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

In the Matter of:	:	
	:	
QUINNE HARRIS-LINDSEY,	:	
	:	
Respondent.	:	Board Docket No. 15-BD-042
	:	Bar Docket No. 2002-D384
A Member of the Bar of	:	
the District of Columbia Court of Appeals	:	
Bar Number 451238	:	
Date of Admission: June 3, 1996	:	

REPORT AND RECOMMENDATION OF HEARING COMMITTEE NUMBER ONE

INTRODUCTION

Respondent, Quinne Harris-Lindsey, handled exactly one probate matter in her legal career. She did so as a favor to a family member. Her conduct in that probate matter now jeopardizes her ability to practice law. In the course of that representation, she paid herself fees from an estate account subject to court supervision with her client's permission but without the required prior authorization of the court. Respondent and Disciplinary Counsel[1] jointly stipulate that her withdrawals constitute misappropriation. The District of Columbia Court of Appeals has held that if a misappropriation is intentional or reckless, the presumptive sanction is disbarment. *See In re Adams*, 579 A.2d 190, 191 (D.C. 1990) (en banc). If the misappropriation is negligent, a six-month suspension is likely the appropriate sanction. *See*, *e.g.*, *In re Anderson*, 778 A.2d 330,

[1] The District of Columbia Court of Appeals changed the title of Bar Counsel to Disciplinary Counsel, effective December 19, 2015. We refer to Disciplinary Counsel as "Disciplinary Counsel" throughout, even though, at the time of the hearing, that office's name was "The Office of Bar Counsel."

342 (D.C. 2001).

The rest of Respondent's career has been, by all accounts, exemplary. She works for the District of Columbia Public Schools as a supervisory attorney. Her work there has been praised by a letter that is in the record from James Sandman – a well-known lawyer in the community. The Hearing Committee finds that her testimony was candid and honest. She forthrightly acknowledged that she did not comply with the court's requirement of prior approval of any withdrawal of legal fees from the probate account. Indeed, in her post-hearing brief she "concedes that she violated Rule 1.15(a) by paying herself from estate funds without receiving prior authorization from the court . . . ." Respondent Brief at 3. The withdrawals from the account in question were agreed to by her client. Finally, Disciplinary Counsel acknowledges that Respondent has been cooperative in their investigation and handling of this complaint.

The primary question before us, then, is whether, first, Respondent's misappropriations were more than merely negligent and, once that is determined, what the appropriate sanction should be.

Based on the evidence submitted at the hearing, we find that the misappropriation was reckless. In light of *Addams,* we must recommend disbarment.

THE HEARING

An evidentiary hearing was held on July 21, 2015 before Hearing Committee Number One. Disciplinary Counsel called Respondent as its sole witness at the hearing and offered Bar Exhibits ("BX") A-D and 1-3, which were admitted into evidence. Transcript of hearing on July 21, 2015 ("Tr.") 64. Respondent testified on her own behalf and submitted one exhibit (Respondent's Exhibit "RX") before the record closed. The parties submitted two Joint Exhibits ("JX") 1 and 2, one at the hearing and the second on July 31, 2014, after the hearing ended, but while the record

remained open. Tr. 70.

Following the hearing, Disciplinary Counsel timely filed its proposed findings of fact, conclusions of law and recommendation as to sanction. Respondent timely filed her proposed findings of fact and conclusions of law. Disciplinary Counsel then timely filed its reply brief.

I. PROPOSED FINDINGS OF FACT

The Hearing Committee finds that the following facts have been established by clear and convincing evidence:

A. The Guardianship Estate

1. Respondent is a member of the District of Columbia Bar, having been admitted on June 3, 1996, and assigned Bar number 451238. JX ¶ 1; BX A.

2. In 1994, Respondent was retained by her first cousin, Anglia Fulwood (the client), to serve as her attorney. JX ¶ 2; BX B ¶ 3. When Ms. Fulwood retained Respondent, Respondent was not yet a member of the District of Columbia Bar. JX 3; Tr. 15, 17, 20; BX 3 at 249. Another attorney moved the Superior Court to admit Respondent *pro hac vice* under his supervision on July 21, 1994. JX ¶ 3; Tr. 16-17, 20-21; BX 3 at 249.

3. Anglia Fulwood is the mother of Deonta Fulwood, who was then a minor. BX B ¶ 2. Ms. Fulwood retained Respondent to set up a trust to receive the proceeds of an insurance policy of which Deonta was the beneficiary. Tr. 15-20; 25; BX 2A at 205-206. The Superior Court appointed Ms. Fulwood as Deonta Fulwood's guardian and issued guardianship letters on October 6, 1994. BX 3 at 220; *Estate of Deonta Harold Fulwood*, 1994-GDN-64 (D.C. Super. Ct.), BX B ¶ 2.

4. After Respondent became a member of the D.C. Bar, she filed a praecipe on March 13, 1997 noting the withdrawal of the supervising attorney and informing the Superior Court that

Respondent would remain as sole counsel to the guardian, Ms. Fulwood. BX B ¶ 2; BX 1 at 11, BX 3 at 218.

5. As counsel to the guardian, Respondent had been retained, *inter alia,* to assist Ms. Fulwood in preparing periodic accountings with the Probate Division of the District of Columbia Superior Court, and preparing and filing tax returns. JX ¶ 4.

6. On or about December 19, 1994, Respondent opened an account at Independence Federal Savings Bank, denominated "Deonta Harold Fulwood, minor/Anglia Fulwood, gdn./Quinne Harris Lindsey, Attorney," and numbered XX-XX-592. JX ¶ 5; BX 1 at 50. There were two signatories to the account: Respondent and Anglia Fulwood. *Id*. The opening balance was $40,760.75, all of which were entrusted funds for the ward. *Id*.

B. The 1995 Withdrawal

7. On November 27, 1995, Respondent wrote to the branch manager of Independence Federal Savings Bank and directed that all correspondence related to the Estate be addressed to Respondent's office. BX 1 at 9.

8. On November 28, 1995, Respondent filed the First Accounting for the Estate for the period October 6, 1994 to October 5, 1995. BX 1 at 39-51.

9. Respondent had never handled a probate matter before, and was reluctant to take this one on but, ultimately, she did so because she wanted to help her cousin. Tr. 16. Respondent told Ms. Fulwood that she did not want to be paid for her work on the case because, she said "I don't really know what we're doing." Tr. 25. However, because Respondent spent considerable time and effort creating the Estate, Ms. Fulwood insisted that Respondent be paid, and Respondent

relented. Tr. 25-26.

10. On December 12, 1995, Respondent prepared a letter to the bank attaching a certificate withdrawal order for disbursement of attorney's fees and stating that, "[a]ccording to the Register of Wills, attorney's fees are included under the category of administrative expenses and therefore do not require an order of the Court for disbursement." BX 1 at 211.

11. On or about December 27, 1995, Respondent withdrew funds in the form of a cashier's check in the amount of $1,650 from the Estate account as payment for services Respondent had rendered in establishing the Estate. JX ¶ 6; BX 1 at 58, 60, 194. Respondent did so with her client's consent, Tr. 41, but without prior court approval. JX ¶ 6.

12. On or about February 27, 1996, Respondent withdrew additional funds in the form of a cashier's check in the amount of $1,400 from the Estate account as payment for services Respondent rendered in establishing the Estate. JX ¶ 6; BX 1 at 58, 60, 194. Respondent did so with her client's consent, Tr. 41, but without prior court approval. JX ¶ 6.

C. The Guardian's 1996-1997 Withdrawals

13. On July 1, 1996, Ms. Fulwood, as guardian, withdrew $1,000 from the Estate for rent and a security deposit without prior court approval. BX 1 at 13-14. Respondent was aware of and assented to the disbursement. *Id*. Respondent later described the sum as having been withdrawn for expenses for moving and children's furniture. BX 1 at 61.

14. On August 20, 1996, Ms. Fulwood withdrew $400 from the Estate for childcare expenses without prior court approval. BX 1 at 14-15. Respondent was aware of and assented to the disbursement. *Id*.

15. On February 10, 1997, Ms. Fulwood withdrew $800 from the Estate for childcare, a school uniform and supplies, and for a bond securing the Estate's assets, again without prior

court approval.[2] JX ¶ 7; BX 1 at 25, 81. The record does not show if Respondent was aware of or assented to this withdrawal. Regardless, Disciplinary Counsel's charges do not relate to it.

16. On or about March 20, 1997, Respondent filed the Second Accounting for the Estate for the period October 6, 1995 to December 31, 1996. BX 1 at 53-80. The Second Accounting reported Ms. Fulwood's July 1 and August 20, 1996 withdrawals, which totaled $1,400. BX 1 at 61. At the same time, Respondent filed a Petition for Expenditures with the court seeking retroactive approval of Ms. Fulwood's July and August 1996 withdrawals. BX 1 at 13-15, 61. The Petition for Expenditures was subsequently approved by order dated April 11, 1997 subject to a proper accounting. BX 1 at 23. The Petition neither disclosed nor sought approval of Ms. Fulwood's $800 February 1997 withdrawal.

17. After withdrawing fees in February 1996, Respondent had a conversation with a Probate Division employee who advised her that court approval was required to withdraw attorney's fees. JX ¶ 8. Based on this conversation, Respondent reported her 1995 and 1996 withdrawals in the Second Accounting and explained that they had been erroneously withdrawn because of Respondent's lack of awareness that court approval was required. JX ¶ 8; BX 2 at 194; BX 1 at 58 (Schedule F), 60 (Schedule H); *see also* BX 3 at 249 (statement of Register of Wills dated July 30, 1997) (noting that Respondent "was unaware that attorney's fees required Court

[2] The bank had no documentary record of this transaction on microfilm so Disciplinary Counsel cannot definitively discern how the funds were withdrawn from the account. The bank records produced by Respondent appear to show a cash withdrawal. BX 1A at 95.

approval").

18. Respondent reported in the Second Accounting that "[u]pon being advised that Court approval was required, Counsel reimbursed the Estate account" the full amount she had withdrawn, which she also reported on Schedule F ("Other Collections"). BX 1 at 58; BX 3 at 249.

19. Consistent with her statement that she had reimbursed the Estate the attorney's fees that she withdrew, on or about March 21, 1997, Respondent opened a second account at Independence Federal Savings Bank, a money market fund account denominated "Deonta Harold Fulwood, minor/Anglia Fulwood, gdn./Quinne Harris Lindsey, Atty.," and numbered XX-XX-XX-231. JX ¶ 9; BX 1A at 21-22, 71-72. Respondent and Ms. Fulwood were joint signatories to this account. *Id*. The opening balance for the money market account was $3,069.46. *Id*. The check that Respondent used to open the second account was dishonored and she funded the second account three weeks later, on April 17, 1997, with her own funds. JX ¶ 9; BX 1 at 101-102.

20. On or about December 29, 1997, Respondent filed the Third Accounting for the Estate for the period January 1, 1997 to September 30, 1997. BX 1 at 81-102. The Third Accounting disclosed Ms. Fulwood's unauthorized withdrawal of $800 in February 1997 and described it as having been "disbursed prior to Court approval, guardian seeking ratification of the above disbursements." BX 1 at 89.

21. On or about March 3, 1998, Ms. Fulwood apparently filed a Petition for Expenditures with the court seeking approval of the $800 withdrawal she had made in February 1997. *See* BX 1 at 25. A copy of the Petition is not in the record. The court approved Ms. Fulwood's Petition by order filed on March 11, 1998. The order describes the $800 as having been used for a bond, child care expenses and school uniforms and supplies. BX 1 at 25. *See also* JX ¶ 10; BX 1 at 81, 89. The court ratified and approved the expenditures as appearing fair and reasonable, but

admonished the Guardian "not to expend estate assets without prior court authorization." BX 1 at 25. A copy of the court's order admonishing Ms. Fulwood was mailed to Respondent, *id*., and Respondent was aware of it. Tr. 52.

22. On November 24, 1998, Respondent filed the Fourth Accounting for the Estate for the period October 1, 1997 to November [sic] 1998. BX 1 at 103, 113.

23. On or about December 31, 1998, Respondent by letter advised the Auditor of the Probate Division that Ms. Fulwood "does not seek a commission" for the period of the Fourth Accounting. BX 1 at 133. Respondent attached an amended form Schedule H to the letter to the same effect. BX 1 at 136.

D. The 1999 Withdrawal

24. On October 1, 1999, Respondent drew a check in the amount of $2,250 from Estate funds, without securing prior court approval but with Ms. Fulwood's consent. JX ¶ 11; BX 1 at 185. The check was signed by Respondent and her client. *Id*.

25. On or about November 23, 1999, Respondent filed the Fifth Accounting for the Estate, which likely covered the period from about November 25, 1998 to about September 30, 1999, though no complete copy appears in the record. *See* BX 1 at 137-139. The Fifth Accounting was approved on or about March 14, 2000. *Id*.

26. Almost two years later, on or about June 21, 2001, Respondent filed the Sixth Accounting for the Estate for the period October 1, 1999 to June 11, 2001. BX 1 at 141-189. The Sixth Accounting disclosed Respondent's October 1999 withdrawal of $2,250 and described it as an "Assignment of Guardian Commission for 5 year period of representation of Estate . . . pursuant to retainer fee agreement." JX ¶ 11; BX 1 at 150.

27. Soon after, on July 6, 2001, the Auditor of the Register of Wills apparently

requested information from Respondent related to several issues, including Respondent's failure to file taxes for the Estate in the year 2000 and Respondent's $2,250 disbursement to herself in October 1999. *See* BX 1 at 27-28.[3] In her response to the Auditor, Respondent repeated that $2,250 represented commissions that the Guardian was entitled to draw from the Estate and which the Guardian had assigned to Respondent pursuant to a February 1995 retainer agreement. BX 1 at 28.

28. On October 24, 2001, the Superior Court issued an order directing Respondent to redeposit the $2,250 she had withdrawn within 30 days. JX ¶ 12; BX 3 at 236. The court further directed Respondent to appear at a hearing on November 19, 2001 to show cause why she should not be referred to Disciplinary Counsel for taking fees without prior court approval. *Id*.

E. Respondent's 2001 Memorandum of Explanation

29. At the November 19, 2001 show cause hearing, the presiding judge extended Respondent's deadline to redeposit the $2,250 to December 7, 2001. Tr. 31-32; JX ¶ 13; BX 3 at 247. The judge further directed Respondent to file a Memorandum of Explanation by November 26, 2001 regarding the funds she withdrew. *Id*. Respondent credibly testified that in doing so, she understood the judge also to be giving her permission to file a petition for fees. Tr. 31-32.

30. On November 26, 2001, Respondent filed her Memorandum of Explanation along with a "Request for Compensation for Service (Ratification)" with the Superior Court. JX ¶ 14; BX 3 at 237, 239.

31. In her Memorandum of Explanation, Respondent stated that her $2,250 withdrawal represented fees for services rendered throughout the five years of the Estate. BX 1 at 237; Tr. 37.

32. The Memorandum further explained that Respondent had taken much of her guidance in administering the Estate from the duty day auditors at the court's probate office. BX

[3] A copy of the Auditor's letter is not included in the record.

3 at 237. Relying on Schedule H of the accounting forms, Respondent erroneously believed that attorney's fees constituted administrative expenses, and that, based on information from Probate Division staff, administrative expenses could be withdrawn without court approval. *Id.*; Tr. 30-31, 40; *see also* BX 2 at 193-195. Respondent mistakenly distinguished administrative expenses from expenditures for the maintenance and care of the minor, which she understood required prior court approval. BX 1 at 237. Indeed, Respondent testified at the hearing that this was her understanding – that, because the last payment was for her work administering the trust and not for care of the ward, it did not require prior court approval. Tr. 40.

33. The Memorandum also explained that when questioned by Probate Division staff about her authority to withdraw attorney fees, Respondent referred to her retainer agreement, under which she would take attorney fees only after five years. BX 3 at 237. A copy of the retainer agreement was not included in the record. Respondent's Memorandum stated that Probate Division staff then informed Respondent that her understanding was erroneous and suggested that she deposit the money back into the account. BX 3 at 237-238. Respondent explained that staff "discouraged [her] idea" of filing a motion seeking retroactive approval, since the money had been withdrawn two years earlier. BX 1 at 238.[4] The Memorandum of Explanation did not identify the names of the court personnel with whom Respondent spoke or from whom she received advice. Respondent could not recall anyone's name during her testimony before the Hearing Committee. Tr. 53, 55.

34. Before the Hearing Committee, Respondent testified that at the start of her work on

[4] Respondent's explanation to Disciplinary Counsel in January 2003 is somewhat contrary. There, she explained that she was disconcerted to learn that the court had found her Request for Compensation to be defective, not only because the same probate staff "directed me in completing" the Request, but because the same staff "informed me that the [R]equest was sufficient" but for a notice to interested parties. BX 2 at 194.

the guardianship matter, she and her cousin, Ms. Fulwood, had agreed that Ms. Fulwood would assign her commission as guardian to Respondent "in lieu of attorneys' fees." Tr. 30. Respondent testified further that when Probate Division staff later characterized the $2,250 withdrawal as being "'all attorney's fees,'" Respondent replied "'[i]t's commission, it's not really attorney's fees.'" Tr. 31.

35. In the Request for Compensation filed with her Memorandum of Explanation, Respondent sought ratification of the $2,250 she had withdrawn and approval of an additional $225 in fees for her work on behalf of the Estate, for a total of $2,475. JX ¶ 14. Respondent included a complete breakdown of her fees based on time expended over five years. BX 3 at 241-242. The Request explained that the amount Respondent sought represented compensation for approximately 25 hours of attorney services and was "in accordance with D.C. Code Court Rules." BX 3 at 239.

F. Referral to Disciplinary Counsel

36. Respondent did not redeposit the $2,250 by December 7, 2001 as the court had directed. It is unclear from the record whether Respondent did not do so because of a mistaken belief that her Request for Compensation had stayed the court's order, or because she was financially unable to do so by that time. JX ¶ 14; BX 3 at 237-238.

37. At some point thereafter the Register of Wills transmitted the record to the Superior Court for consideration of Respondent's non-compliance with the court's October 24, 2001 order directing Respondent to reimburse the Estate. *See* BX 1 at 3.

38. On or about June 19, 2002, the Superior Court issued an order denying Respondent's Request for Compensation and referring the matter to Disciplinary Counsel for investigation. JX ¶ 15; BX 1 at 3-5. The court expressed concern over Respondent's explanation

for her unauthorized withdrawal, which was "that [Respondent] failed to fully familiarize herself with the rules requiring court approval." BX 1 at 4. The court, through its own investigation, learned that this was Respondent's second unapproved withdrawal. *Id.* The court stated that it would be reasonable to show some leniency for a first time offense, but noted that "the same mistake occurs twice" and "ignorance is the same excuse." *Id*. The court expressed concern that Respondent ignored its mandate to redeposit the funds and filed her Request for Compensation without giving a reason. *Id*. The court further found the Request did not comply with the D.C. Superior Court Rules of the Probate Division ("SCR-PD") 225(f), and that of the 25 hours for which Respondent sought compensation, only 1.75 were compensable as attorneys' fees under SCR-PD 225(e). *Id*. The remaining time was for services that were either non-compensable by a fee or compensable as ordinary commissions to the guardian. BX 1 at 4-5. An earlier transmittal from the Register of Wills in fact noted that the commissions due to Ms. Fulwood based on the first six accountings "would only amount to $199.68." BX 3 at 247-248.

39. On July 10, 2002, Ms. Fulwood sent a letter to the court, requesting that Respondent be removed as her counsel. BX 3 at 251. The court denied her motion on the ground that Ms. Fulwood had retained Respondent and thus Ms. Fulwood had authority to discharge her; she did not need leave of the court. BX 3 at 253. Ms. Fulwood discharged Respondent, but Respondent did not file any notice or praecipe notifying the court that it should no longer send her notices concerning the case. JX ¶ 16.

40. By letter dated September 16, 2002, the Office of Disciplinary Counsel requested Respondent's response to the Superior Court's June 19, 2002 order denying Respondent's Request for Compensation and referring the matter for disciplinary investigation. JX ¶ 17; BX 1. Disciplinary Counsel also requested that Respondent provide any and all documents relating to her

representation of Ms. Fulwood. *Id*. Respondent provided an incomplete response on October 28, 2002. BX 1 at 7; BX 2 at 191.

41. On December 11, 2002, Disciplinary Counsel again wrote to Respondent and asked that Respondent provide a response to the Superior Court's June 19, 2002 order within five days. BX 2 at 191.

42. On January 7, 2003, Respondent provided a more complete response in which she asserted that she had not been aware of the Superior Court's June 19, 2002 order until she had received the disciplinary complaint from Disciplinary Counsel, which had enclosed it. JX ¶ 18; BX 2 at 193-195. Respondent failed to submit her complete file, asserting that a number of the relevant documents had been lost in an office move. BX 1 at 7, BX 2 at 195. The records that Respondent provided did not reflect contemporaneous recordkeeping of disbursements of Estate funds. *See* BX 1 at 137 (Fifth Accounting missing).

43. On December 8, 2003, more than two years after the court had directed Respondent to redeposit the funds, and more than four years after the funds were withdrawn, Respondent reimbursed the Estate $2,250. JX ¶ 20; BX 2A at 193-194, BX 3 at 256-257.

44. The Superior Court never authorized or ratified any of the payments Respondent made to herself from Estate assets. JX ¶ 19. During the time that she represented Ms. Fulwood, despite the Superior Court's issuance of several notices of delinquent filings, the accountings that Respondent filed were all ultimately approved. JX ¶ 21; BX 3 at 215-220. In the end, Respondent did not receive any compensation in connection with her representation of Ms. Fulwood. *Id*.; BX

1 at 58, 62, 101-102.

45. Respondent left the private practice of law in 2002 and has not returned. Tr. 43-45.[5] She has worked for the District of Columbia Public Schools General Counsel's office since then and has held her current position as a supervisory attorney since 2005. Tr. 13, 42.

46. Respondent has no prior discipline. JX 2. She cooperated fully with Disciplinary Counsel during and after its investigation, Tr. 67-68, and acknowledges her misconduct, taking full responsibility for it. JX; BX 2 at 193.

47. Respondent's former supervisor is James J. Sandman, Esquire, past president of the D.C. Bar and current President of the Legal Services Corporation. RX. He served as General Counsel for part of Respondent's time in the D.C. Public Schools General Counsel's Office and was aware of the full extent of the charges pending against Respondent when he worked with her. *Id*. He nevertheless thinks very highly of her and would work with her again. *Id*.

G. Respondent's Testimony

48. The Hearing Committee found Respondent's testimony to be credible, subject to some limitations discussed below. She was forthright in her explanations of her conduct as far as she remembered, clear on the gaps in her memory, and did not appear to us to be evasive in any way. When pressed by Hearing Committee members about her conduct, she made no excuses for herself, but acknowledged that the way she handled this matter was clearly wrong. However, Respondent also credibly testified that she cannot fully recall circumstances and events that occurred between 15 and 20 years ago. There is no reason to doubt that Respondent today believes

[5] Respondent seems to have misspoken when she said she worked at a particular private law firm from 2005-2007, probably intending to say 1995-1997; she testified that she has worked for DCPS for the last 13 years. Tr. 45.

her actions arose from a sincere, if mistaken, belief in what the law permitted. The problem is that, as Respondent concedes, her memory is now weak and sometimes non-existent. *See, e.g.*, Tr. 49-50 (cautious as to testimony given elapsed time); 57 (no actual recollection of having reviewed applicable rules). Acknowledging this, Respondent forthrightly admitted she relied on her contemporaneous writings in the record, stating that "what I wrote at the time was my understanding at the time." Tr. 50.

49. Respondent did not prepare for filing in a timely or complete manner a number of the required accountings that were due during her tenure as Ms. Fulwood's counsel, requiring the court to send Respondent and her client repeated notices and to schedule multiple hearings in connection with the missed accounting deadlines. JX ¶ 4; *see e.g.*, BX 1 at 27, BX 3 at 215-220 (docket sheet reflects delinquency notices). Respondent also failed to file the Estate's 2000 tax return, which subjected the Estate to potential tax liabilities due to the missed tax deadline. *Id*.

50. Respondent never developed a firm understanding of the probate practice area concerning guardianships during her representation of Ms. Fulwood and her work on the Estate. *See* Tr. 8, 21, 33-41, 48-50, 62; BX 2 193-195. She testified to the Hearing Committee that she never consulted with a probate attorney. Tr. 51. Respondent admitted that though she familiarized herself with some rules, she later learned they were the wrong rules. Tr. 51-52; *see also* 57 (lack of knowledge of difference between probate and guardianship rules). Respondent admitted she did not "familiarize [herself] with this area of law." Tr. 58. Though she testified that she sat with a probate representative, whom she could not identify by name, to "figure out" how to do this kind of work, she did so only "once, maybe twice." Tr. 53, 54-55.

51. Respondent repeatedly testified that she was aware at the time of the seriousness of her responsibilities and the consequences of not getting it right. Respondent said she was reluctant

at first to undertake the representation of Ms. Fulwood because of her lack of knowledge of the area of probate proceedings and because of her own and Ms. Fulwood's lack of knowledge with respect to filing estate taxes. Tr. 17, 20. Respondent described her work at one point as "trying to figure this out as we were going along." Tr. 28. Respondent recalled telling Ms. Fulwood that they had to figure it out how to do things the right way to avoid "get[ting] in any trouble in managing this account." Tr. 55. But in the end Respondent conceded that she "didn't really know what [she] was doing," Tr. 18, 25, 28, and that, at the end, her lack of guidance had been "a step in the wrong direction." Tr. 60-61.

II. CONCLUSIONS OF LAW

Based upon the above facts, it is uncontested that Respondent violated Rule 1.15(a) and D.C. Bar R. XI, §19(f).[6]

[6] Disciplinary Counsel charged Respondent with violating Rule 8.4(d), conduct that seriously interfered with the administration of justice, but concedes in its post-hearing brief that it failed to adduce clear and convincing evidence to support that charge. Disciplinary Counsel does not have the authority to unilaterally elect not to pursue charges that have been approved by a Contact Member. *See In re Drew*, 693 A.2d 1127, 1132-33 (D.C. 1997) (per curiam) (appended Board Report) ("it is incumbent upon the Board to determine" whether all charged Rule violations are proved by clear and convincing evidence); *In re Reilly*, Bar Docket No. 102-94 at 4 (BPR July 17, 2003) (concluding that Disciplinary Counsel did not have the authority to dismiss charges approved by a Contact Member). In any event, having reviewed the record, the Hearing Committee concludes that Disciplinary Counsel has not proven a Rule 8.4(d) violation by clear and convincing evidence and recommends a Conclusion of Law to this effect.

A. Respondent Violated D.C. Bar Rule XI, §19(f) by Failing to Maintain Necessary Records.

D.C. Bar Rule XI, § 19(f) ("Required Records")[7] provides:

> Every attorney subject to the disciplinary jurisdiction of this Court shall maintain complete records of the handling, maintenance, and disposition of all funds, securities . . . belonging to another person . . . at any time in the attorney's possession, from the time of receipt to the time of final distribution, and shall preserve such records for a period of five years after final distribution of such funds, securities, or other properties or any portion thereof.

Under Rule 1.15(a) and DC Bar Rule XI, § 19(f), Respondent was obligated to maintain complete records of her handling of the Estate's entrusted funds for at least five years, which she failed to do – a fact she does not dispute.

B. Respondent Violated Rule 1.15(a) by Misappropriating Estate Funds.

Before an attorney is permitted to withdraw fees in connection with services rendered in a guardianship matter, the attorney must submit a petition that includes a detailed accounting of the fees and costs sought to be paid and await approval by the Superior Court before paying herself. JX ¶ 6. Respondent failed to do so.[8]

Rule 1.15(a) ("Safekeeping Property") provides:[9]

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[7] Effective March 1, 2016, section 19(f) was deleted from D.C. Bar Rule XI. Order, No. M-252-15 (D.C. Feb. 4, 2016) as duplicative of the complete records requirement of Rule 1.15(a).

[8] In its 2002 order referring this matter to Disciplinary Counsel, the Superior Court found that Respondent had violated SCR-PD 225(e). BX 1 at 3; *see also* BX 3 at 247-48 (Register of Wills noting Respondent's non-compliance with SCR-PD 225); BX 2 at 193 (Respondent's admission she failed to familiarize herself with D.C. Code § 21-143 and SCR-PD 225(e)). In its Specification of Charges, however, Disciplinary Counsel alleges that Respondent violated D.C. Code § 21-2060(a) and SCR-PD 308, BX B ¶ 6, asserting that they superseded D.C. Code § 21-143 and SCR-PD 225 "for estates opened after September 30, 1989." BX B ¶ 15 n. 2. Both sets of rules address compensation to different types of guardians, but only D.C. Code § 21-143 and SCR-PD 225 address compensation to guardians of minors. While it is true that SCR-PD 225 was superseded in part, it is only with respect to conservatorships established after September 30, 1989. *See* District of Columbia Guardianship, Protective Proceedings, and Durable Power of Attorney Revision Amendment Act of 1989, codified at D.C. Code § 21-2001 *et seq.*

[9] This is the text of the Rule in effect at the time in question.

> A lawyer shall hold property of clients or third persons that is in the lawyer's possession in connection with a representation separate from the lawyer's own property . . . . Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of five years after termination of the representation.

Misappropriation is defined as "any unauthorized use of client 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) ("*Anderson I*") (quoting *In re Harrison*, 461 A.2d 1034, 1036 (D.C. 1983) (citation and quotation marks omitted)). Misappropriation is "essentially a *per se* offense; proof of improper intent is not required." *Id*. (quoting *In re Micheel*, 610 A.2d 231, 233 (D.C. 1992) (citations omitted)). Rather, it is the burden of Disciplinary Counsel to establish, by clear and convincing evidence, the requisite level of culpability. *Id*. at 338. Where the misappropriation is the result of simple negligence, the sanction is generally a six-month suspension; where it is intentional or reckless, the Court of Appeals has established a largely unforgiving standard – the presumptive sanction is disbarment, absent "the most stringent of extenuating circumstances." *Addams*, 579 A.2d at 103.

Respondent has made us aware, in her Brief, that this matter was originally the subject of negotiated discipline. The Court of Appeals rejected that negotiated discipline because it concluded that the question of Respondent's level of culpability – whether the misappropriation was more than simply negligent – could not "be answered without the presentation of evidence in a contested proceeding." As the Court explained:

> [A] serious question exists on the face of the record whether respondent acted negligently, or instead recklessly, when she continued to take funds from the estate after having been advised by court officials that she needed approval from the Court and after the Probate Court admonished her not to expend any funds without prior approval. We do not believe that question, which may be critical to deciding the

> proper sanction for respondent's conduct, can be answered without the presentation of evidence in a contested proceeding.

In re Harris-Lindsey, 19 A.3d 784-85 (D.C. 2011) (citations and paragraph break omitted).

To determine the character of Respondent's misappropriation, the "central issue" is how the attorney handled the entrusted funds, that is, "whether in a way that suggests the unauthorized use was inadvertent . . . or in a way that reveals either an intent to treat the funds as the attorney's own or a conscious indifference to the consequences of his or her behavior for the security of the funds." *Anderson I*, 778 A.2d at 339 (D.C. 2001). While the hallmarks of reckless misappropriation include "the indiscriminate commingling of entrusted and personal funds [ ]; total disregard of the status of accounts into which entrusted funds were placed, resulting in repeated overdrafts[;] and indiscriminate movement of monies between accounts," *Anderson I*, 778 A.2d at 338, engaging "in a pattern or course of conduct demonstrating an unacceptable disregard for the welfare of the entrusted funds" is sufficient to prove recklessness. *Id*. at 339. The Court thus has found reckless misappropriation where the respondent withdrew estate funds as a legal fee without prior court approval, after being advised by the Probate Division that her prior unauthorized withdrawals were improper. *See In re Utley*, 698 A.2d 446 (D.C. 1997).

Because Respondent concedes that she twice engaged in misappropriation by withdrawing funds from the Estate without prior court approval, the Hearing Committee must assess the character of each withdrawal, one of which occurred 15 years ago, the other 20 years ago. Needless to say, memories fade. Though Respondent was credible and forthright in her testimony to the Hearing Committee, even she (to her further credit) admitted that her ability to recall her state of mind two decades earlier was imperfect, if it existed at all. FF 47. For that reason, Respondent relied on her contemporaneous writings in the record, stating "what I wrote at the time was my

understanding at the time." Tr. 50. The Hearing Committee has therefore done the same.

1. The 1995 and 1996 Withdrawals

The Hearing Committee finds that Respondent's withdrawal of fees in 1995 and 1996, before learning from court administrative personnel that prior court approval was required, was merely negligent and due to a sincerely held belief that the withdrawals were proper.

Respondent testified that in 1995, she and Ms. Fulwood agreed that Respondent should be paid for the work Respondent had done in setting up the Estate. FF 9. At the time Respondent sincerely but mistakenly thought the payment of attorney fees were administrative expenses of the estate and did not require prior court approval. FF 10, 17. Respondent testified that her belief was predicated on information from staff in the Probate Division. FF10, 17. Consistent with that understanding, and with Ms. Fulwood's consent, Respondent withdrew from the Estate amounts totaling $3,050 in two payments in December 1995 and February 1996 without court authorization. FF 11-12. After the withdrawals, Respondent had a conversation with a Probate Division employee who advised her that legal fees could not be withdrawn without prior court authorization. Respondent thereupon reported her 1995 and 1996 withdrawals in the Second Accounting, explaining that she had been unaware of the court authorization requirement. FF 17-18. Respondent repaid the Estate promptly. FF 17-19.

"The distinguishing characteristic of our cases involving simple negligence (as opposed to intentional misappropriation) is that the attorneys were acting pursuant to a truly held, albeit inaccurate, understanding of [their] right to withdraw the funds . . . ." *In re Pierson*, 690 A.2d 941, 949 (D.C. 1997) (quoting *In re Cooper*, 613 A.2d 938, 939 (D.C. 1992) (internal quotation marks omitted) (quoting *In re Cooper*, 591 A.2d 1292, 1297 (D.C. 1991)). The Hearing Committee believes that the record evidence does not show by clear and convincing evidence that the 1995

withdrawal resulted from more than simple negligence. Based on our observation of Respondent's testimony at the hearing, we find that Respondent testified credibly when she said that she had a truly-held belief that she was entitled to withdraw the funds in December 1995 and February 1996 without prior court approval, and we therefore believe that, under *Pierson*, her conduct was negligent with respect thereto.

2. The 1999 Withdrawal

In the Third Accounting, filed in December 1997, Respondent disclosed Ms. Fulwood's unauthorized withdrawal of $800 in February 1997 and described it as having been "disbursed prior to Court approval, guardian seeking ratification of the above disbursements." FF 20. FF 19. The court ultimately ratified the expenses but admonished the guardian "not to expend estate assets without prior court authorization." A copy of the order was sent to Respondent, and she was aware of it. FF 21.

In 1999, notwithstanding that Respondent by then was placed on notice of the requirement of prior court authorization, Respondent again paid herself fees from the Estate without court approval, this time in the amount of $2,250. FF 24. Once again, Respondent testified that she did so in the erroneous belief that her payment was permissible. FF 11. Whether this was more than merely negligent is a harder question. The exact nature of Respondent's error in 1999 is difficult to reconstruct, not least as a result of the lapse of time since it occurred. Respondent conceded that her memory of events was weak or non-existent, and she has relied on what she wrote at the time as reflecting her understanding at the time. FF 48. However, what Respondent wrote at the time is itself somewhat conflicting.

Although Respondent reported her 1999 withdrawal in the Sixth Accounting, the Sixth Accounting itself was untimely filed. *See* D.C. Code § 21-143; SCR-PD 204(a), 206. As a result,

the 1999 withdrawal was not disclosed until almost two years after the fact. FF 26. In the Sixth Accounting, Respondent described the withdrawal as an assignment of the guardian's commission for five years pursuant to a retainer fee agreement – that is, fees for Respondent's work in the prior five years. FF 26; BX 1 at 150. Yet the supporting documents Respondent included with the Sixth Accounting in support of the assignment of commission contain no reference to, much less calculation of, the amount of commissions to which Ms. Fulwood was entitled. BX 1 at 150. Questioning Respondent's explanation, the Register of Wills later pointed out that under the applicable rules of the Probate Division, the guardian's commission for the five years would have been under $100, far less than the $2,250 Respondent withdrew. BX 3 at 248.

Indeed, Respondent told the Superior Court in November 2001 that the $2,250 was for legal services rendered during the life of the Estate. BX 3 at 237. In January 2003, in a response to Disciplinary Counsel, Respondent asserted that the 1999 withdrawal included services rendered after the opening of the Estate, and that it was negotiated for in an agreement. BX 1 at 193. Respondent made much the same point in her testimony before the Hearing Committee, namely, that the $2,250 was for her work on the Estate over five years, "all the filings, the draftings of the petitions, of the accountings," and also that it was an assignment of the guardian's commission. The clear and convincing evidence shows that the 1999 withdrawal was not an assignment of the guardian's commission but a way of paying Respondent for legal work.

In any event, to explain why she believed that the 1999 withdrawal was different than the 1995 withdrawal – when both were for attorney's fees – Respondent points to a different error she made. She notes that unlike the 1995 withdrawal, which was for *pre-estate* legal services, the 1999 withdrawal was for estate-related legal services after the Estate was set up. Respondent said that she sincerely but mistakenly believed that this difference was significant because, she says she

thought that legal services performed once the Estate was set up were "administrative expenses" not needing prior court approval. Respondent further distinguished "administrative expenses" not requiring court approval from "expenditures" for the support of the minor which – as she knew based on the admonishment of Ms. Fulwood by the Superior Court – required such approval.

Respondent's explanation is not implausible, but is difficult to accept. We recognize that she was trying to reconstruct facts about what happened many years ago. We do not find that she was trying to mislead the Hearing Committee; rather that her description of what she remembers believing was likely wrong.

What we know is that in 1995 Respondent incorrectly believed that attorney's fees were administrative expenses that could be paid without prior court approval, and she subsequently learned she was mistaken. FF 10, 17. For the 1999 withdrawal, she again paid herself attorney's fees, based on the same mistaken belief they were administrative expenses, after she had already been informed that this belief was incorrect. We find that the subsequent distinction articulated by Respondent between "pre-estate" and "estate-related" legal services is a post hoc rationalization and we do not credit it. We note that Respondent made other errors with respect to the classification of payments to herself, because, as discussed above, at different times she claimed the 1999 withdrawal to be a guardian's commission or attorney's fees, sometimes seemingly both. While, again, we found her a sincere and credible witness, Respondent forthrightly admitted under questioning by her own attorney, "I don't really know what I was thinking at that point." Tr. 35.

Having helped set up the Estate in 1994, by October 1999 Respondent had worked on the guardianship matter for five years. If nothing else, she was aware that her prior unauthorized withdrawals were improper. Specifically, the Court's March 11, 1998 order clearly placed her on notice that, without exception, estate assets could not be disbursed without prior court

authorization. Despite this, Respondent and the guardian withdrew funds for what they later described was an expense of administering the estate, which was in fact a way to compensate Respondent for her legal services, without filing the necessary fee petition. Respondent did not take any number of steps to inform herself, even after a number of times when she was clearly shown the perils of proceeding without understanding the Rules of the Probate Court. She did not seek the advice of more experienced probate attorneys, made little serious effort to better inform herself as to what the rules of the Probate Division required, and, instead, continued to rely on probate personnel.

3. Analysis

To be more than negligent, Respondent must have consciously disregarded the risk that the funds would be used for unauthorized purposes. *Anderson I*, 778 A.2d at 339; *In re Fair*, 780 A.2d 1106, 1109 (D.C. 2001). Engaging "in a pattern or course of conduct demonstrating an unacceptable disregard for the welfare of the entrusted funds" is sufficient to prove recklessness. *Id*. at 339. Put another way, "recklessness is a 'state of mind in which a person does not care about the consequences of his or her action.'" *Anderson I*, 778 A.2d at 338.

Applying this standard, the Hearing Committee finds that the misappropriation as a result of the 1999 withdrawal was at least reckless.

As the Court in this case recognized, "the same mistake occur[ed] twice" and "ignorance [wa]s the same excuse." BX 1 at 4; FF 38. Respondent was practicing in a technical and unique area of law that she was unfamiliar with; she had been informed that she could not take fees without court approval; did not acquaint herself with the relevant rules; failed to consult with more experienced counsel; failed to seek guidance as to whether court approval was required only for pre-estate fees; continued to rely on non-lawyer court staff; and appears to have continued, at best,

to have misheard what that court staff said. Respondent's taking of her fee without court approval after clear notice that such approval was required constitutes at least reckless misappropriation. *See In re Pleshaw*, 2 A.3d 169, 173-74 (D.C. 2011); *Utley*, 698 A.2d at 450. Based on that, the Hearing Committee concludes that Respondent's 1999 withdrawal amounts to a "pattern or course of conduct demonstrating an unacceptable disregard for the welfare of the entrusted funds." *Anderson I*, 778 A.2d at 339.

That Ms. Fulwood consented to Respondent's withdrawals makes no difference to this analysis. Such approval was the *court's*, not the guardian's, to give, SCR-PD 225, because the misappropriated funds ultimately belonged not to Ms. Fulwood, but to her son, for whose benefit the Estate was created. Because it involves the guardianship of a minor, there can be no legal consent from the ultimate beneficiary – which is why court supervision is required. *Cf. In re Berryman*, 764 A.2d 760, 772 (D.C. 2000) (consents of heirs filed with court weighs against finding of recklessness).

Ultimately, we find that Respondent's misappropriation for the 1999 withdrawal was at least reckless.

There is an additional issue that warrants consideration – the Board's finding in *In re Travers*, 764 A.2d 242 (D.C. 2000). In *Travers*, the Board determined that an attorney who did not have exclusive control of an estate checking account, because the co-signature of the personal representative was required on any check drawn on the account, was not entrusted with estate funds and thus did not commit misappropriation. *See Travers*, 764 A.2d at 250; *In re Harrison* 461 A.2d at 1036 (misappropriation is "any unauthorized use of client's funds *entrusted* to [an attorney] . . . .") (emphasis added). The Court of Appeals, noting that the case law was "sparse

and inconclusive," did not reach the question of exclusive control in *Travers* and decided the case on other grounds. *Travers,* 764 A.2d at 250.

Disciplinary Counsel asserts in its brief that "[n]either Respondent nor [Ms. Fulwood] had exclusive control of the [estate] funds." *See* ODC Brief at 27 n.14. If Disciplinary Counsel is correct as a factual matter, under *Travers*, Respondent would not have committed misappropriation.[10] However, Respondent did not raise the entrustment issue and Disciplinary Counsel did not address it.[11] In the absence of argument or briefing by the parties, the Hearing Committee is not in a position to decide the question and leaves it for the Board's consideration, with the benefit of the parties' input.[12]

III. RECOMMENDED SANCTION

The sanction for Respondent's admitted misconduct turns on the character of the misappropriation. *See In re Ahaghotu*, 75 A.3d 251, 256 (D.C. 2013) (citing *Anderson I*, 778 A.2d at 338). If the misappropriation is simply negligent, the sanction is generally a six-month

[10] The parties stipulated that there were two signatories on each of the two estate accounts, but the Stipulations fail to clarify whether both signatures were required for a withdrawal. *See* Joint Stipulations at ¶5 (the "592" account), ¶ 9 (the "231" account). However, our review of the evidence shows that Respondent's and Ms. Fulwood's signatures were required for withdrawals from both accounts. BX 1 at 50 ("Savings Certificate" for the 592 account), 71 (signature card for the 231 account). The 1999 payment—which serves as the basis for our finding of reckless misappropriation—was drawn on the 231 account, and was signed by Respondent and her client. *See* FF 24, BX 1 at 185.

[11] Respondent did not cite *Travers* or raise the entrustment issue as a defense to the misappropriation charge. In fact, her brief "concedes that she violated Rule 1.15(a) by paying herself from estate funds without receiving prior authorization from the court." R. Brief at 3. Thus, there is an argument that she waived this issue. *See*, *e.g.*, *In re Fay,* 111 A.3d 1025, 1032 (D.C. 2015) (argument not raised before the Hearing Committee is waived).

[12] Because *Travers* involved a probate estate and this matter concerns a guardianship, *Travers* may not apply, since arguably a guardianship requires enforcement of the most stringent fiduciary requirements.

suspension. *Ahaghotu*, 75 A.3d at 255; *Anderson*, 778 A.2d at 332. If it is intentional or reckless, the sanction is presumptively disbarment. *Adams*, 579 A.2d at 191. Disciplinary Counsel argues that Respondent's misappropriations were no more than negligent, and Respondent, unsurprisingly, agrees. However, as discussed above, we find that the 1999 withdrawal amounted to more than simple negligence.

Once misappropriation involving more than simple negligence has been established, the inquiry turns to whether mitigating factors have been shown sufficient to rebut the presumption of disbarment. *Anderson I*, 778 A.2d at 337 (citing *Addams*, 579 A.2d at 199). We do not find extraordinary circumstances warranting a departure from disbarment; accordingly, the sanction we recommend is disbarment.

Mitigating Factors

Respondent argues, in mitigation of sanction, that she took this case solely to assist a family member, had never before practiced in the probate division, withdrew the funds with Ms. Fulwood's approval and participation, reported each payment in required accountings, repaid the funds as soon as she was able, cooperated with Disciplinary Counsel, admitted her misconduct, and agreed to a negotiated discipline. She also notes that in the 16 years since the events at issue, she has become a respected member of the legal community, and that her former supervisor, former D.C. Bar President James Sandman, describes her as a lawyer of great integrity, who is "honest as the day is long," and a "careful, highly competent and scrupulous lawyer."

We recognize that Respondent was unfamiliar with probate practice, that she reluctantly undertook the representation at the behest of a family member, that she did not have exclusive control of the funds in question, and that she withdrew the funds with the complete and contemporaneous approval – even urging – of her client, Ms. Fulwood. Moreover, this was

Respondent's only probate representation, and indeed, she has left the private practice of law. In addition, based on the information before us, Respondent has a distinguished record of service to the District of Columbia's public school system.

However, in cases of reckless or intentional misappropriation, departure from the presumption of disbarment is warranted "only in extraordinary circumstances." *Addams,* 579 A.2d at 191; *see also id.* at 193 (disbarment warranted absent "the most stringent of extenuating circumstances"). Mitigating facts "of the usual sort," like those cited by Respondent, "overcome the presumption of disbarment only if they are especially strong and, where there are aggravating factors, they substantially outweigh the aggravating factors as well." *Id*. at 191; *see In re Hewett,* 11 A.3d 279, 286-87 (D.C. 2011) ("usual" mitigating factors include "(1) an admission of wrongdoing, (2) full cooperation with the disciplinary authorities, (3) prompt return of the disputed funds, and, most importantly, (4) an unblemished record of personal conduct."). "The exceptional case envisioned in *Addams* [is] where, notwithstanding intentional misappropriation, 'giving effect to mitigating circumstances is consistent with protection of the public and preservation of public confidence in the legal profession.'" *In re Hewett*, 11 A.3d 279, 287-88 (D.C. 2011) (quoting *Addams*, 579 A.2d at 195).

Other than cases involving "*Kersey* mitigation,"[13] which is not applicable here, the Court of Appeals has found "extraordinary circumstances" supporting a departure from the presumption of disbarment only once, in *Hewett.* There, in an attempt to spend down his ward's cash assets to

[13] Under *In re Kersey,* 520 A.2d 321, 327 (D.C. 1987), mitigation of sanction is appropriate where the misconduct was substantially caused by a disability or addiction, and the respondent is substantially rehabilitated. *See, e.g., In re Verra,* 932 A.2d 503, 505 (D.C. 2007) (where the respondent showed that he had been substantially rehabilitated from the depression that had been a substantial cause of his reckless misappropriation, disbarment was suspended in favor of 30-day suspension and three years' probation). *Kersey* mitigation is not applicable here because Respondent did not assert that her misconduct was substantially caused by a disability or addiction.

below $2,500 in order to maintain his ward's Medicaid eligibility, the respondent withdrew funds to pay his legal fees without the necessary prior court approval, thus committing intentional misappropriation.

In its sanction analysis, the Court found that in addition to the "usual sort" of mitigating factors (respondent was cooperative with disciplinary authorities, admitted his misconduct, legitimately believed he was permitted to withdraw the money, and had a record of no discipline, as well as an "unquestioned" devotion to the ward over an eleven-year period), the respondent's actions were intended to benefit the ward by maintaining his Medicaid eligibility. *Id.* at 287. Indeed, the Court focused on the fact that the respondent's conduct was "motivated solely by a desire to protect his ward's interests," to distinguish *Hewett* from cases where disbarment was imposed. *Id.* at 288-89. In *Hewett,* the Court imposed a six-month suspension, which was stayed pending a six-month period of probation. *Id.* at 290.

The Hearing Committee cannot find that this case presents extraordinary circumstances comparable to *Hewett* and necessary to overcome the presumption of disbarment under *Addams*. Respondent's misappropriation was not intended to benefit the ward. It was intended to recover legal fees. The funds withdrawn were for Respondent's benefit, and no one else's. The Court in *Hewett* relied heavily on who benefited from the misappropriation. This case is different from *Hewett* in that regard.

This is not to say that we are unsympathetic to Respondent's situation. But, based on the mitigation in this case described above, we do not see extraordinary circumstances like those present in *Hewett.*

There is one other possible basis for mitigation – the extremely long delay between the time the conduct at issue took place and when this case was brought to a contested hearing.

Respondent's 1999 withdrawal occurred more than fifteen years ago, and it has been fourteen years since this disciplinary matter was referred to Disciplinary Counsel by the Superior Court. By any measure, this is a significant and troubling delay.

In the ordinary case, delay will not mitigate the sanction otherwise necessary to protect the public unless the delay is "unique and compelling." *In re Fowler*, 642 A.2d 1327, 1331 (D.C. 1994). And even where the misconduct is serious, the Court of Appeals has held that delay will not mitigate the sanction otherwise necessary to protect the public. *See Howes*, 39 A.3d 1, 19 n.24 (D.C. 2012) (no mitigation for twelve-year delay that did not prejudice the respondent); *In re Ponds*, 888 A.2d 234, 244 (D.C. 2005) (no mitigation for five-year delay that did not prejudice the respondent). In light of these cases, we cannot find that this delay is sufficient to mitigate the presumptive sanction of disbarment. We, therefore, recommend that the Respondent be disbarred.

CONCLUSION

Accordingly, we find that Respondent committed reckless misappropriation, in violation of Rule 1.15(a) and the failure to maintain complete records, in violation of D.C. Bar R. XI, § 19(f), and recommend that she be disbarred.

HEARING COMMITTEE NUMBER ONE

/MGK/
Matthew G. Kaiser, Esquire
Chair

/CI/
Carol Ido
Public Member

/MJK/
Matthew J. Kelly, Esquire
Attorney Member

Dated: