that the $1,320 was an advance payment for attorney fees and a $120 filing fee. *Id.* Yet, only six days later on August 29, 2013, when he had only earned $50 in legal fees for one half-hour of work, Respondent depleted that account so that it had only a balance of $589.24, well below the amount he was required to hold in trust for Mr. Schrader. FF 34-35. Respondent further had no records to account for what happened to the balance of $320 cash that Respondent had immediately obtained when he cashed out Mr. Schrader's cashier check. FF 33.

In the same manner, Respondent intentionally spent Ms. Howard's funds when he had not earned them. Respondent took Ms. Howard's $750 retainer fee made in cash payment and deposited it into the account ending in number 6855, a non-trust account, on May 1, 2014. FF 57. According to his own billing statement, Respondent provided 2.5 hours of legal services entitling him to $437.50, leaving a remaining balance of $312.50 that Respondent should have continued to hold for

Ms. Howard. FF 63-66. Even though he admittedly had never earned $312.50 of that advance payment at any point in the representation, the balance in that account fell below $312.50 on multiple occasions during May to August 2014. FF 66-67. In fact, by May 8, 2014, only seven days after the deposit, the account fell below this unearned amount. FF 67. Because Respondent still has not refunded the $312.50 to Ms. Howard (the check was never received or cashed), he should still to this date be holding that money in the 6855 account where he deposited the funds. Disciplinary Counsel rightly points out that Respondent did not even set aside the conceded refund amount in response to Disciplinary Counsel's investigation, when he purportedly wrote and sent a refund check to Ms. Howard. *See* FF 66. Indeed, on the date he sent the check from his account ending in 3009, the account was overdrawn. FF 65-66.

Intentional misappropriation occurs where an attorney "handle[s] entrusted funds in a way that reveals . . . an intent to treat the funds as the attorney's own." *In re Hewett*, 11 A.3d 279, 286 (D.C. 2011) (quoting *In re Fair*, 780 A.2d 1106, 1109-1110 (D.C. 2001)). Evidence of knowledge and intent will generally be circumstantial and may be evinced by "considering the entire mosaic" of the situation. *See In re Ukwu*, 926 A.2d 1106, 1116 (D.C. 2007) (citation omitted); *accord In re Anderson*, 979 A.2d 1206, 1209 (D.C. 2009) (adopted and appended Board report); *In re Starnes*, 829 A.2d 488, 500 (D.C. 2003) (per curiam) (adopting Board's findings) (circumstantial evidence was sufficient to prove respondent's state

of mind as "more direct proof . . . , such as an outright assertion of an individual's intent, is rarely available"); *In re Berkowitz*, 801 A.2d 51, 57 (D.C. 2002).

In addition to the record of Respondent handling entrusted money as his own, the "entire mosaic" of evidence clearly shows Respondent's knowledge and intent. As discussed *supra*, Respondent kept no records that would allow him to track how much he was required to hold for a client at any given time. FF 51, 65. Respondent overdrew his accounts ending in 7428, 6855, and 3009 on several occasions and transferred money back and forth between them whenever it suited him. FF 33-35, 65-67. Respondent also disregarded inquiries about the status of the funds, including Ms. Howard's request for a refund. FF 59-60. Respondent's failing to deposit the funds in a trust account and failing to keep records further support our finding that Respondent intentionally misappropriated client funds in the Schrader and Howard matters. FF 35, 66.

Accordingly, the Hearing Committee concludes that the record demonstrates, clearly and convincingly, that Respondent violated Rule 1.15(a) by intentionally misappropriating Mr. Schrader's and Ms. Howard's funds.

## V. RECOMMENDED SANCTION

When an attorney has intentionally misappropriated funds, the law regarding misappropriation is clear and consistent: absent "extraordinary circumstances," disbarment is the presumptive sanction for intentional or reckless misappropriation. *Addams*, 579 A.2d at 191; *Hewett*, 11 A.3d at 286; *see also In re Mayers*, 114 A.3d 1274, 1279 (D.C. 2015) ("'In virtually all cases of misappropriation, disbarment will

be the only appropriate sanction unless it appears that the misconduct resulted from nothing more than simple negligence.'") (quoting *Addams*, 579 A.2d at 191).

"[I]t is appropriate . . . to consider the surrounding circumstances regarding the misconduct and to evaluate whether the mitigating factors are highly significant, and [whether] they substantially outweigh any aggravating factors such that the presumption of disbarment is rebutted." *Addams*, 579 A.2d at 195. However, "mitigating factors of the usual sort" are not sufficient to rebut the presumptive sanction of disbarment in a misappropriation case. *Id.* at 191, 193.

Here, Respondent offered no mitigation evidence beyond his testimony that he had previously worked in law firms and a regulatory agency that had not required him to keep an IOLTA account; such evidence is not sufficient to rebut the presumptive sanction of disbarment. *See In re Kersey*, 520 A.2d 321, 326 (D.C. 1987); *Hewett*, 11 A.3d at 286.

## VI. CONCLUSION

For the reasons stated, the Hearing Committee finds that Respondent violated Rules 1.1(a), 1.1(b), 1.3(a), 1.3(b)(1), 1.3(b)(2), 1.3(c), 1.4(a), 1.4(b), 1.15(a), 1.15(b), 1.15(e), 1.16(d), 8.4(c), and 8.4(d) of the D.C. Rules of Professional Conduct, as set forth above, but Disciplinary Counsel has not proven a violation of Rule 1.16(d) in the Simmons-Beathea representation (Count I) and commingling in the Schrader, Howard, and Lutfi representations (Counts II, III, and IV). Even though the alleged commingling has not been proven by clear and convincing evidence, the Hearing Committee concludes that because Respondent intentionally

misappropriated client funds in violation of Rule 1.15(a), the presumptive sanction of disbarment applies.

AD HOC HEARING COMMITTEE

/MMC/
Margaret M. Cassidy, Chair

/TM/
Trevor Mitchell, Public Member

/PBM/
Patricia B. Millerioux, Attorney Member