THIS REPORT IS NOT A FINAL ORDER OF DISCIPLINE*

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

In the Matter of:	:	
	:	
Robert P. Waldeck,	:	Board Docket No. 21-BD-038
	:	
Respondent.	:	Disc. Docket Nos. 2016-D066
	:	2017-D195, 2020-D041, 2020-D042,
A Member of the Bar of the	:	2020-D057, 2020-D058 & 2020-
District of Columbia Court of Appeals	:	D124
(Bar Registration No. 494643)	:	

REPORT AND RECOMMENDATION OF THE AD HOC HEARING COMMITTEE

Respondent, Robert P. Waldeck, is charged with violating Rules 1.3(a), 1.3(b)(1), 1.3(b)(2), 1.3(c), 1.4(a), 1.5(b), 1.15(a), 1.15(b), 1.15(e), 1.16(d), 8.4(c), and 8.4(d) of the District of Columbia Rules of Professional Conduct (the "Rules"), arising from his alleged mishandling of entrusted funds and his representation of six different clients. Disciplinary Counsel contends that Respondent committed all of the charged violations and that he should be disbarred as a sanction for his intentional, or at least reckless, misappropriation. Respondent did not participate in these proceedings, and has not filed a brief in opposition, the time for doing so having expired.

As set forth below, the Hearing Committee concludes that Disciplinary Counsel has proven by clear and convincing evidence that Respondent violated Rules 1.3(a), 1.3(b)(1), 1.3(b)(2), 1.3(c), 1.4(a), 1.15(a) (in part), 1.15(b), 1.15(e),

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* Consult the 'Disciplinary Decisions' tab on the Board on Professional Responsibility's website (www.dcattorneydiscipline.org) to view any subsequent decisions in this case.

1.16(d), 8.4(c), and 8.4(d). We conclude that Disciplinary Counsel did not prove that Respondent violated Rule 1.5(b), or the recordkeeping provision of Rule 1.15(a). We recommend that Respondent be disbarred because he repeatedly engaged in intentional, or at least reckless, misappropriation of entrusted funds.

I. PROCEDURAL HISTORY

On July 18, 2021, Disciplinary Counsel served Respondent with a Specification of Charges ("Specification"). A pre-hearing conference was held on November 18, 2021. Respondent was not present, and no counsel appeared on his behalf. The evidentiary hearing in this matter was held on January 10, 2022, before this Ad Hoc Hearing Committee (the "Hearing Committee"). Disciplinary Counsel was represented at the hearing by Jelani C. Lowery, Esquire. Respondent was not present at the evidentiary hearing, and no counsel appeared on his behalf. Respondent has not participated in this disciplinary matter in any fashion.

The following exhibits were received in evidence: DX 1-44.[1]

During the hearing, Disciplinary Counsel called as witnesses Office of Disciplinary Counsel Investigative Attorney Azadeh Matinpour, Esquire and Respondent's former clients: Thomas Coughlin, Jared Hautamaki, John Lowrie, Shawn Drayson, Errica Edwards, and Vivian Barial.

Upon conclusion of the hearing, the Hearing Committee made a preliminary, non-binding determination that Disciplinary Counsel had proven at least one of the

[1] "DX" refers to Disciplinary Counsel's exhibits. "RX" refers to Respondent's exhibits. "Tr." refers to the transcript of the hearing held on January 10, 2022.

Rule violations set forth in the Specification. Tr. 238-39; *see* Board Rule 11.11. Disciplinary Counsel offered no additional evidence in aggravation of sanction. Tr. 239.

II. FINDINGS OF FACT

The following findings of fact are based on the testimony and documentary evidence admitted at the hearing, and these findings of fact are established by clear and convincing evidence. *See* Board Rule 11.6; *In re Cater*, 887 A.2d 1, 24 (D.C. 2005) ("[C]lear and convincing evidence" is more than a preponderance of the evidence, it is '"evidence that will produce in the mind of the trier of fact a firm belief or conviction as to the fact sought to be established").

1. Respondent is a member of the Bar of the District of Columbia Court of Appeals, having been admitted by motion on October 14, 2005, and assigned Bar Registration Number 494643. DX 1.

Count I – Waldeck/Disciplinary Counsel 2016-D066

2. From April 2015 through April 2016, Respondent maintained an IOLTA at Wells Fargo Bank, N.A. in the name of "Robert P. Waldeck PLLC IOLTA Attorney Escrow Account," with an account number ending in 1051. DX 9 at 90-129.

3. Respondent accepted advanced legal fees from five clients (Jacqueline Jacobs, Brenda Alexander, James Reives, Houssain Naziri, and Monique Pettett). Respondent did not have authority to use his clients' funds before they were earned. In his retainer agreements he told his clients that the firm would keep their advanced

legal fees in a trust account until they were earned. DX 8 at 1-2, 7-8, 16-17, 24-25, 34-35. He agreed not to withdraw funds from the trust account until after the clients were billed for the work he had done, and the clients authorized the withdrawals. *Id*.

4. Between November 1, 2015, and January 1, 2016, Respondent's trust account balance was consistently thousands of dollars less than the combined advanced fees he was required to hold in trust for five clients: Jacqueline Jacobs, Brenda Alexander, James Reives, Houssain Naziri, and Monique Pettett. DX 10. For example:

a. According to Respondent's own billing statements, on November 1, 2015, Respondent should have been holding $11,189.00 in trust for these five clients ($1,026.50 for Jacobs (DX 8 at 4), $1,515 for Alexander (DX 8 at 10), $3,880 for Reives (DX 8 at 20), $3,367 for Naziri (DX 8 at 28), and $1,400.50 for Pettett (DX 8 at 38)). However, the "beginning balance" in his trust account for November 1, 2015, was $6,288.96, which was $4,900.04 less than it should have been. DX 9 at 112; DX 10. During November 2015, Respondent wrote four checks transferring $2,334 from his trust account to his operating account. DX 9 at 70, 72-74, 113.

b. According to Respondent's own billing statements, on December 1, 2015, Respondent should have been holding $8,430.00 in trust for these five clients ($1,026.50 for Jacobs (DX 8 at 5), $1,405 for Alexander (DX 8 at 10), $3,385 for Reives (DX 8 at 20), $1,213 for Naziri (DX 8 at 29), and $1,400.50 for Pettett (DX 8 at 39)). However, the "beginning balance" in his

trust account for December 1, 2015 was $2,852.96, which was $5,577.04 less than it should have been. DX 9 at 115; DX 10. During December 2015, Respondent wrote seven checks transferring $2,309 from his trust account to his operating account. DX 9 at 75-81, 116.

c. According to Respondent's own billing statements, on January 1, 2016, Respondent should have been holding $3,960.00 in trust for four of the five clients ($1,026.50 for Jacobs (DX 8 at 5), $1,322.50 for Alexander (DX 8 at 10), $210.50 for Naziri (DX 8 at 33), and $1,400.50 for Pettett (DX 8 at 39)).[2] However, the "beginning balance" in his trust account for January 1, 2016, was $543.96, which was $3,416.04 less than it should have been. DX 9 at 118; DX 10.

5. Between November 1, 2015, and January 11 2016, Respondent sent bills—and in one case an email—to his clients falsely claiming that he was holding their funds in trust. DX 8 at 4-5, 10-13, 20-21, 27-33, 37-39. For example:

a. The billing statement for Mr. Reives dated December 1, 2015, falsely stated that the total amount remaining in trust for Mr. Reives was $3,385. DX 8 at 20. The balance in Respondent's IOLTA account on December 1, 2015, was $2,852.96. DX 9 at 115.

b. The billing statement for Mr. Reives dated December 7, 2015,

[2] Disciplinary Counsel did not have a bill for Reives covering January 1, 2016. Therefore, the Hearing Committee makes no finding as to the amount that should have been held in trust for Reives as of that date.

falsely stated that the total amount remaining in trust for Mr. Reives was $2,895. DX 8 at 21. The balance in Respondent's IOLTA account on December 7, 2015, was $1,044.96. DX 9 at 116.

c. The billing statement for Ms. Alexander dated January 11, 2016, falsely stated that the total amount remaining in trust for Ms. Alexander was $1,322.50. DX 8 at 10. The balance in Respondent's IOLTA account on January 11, 2016, was *negative* $150.04. DX 9 at 119.

6. On January 11, 2016, Respondent overdrew his IOLTA account when he wrote check number 1670 in the amount of $192.50 made payable to his operating account, leaving a balance in the account of negative $150.04. DX 4 at 4; DX 9 at 119.

7. Wells Fargo reported the overdraft to Disciplinary Counsel. DX 4 at 4; Tr. 15.

8. On April 26, 2016, Disciplinary Counsel sent a letter to Respondent asking him to explain the overdraft. DX 4; Tr. 15-16. Disciplinary Counsel asked Respondent to provide copies of the financial records—specifically, for the period of December 11, 2015, through April 26, 2016—that he was required to maintain for his IOLTA under Rule 1.15(a) of the District of Columbia Rules of Professional Conduct. DX 4 at 2; Tr. 16.

9. On May 20, 2016, Respondent submitted his Response to Disciplinary Counsel. DX 5. Respondent also provided about 150 pages of financial records, including billing statements for some clients whose funds the firm held in trust

during the relevant time period. DX 5 at 4; Tr. 17. In this response, Respondent asserted that the overdraft "occurred because a deficit in the account existed due to the fact that the Firm's credit card processor deducted fees incurred by the Firm for accepting credit card payments for retainer amounts from the trust account." DX 5 at 1. He further explained that the January 11, 2016 overdraft resulted from his inability to reimburse the trust account for credit card processing fees taken out of the account between 2007 and 2011. DX 5 at 2-3; Tr. 17; *see also* Tr. 35. According to his letter to Disciplinary Counsel, Respondent learned of the unreimbursed credit card fees in 2011, but "[p]ressed by the work requirements and financial pressures of a solo firm, [Respondent] was unfortunately unable to pay off the deficit." DX 5 at 3.

10. On September 14, 2016, Disciplinary Counsel sent Respondent a subpoena for the office files he kept in conjunction with his representations of four clients: Brenda Alexander, Jacqueline Jacobs, Donald Pickney, and James Reives. DX 6 at 1-4; Tr. 18.

11. On October 13, 2016, in response to the September 14, 2016, subpoena, Respondent delivered to Disciplinary Counsel copies of his office files—including financial records—for each of the four clients. DX 6 at 5; Tr. 19.

12. On November 28, 2016, Disciplinary Counsel subpoenaed Respondent's trust account records from Wells Fargo. DX 9 at 4-5. In response, Wells Fargo provided the records from Respondent's IOLTA for the period of April 2015 through April 2016. DX 9 at 6-129.

13. On March 8, 2019, Disciplinary Counsel sent another subpoena to Respondent, this time requesting the office files he kept in conjunction with his representations of seven other clients. DX 7 at 1-4; Tr. 19.

14. On October 3, 2019, Respondent provided a partial response to Disciplinary Counsel's subpoena. He sent several zip files by email containing documents related to his representation of Houssain Naziri. DX 7 at 5-8. The next day, October 4, 2019, Respondent delivered a flash drive to Disciplinary Counsel that contained additional documents related to his representations of Houssain Naziri and Monique Pettett. DX 7 at 9-11. Respondent never provided the office files for the other five clients listed on Disciplinary Counsel's March 8, 2019, subpoena. Tr. 20.

15. Disciplinary Counsel's investigator, Azadeh Matinpour, analyzed the financial records received from Respondent, as well as the trust account records received from Wells Fargo, to determine whether Respondent's trust account had fallen below the amount he was required to hold in trust for his clients. Tr. 22-23. She determined that the balance fell below the required amount on multiple occasions. She created a spreadsheet to illustrate the discrepancy between the amount Respondent should have been holding in trust for the five clients and the actual balance of his trust account. DX 10; Tr. 22-33 (Matinpour explaining how spreadsheet figures were calculated using records in DX 8 and DX 9).

16. The records that Respondent provided to Disciplinary Counsel do not cover the time period of when the purported unreimbursed credit card charges

occurred. Tr. 34-37. However, there is no evidence to contradict Respondent's concessions that (1) he learned in 2011 that credit card fees had been withdrawn from the trust account between 2007 and 2011, and (2) those fees had not been fully reimbursed as of his May 20, 2016, letter to Disciplinary Counsel. DX 5 at 3.

Count II – Waldeck/Kelly 2017-D195

17. On April 24, 2017, Timothy Kelly met with and retained Respondent to appeal to the Merit Systems Protection Board regarding Mr. Kelly's removal from federal service. DX 11; DX 13 at 4-5, 23-24.

18. At the April 24, 2017, meeting, Mr. Kelly paid a $2,500 installment of a $5,000 flat fee to Respondent by credit card. DX 13 at 5; Tr. 43-45. The money was deposited directly into Respondent's operating account at Wells Fargo Bank, N.A. titled "Robert P. Waldeck PLLC" with an account number ending in 1019. DX 14 at 3; Tr. 45-46. Respondent's operating account held his own funds on that date and thereafter. DX 14 at 3 (showing repeated withdrawals for personal expenses (restaurants, pharmacies, ride-sharing services, etc.) before and after Mr. Kelly's fee was deposited).

19. The next day, April 25, 2017, Mr. Kelly terminated the representation and requested a refund. DX 13 at 46-47, 91-92.

20. On April 26, 2017, Respondent sent Mr. Kelly a closing letter stating that "the firm does not have a refund policy for flat-fee cases. However, in the interest of equity, the Firm has decided to bill you at the standard rate of $310 an hour for the small amount of work done on the case." DX 13 at 94.

21. Respondent billed Mr. Kelly $465.00 for his time spent working on the case and issued Mr. Kelly a check in the amount of $2,035.00. DX 13 at 6, 96-98. Tr. 46. Mr. Kelly did not cash the check. DX 13 at 6.

22. Mr. Kelly contacted his credit card company to dispute Respondent's fee, and on May 3, 2017, the credit card company reversed the entire transaction, crediting $2,500 back to Mr. Kelly. DX 13 at 6; DX 14 at 9; Tr. 47.

Count III – Waldeck/Edwards 2020-D041

23. At the end of 2018 or beginning of 2019, Erica Edwards hired Respondent because she had experienced a sexual assault at work and wished to initiate complaint proceedings. Tr. 176-177.

24. Ms. Edwards paid Respondent $5,000 for the representation. Tr. 179. Ms. Edwards took money out of her TSP retirement fund to pay Respondent. Tr. 181.

25. At the beginning of the representation, Respondent performed some services as her attorney, but as time progressed Ms. Edwards began having more and more difficulty contacting Respondent, until eventually he stopped communicating with her entirely. Tr. 177, 179.

26. When she could not contact Respondent, Ms. Edwards tried to obtain information about her case from her job, but they would not communicate with her because Respondent was still her attorney of record. Tr. 179.

27. By ceasing all communication with Ms. Edwards and stopping work on her case, Respondent effectively terminated the representation by abandoning

Ms. Edwards. Tr. 179, 182. Ms. Edwards had to hire a new attorney and "start all over" with her case. Tr. 181. Ms. Edwards paid the new attorney $5,000. Tr. 181-182.

28. After hiring the new attorney, Ms. Edwards continued her attempts to contact Respondent. Tr. 180. Because Ms. Edwards lived in Texas, she asked friends and family in the DC area to go to Respondent's office, but the office was always closed. *Id*.

29. Although the representation ended, Respondent did nothing to protect Ms. Edwards' interests. Tr. 180. When Ms. Edwards and her new attorney tried to get her file, Respondent did not respond. Tr. 182. Respondent also did not give Ms. Edwards any refund and never provided any accounting showing that he had earned the advanced fees Ms. Edwards had paid to him. Tr. 180-183.

30. On February 4, 2020, Ms. Edwards filed a complaint with Disciplinary Counsel. DX 15; Tr. 175-176.

31. On February 11, 2020, Disciplinary Counsel mailed and emailed a copy of Ms. Edwards' complaint to Respondent. DX 16; DX 17. Respondent did not respond. Tr. 49.

32. On April 20, 2020, Disciplinary Counsel emailed Respondent a copy of Ms. Edwards' complaint. DX 20; Tr. Tr 48-50 Respondent did not respond. *Id*.

33. On August 19, 2020, Disciplinary Counsel sent Respondent another letter with a copy of Ms. Edwards' complaint via certified mail. DX 18; Tr. 50. The letter was delivered on August 24, 2020. DX 19; Tr. 51. Respondent never

responded. Tr. 51.

Count IV – Waldeck/Hautamaki 2020-D042

34. Jared Hautamaki is an attorney and former tribal appellate judge. Tr. 87. He has worked for the Environmental Protection Agency ("EPA") since 2008. *Id*. In 2017, Mr. Hautamaki encountered racial discrimination and retaliation at work. *Id*. He initially hired different counsel to assist him in pursuing Equal Employment Opportunity (EEO) claims but had to terminate the representation because it was too expensive. *Id*.

35. Mr. Hautamaki sought new counsel who would take the case on a contingency fee basis. Tr. 88. In April or May 2019, Mr. Hautamaki hired Respondent to represent him in the EEO cases. DX 21 at 3; Tr. 88.

36. Mr. Hautamaki agreed to pay Respondent a $1,500 retainer plus a 30% contingency fee. Tr. 88-89. Respondent and Mr. Hautamaki executed a written retainer agreement. Tr. 88-89. Mr. Hautamaki received a paper copy but not an electronic copy. *Id*.

37. On June 14, 2019, Mr. Hautamaki asked Respondent to send him another copy of the retainer agreement. DX 44 at 7; Tr. 89, 114. Respondent never did so. Tr. 89, 114.

38. On June 25, 2019, Respondent represented Mr. Hautamaki at the initial scheduling conference where a schedule was set by Judge Wright for completing discovery by the first or second week of December 2019. DX 44 at 1; Tr. 91-92, 113. Mr. Hautamaki never received a copy of the scheduling order. Tr. 91.

39. On or about August 9, 2019, EPA served its discovery requests on Respondent. DX 44 at 9.

40. In early September 2019, Mr. Hautamaki met with Respondent and provided him with a USB drive with 600 pages of documents that he had compiled during the course of the EEO investigations. DX 21 at 163; Tr. 89-90.

41. Throughout September, October and November, Mr. Hautamaki repeatedly asked Respondent for status updates on the progress of obtaining discovery from EPA and on providing responses to EPA's discovery requests. DX 21 at 12-19; Tr. 92. Respondent kept putting Mr. Hautamaki off, claiming he was working on a matter related to impeachment, Ukraine, and javelin missiles. Tr. 92, 96.

42. On Thursday, November 21, 2019, Respondent sent discovery requests to the EPA, asking to depose ten witnesses on November 26th. DX 44 at 9; Tr. 115-116.

43. On Friday, November 22, 2019, EPA sent an email to Respondent stating that two business days' notice was insufficient time for EPA to produce ten high-level officials for depositions on the Tuesday before Thanksgiving. DX 44 at 9; Tr. 115.

44. At this time, Respondent still had not provided answers to EPA's discovery requests, despite Mr. Hautamaki having given him the documents and interrogatory responses in September. DX 44 at 9; Tr. 116.

45. Respondent did not tell Mr. Hautamaki about the email from EPA

stating that the ten witnesses would not be available for depositions on November 26, 2019. DX 21 at 18-19; Tr. 92-93, 117. Instead, Respondent told Mr. Hautamaki that the EPA "did not say no" and led him to believe that the depositions were scheduled to go forward. *Id*.

46. On Tuesday, November 26, 2019, Mr. Hautamaki went to Respondent's office for the depositions. Tr. 92-93, 118. A court reporter was present, but the witnesses from the EPA did not appear. DX 44 at 10; Tr. 92-93, 100.

47. After the failed depositions, Respondent still did not tell Mr. Hautamaki that the EPA had told him the witnesses would not appear due to the last-minute nature of his request. Tr. 100-101. Instead, Respondent convinced Mr. Hautamaki that they should file a motion to compel, blaming EPA and not Respondent, for their failure to appear. Tr. 93, 100-101.

48. On November 27, 2019, Respondent filed a response to EPA's discovery requests. DX 21 at 68-162. In part I, Respondent provided answers to the agency's interrogatories but included track-changed edits that were highlighted in red and blue. DX 21 at 68-86; Tr. 98. In part II, Respondent replied to the agency's request for documents by providing a list of documents. DX 21 at 87-162. Respondent did not however produce the actual documents which Mr. Hautamaki had given him in early September. Tr. 99.

49. On or around December 10, 2019, Respondent filed a motion to compel. Tr. 100.

50. On December 17, 2019, EPA filed a motion for summary judgment. DX 21 at 29-30; Tr. 102-103.

51. Over the next three weeks, Mr. Hautamaki repeatedly asked Respondent about the plan for, and the progress on, the response to the motion for summary judgment which was due on January 6, 2020. DX 25-31; Tr. 102-104.

52. On January 6, 2020, at 2:17 PM, Judge Wright sent an email to Respondent and to Mr. Hautamaki denying the motion to compel because it was "unreasonable [for Respondent] to expect the EPA to prepare 10 witnesses, including high-level managers, for depositions with less than five days' notice. The parties had ample time to complete discovery (over 4 months), yet [Respondent] failed to timely notice depositions in the matter or seek any further extensions of the discovery period." DX 44 at 11. This was the first time Mr. Hautamaki learned that the depositions did not occur because of Respondent's delay. Tr. 93, 97, 101, 117. Judge Wright also noted that Mr. Hautamaki's response to the motion for summary judgment was due that same day, January 6, 2020. *Id*.

53. At this time, Mr. Hautamaki still had not received from Respondent a draft response to the motion for summary judgment. DX 21 at 32-33. Mr. Hautamaki emailed and texted Respondent repeatedly that day asking when the response would be complete. DX 21 at 32-33; Tr. 103-104. Respondent eventually sent a "fact section" around 9:30 PM that was missing key facts that Mr. Hautamaki wanted included. DX 21 at 34-43.

54. Respondent continued working on the response until late at night, after

Mr. Hautamaki had gone to bed. Tr. 106. At one point, he sent a text message to Mr. Hautamaki asking to drop one of the claims. DX 21 at 165; Tr. 106. Mr. Hautamaki did not respond because he was asleep. *Id.* ("It was 10:00 or 11:00 o'clock at night."). Respondent ultimately did not drop the claim, but provided only a one-sentence defense, and it was later dismissed by the judge. Tr. 107.

55. On January 15, 2020, Mr. Hautamaki emailed Respondent and terminated the representation. DX 21 at 169; Tr. 107. He asked Respondent to turn over his client file, but Respondent did not do so. *Id*.

56. Also on January 15, 2020, Mr. Hautamaki emailed Judge Wright explaining that he had terminated Respondent due to his failure to communicate, failure to provide zealous representation, and misrepresentations during the discovery process. DX 44 at 13-14.

57. Thereafter, Mr. Hautamaki represented himself *pro se*. Tr. 119-124.

58. On January 22, 2020, Mr. Hautamaki emailed Respondent, again asking for the client file. Respondent did not turn over the file. DX 21 at 170; Tr. 108.

59. On January 25, 2020, Mr. Hautamaki emailed Respondent asking for the client file. Respondent did not turn over the file. DX 21 at 171; Tr. 109.

60. Despite never receiving his file from Respondent, Mr. Hautamaki ultimately achieved a favorable settlement with EPA. Tr. 119-124. However, Respondent's actions as Mr. Hautamaki's counsel "added an incredible amount of extra stress to an already . . . bad situation." Tr. 119. In addition, Mr. Hautamaki

believed that with the help of an employment attorney, he would have pursued and potentially prevailed on additional claims. Tr. 123.

61. On February 6, 2020, Mr. Hautamaki filed a complaint with Disciplinary Counsel. DX 21; Tr. 86-87.

62. On February 11, 2020, Disciplinary Counsel mailed and emailed a copy of Mr. Hautamaki's complaint to Respondent. DX 22; DX 23; Tr. 51-52. Respondent did not respond. Tr. 51-52.

63. On April 20, 2020, Disciplinary Counsel again emailed Respondent a copy of Mr. Hautamaki's complaint. DX 20; Tr. 52. Respondent did not respond. *Id*.

64. On August 19, 2020, Disciplinary Counsel sent Respondent another letter with a copy of Mr. Hautamaki's complaint via certified mail. DX 24. The letter was delivered on August 27, 2020. DX 25; Tr. 52-53. Respondent never responded. Tr. 53.

Count V – Waldeck/Drayson 2020-D057[3]

65. In 2019, Shawn Drayson worked for the Postal Service in the Billings, Montana area. Tr. 129, 160-161. The Postal Service sought to terminate Mr. Drayson for violations of a Postal Service policy. Tr. 129. Mr. Drayson initiated the EEO process. Tr. 130-131. The Postal Service was concerned about following through with disciplinary action against Mr. Drayson because of his disabilities and

[3] The Specification erroneously lists this as Count IV.

the pending EEO matter. *Id*.

66. The Postal Service wanted to enter into a global settlement with Mr. Drayson whereby he would be allowed to retire on disability but forfeit his other claims. DX 30 at 3-9; Tr. 134-135.

67. On August 8, 2019, John Lowrie, an attorney for the Postal Service, sent Mr. Drayson a rough draft settlement agreement. DX 30 at 3-9; Tr. 135-136, 140.

68. On August 27, 2019, Mr. Drayson hired Respondent to represent him. DX 26 at 4; Tr. 160. Mr. Drayson agreed to pay $2,500 for Respondent to negotiate a settlement with the Postal Service in the removal matter and another $2,500 for Respondent to process Mr. Drayson's disability retirement application. DX 26 at 8, 12; Tr. 161. Mr. Drayson paid Respondent the total advanced flat fee of $5,000. Tr. 161-162.

69. On August 27, 2019, Respondent notified Mr. Lowrie, the Postal Service attorney, that he had taken over Mr. Drayson's case. DX 30 at 13-15; Tr. 138-139.

70. On September 5, 2019, Mr. Lowrie sent Respondent an email in an effort to move forward with the proposed settlement. DX 30 at 16; Tr. 142. Mr. Lowrie asked Respondent if Mr. Drayson would be willing to settle the case if 30-days' pay was added as additional consideration. *Id*. Mr. Lowrie was concerned about the possibility of Mr. Drayson suing the Postal Service under the Rehabilitation Act of 1973. Tr. 142-143. The Postal Service remained willing to

assist Mr. Drayson in obtaining his disability retirement. *Id*.

71. Respondent responded to Mr. Lowrie that he just got the file and still needed time to finish reviewing it. DX 30 at 16; Tr. 144.

72. On Tuesday, September 17, 2019, Mr. Lowrie emailed Respondent, asking if they were going to be able to finalize a settlement agreement. DX 30 at 18. Respondent replied that he was busy but would call Mr. Lowrie on Thursday, September 19, 2019. *Id*.

73. On September 27, 2019, Respondent sent Mr. Lowrie an email apologizing for the delay. DX 30 at 20. Respondent explained that Mr. Drayson's mother had passed away and asked if the settlement agreement could be finalized on Thursday, October 3, 2019. DX 30 at 20; Tr. 148-150.

74. On October 3, 2019, Respondent emailed Mr. Lowrie that he was running behind because he was working on something related to whistleblowers and the impeachment of President Trump. DX 30 at 22; Tr. 146-147.

75. After October 3, 2019, Respondent stopped communicating with Mr. Lowrie. Tr. 150-151.

76. On January 24, 2020, Mr. Lowrie tried again to resolve the case. Tr. 152. Mr. Lowrie asked Respondent if he was still representing Mr. Drayson. DX 30 at 23. Respondent did not respond. Tr. 152.

77. Aside from emailing Mr. Lowrie a couple times on ministerial matters, Respondent did nothing to advance Mr. Drayson's case. Tr. 140-155, 166. He filed nothing with the Postal Service, and otherwise took no action to move Mr. Drayson's

EEO case forward. *Id*. Respondent also did not file the application for Mr. Drayson's disability retirement. Tr. 166.

78. Throughout the representation, Mr. Drayson communicated with Respondent by telephone, text message, and email. DX 31; Tr. 163-164. As time wore on, Mr. Drayson began to have greater difficulty communicating with Respondent. Tr. 164. Respondent did not consistently return phone calls, answer requests for information, or provide status updates. *Id*.

79. The last communication Mr. Drayson received from Respondent was in December 2019. DX 31 at 40; Tr. 167-170. Mr. Drayson continued attempting to contact Respondent for the remainder of December and through early February 2020. DX 31 at 40-43; Tr. 164, 167-170. Respondent never communicated with Mr. Drayson again. *Id*.

80. By ceasing all communication with Mr. Drayson and failing to take action to move his case forward, Respondent abandoned his client and effectively terminated the representation. Tr. 168. Mr. Drayson had to hire a former Postal Service employee to assist him with obtaining his disability retirement. *Id*.

81. Although the representation ended, Respondent did nothing to protect Mr. Drayson's interests. Respondent never gave Mr. Drayson his file, and he never provided any accounting showing whether and how he had earned the advanced fees Mr. Drayson had paid. Tr. 168. Respondent did not refund any of Mr. Drayson's money. *Id*.

82. Mr. Drayson eventually obtained his disability retirement with the help

of the former Postal Service employee. Tr. 153, 168. Mr. Drayson and the former employee did all the necessary work. Tr. 168, 170. They obtained the needed medical records, and then compiled and submitted the retirement application package. *Id*.

83. Mr. Drayson was unable to obtain the additional 30 days' pay the Postal Service had offered in exchange for settling his EEO matter. Tr. 153. Mr. Drayson also did not get to pursue further his EEO claims. Tr. 153-154. Even after obtaining the disability retirement, Mr. Drayson still had viable EEO claims that a competent attorney would have pursued. Tr. 154. But ultimately, the statute of limitations ran, and Mr. Drayson lost his ability to pursue those claims. Tr. 155.

84. Mr. Drayson filed a request for fee arbitration with the Attorney Client Arbitration Board (ACAB). DX 32; Tr. 169-170. ACAB held a hearing on December 15, 2020. DX 32. Respondent did not appear. DX 32 at 1. On December 16, 2020, ACAB issued a decision requiring Respondent to refund the entire $5,000 Mr. Drayson had paid. *Id*. As of the date of the hearing in this matter (January 10, 2022), Respondent had not satisfied the ACAB award. Tr. 170. Mr. Drayson has not received a refund of any portion of the $5,000 fee. Tr. 170.

85. Mr. Drayson believed Respondent had taken advantage of him because of his disability and "just took the money and ran with it." Tr. 170-171.

86. On February 18, 2020, Mr. Drayson filed a complaint with the Office of Disciplinary Counsel. DX 26; Tr. 160.

87. On March 2, 2020, Disciplinary Counsel mailed a copy of

Mr. Drayson's complaint to Respondent. DX 27; Tr. 53. Respondent did not respond. Tr. 53.

88. On April 20, 2020, Disciplinary Counsel emailed Respondent a copy of Mr. Drayson's complaint. DX 20; Tr. 49-50. Respondent did not respond. *Id*.

89. On August 19, 2020, Disciplinary Counsel sent Respondent another letter with a copy of Mr. Drayson's complaint via certified mail. DX 28; Tr. 53. The letter was delivered on August 24, 2020. DX 29; Tr. 53-54. Respondent never responded. Tr. 53-54.

Count VI – Waldeck/Coughlin 2020-D058[4]

90. On June 5, 2019, Thomas Coughlin filed in the Superior Court of the District of Columbia a *pro se* petition for review of an agency decision of the District of Columbia Retirement Board. DX 37; Tr. 63, 70-71.

91. On September 27, 2019, Mr. Coughlin hired Respondent to represent him and paid him a $5,000 advanced fee. DX 33 at 3-6; Tr. 63, 69-70.

92. At the time Respondent was hired, Mr. Coughlin faced an approaching deadline for his initial brief, which was due on October 4, 2019. Tr. 63.

93. On October 2, 2019, Respondent moved for an extension of time to file Mr. Coughlin's initial brief. DX 38; Tr. 64.

94. Shortly after Mr. Coughlin hired Respondent, the District of Columbia Retirement Board filed a motion to dismiss the case. Tr. 71.

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[4] The Specification erroneously lists this as Count V.

95. After receiving the motion to dismiss, Respondent advised Mr. Coughlin that a petition for review of an agency decision, which he had filed, was not the correct avenue for relief. Tr. 64; 72-73. Respondent advised Mr. Coughlin that the best course of action would be to dismiss voluntarily the petition and then re-file the claim as a civil suit. DX 40 at 2; Tr. 64-65.

96. On October 16, 2019, Respondent filed a Praecipe Notice of Voluntary Dismissal, and on October 21, 2019, the Court dismissed the case. DX 39.

97. On October 22, 2019, Mr. Coughlin emailed Respondent asking if there was anything else Respondent needed him to do to get the case refiled. DX 33 at 2; DX 40 at 3; Tr. 65.

98. On October 29, 2019, Mr. Coughlin sent another email asking for an update on the refiling of the case. DX 33 at 2; DX 40 at 3; Tr. 65.

99. On October 30, 2019, Respondent emailed Mr. Coughlin and said he would be re-filing in D.C. Superior Court "soon." DX 33 at 2; DX 40 at 3; Tr. 65.

100. On November 21, 2019, Mr. Coughlin again asked Respondent for a status update on the re-filing of the case. DX 33 at 2; DX 40 at 4; Tr. 65.

101. On December 5, 2019, Respondent told Mr. Coughlin that he was still working on the case and that he would be filing it the following week. DX 33 at 2; DX 40 at 4; Tr. 65.

102. On December 16, 2019, Respondent texted Mr. Coughlin that they still had several months to file the new case and asked if he could wait until after the Christmas and New Year's holidays to re-file. DX 33 at 2; Tr. 65-66, 75.

103. After December 16, 2019, Respondent stopped communicating with Mr. Coughlin. DX 33 at 2; Tr. 66.

104. On January 7, 2020, Mr. Coughlin emailed Respondent, following up about the status and attaching some documents. DX 40 at 5; Tr. 66-67. Respondent did not reply. Tr. 66.

105. On January 16, 2020, Mr. Coughlin emailed Respondent again, expressing concern over Respondent's lack of communication. DX 40 at 5-6; Tr. 66-67. Respondent did not reply. Tr. 66.

106. On January 30, 2020, Mr. Coughlin emailed Respondent, stating: "please contact me ASAP." DX 40 at 6; Tr 66-67. Respondent did not reply. Tr. 66.

107. Throughout January 2020, Mr. Coughlin also placed multiple phone calls to Respondent, leaving voicemails that went unreturned. Tr. 66. Mr. Coughlin sent a letter to Respondent via priority mail, return receipt requested. Somebody signed for it, but Mr. Coughlin still did not receive a response. Tr. 66-67. Eventually, Mr. Coughlin travelled to Respondent's office but was unable to find him. Tr. 67.

108. Other than filing the motion for extension of time to file the brief and the voluntary withdrawal of the petition, the record does not show that Respondent performed any work on Mr. Coughlin's case. Tr. 75-76.

109. By ceasing all communication and failing to move his case forward, Respondent abandoned Mr. Coughlin and effectively terminated the representation. Tr. 78.

110. Although the representation ended, Respondent did nothing to protect Mr. Coughlin's interests. Respondent never gave Mr. Coughlin his file. Tr. 73, 76. Respondent did not provide Mr. Coughlin an accounting showing whether or how he had earned the advanced fees. Tr. 76. Respondent also did not refund any of the fee. Tr. 77.

111. In addition to losing $5,000, Mr. Coughlin also lost the opportunity to have his case heard on the merits. Tr. 80-81.

112. On February 20, 2020, Mr. Coughlin filed a complaint with Disciplinary Counsel. DX 33; Tr. 54, 62.

113. On March 2, 2020, Disciplinary Counsel mailed a copy of Mr. Coughlin's complaint to Respondent. DX 34; Tr. 54. Respondent did not respond. Tr. 54-55.

114. On April 20, 2020, Disciplinary Counsel emailed Respondent a copy of Mr. Coughlin's complaint. DX 20; Tr. 49-50. Respondent did not respond. *Id*.

115. On August 19, 2020, Disciplinary Counsel sent Respondent another letter with a copy of Mr. Coughlin's complaint via certified mail. DX 35; Tr. 55. The letter was delivered on August 24, 2020. DX 36; Tr. 55. Respondent never responded. Tr. 55-56.

Count VII – Waldeck/Barial 2020-D124[5]

116. In early October 2018, Vivian Barial contacted Respondent about his

[5] The Specification erroneously lists this as Count VI.

representing her in an EEO case against the Department of Veterans Affairs. DX 41 at 48-54; Tr. 193. On October 31, 2018, after Respondent reviewed her documents and assured her that the case had merit, Ms. Barial retained him. DX 41 at 16-18. Ms. Barial agreed to pay Respondent $8,000 for the representation. *Id.* She paid Respondent $5,000 on the day they signed the retainer agreement and planned to pay the other $3,000 by November 25, 2018. DX 41 at 17 (engagement letter); *but see* Tr. 200-201 (Barial testified that she thought that the payment was due on November 15, 2018). Whether the second payment was due on November 25, as the engagement letter indicated or November 15, as Ms. Barial testified, is not material to our analysis.

117. Initially, Ms. Barial primarily communicated with Respondent by telephone, but she found she got better responses by sending text messages. DX 41 at 56-150; Tr. 197. During the first few months of the representation, Respondent did not communicate regularly with Ms. Barial, but she waited patiently, assuming he was reviewing her documents and case file. Tr. 199.

118. When Ms. Barial did not make the $3,000 payment by November 25, 2018, Respondent began messaging her more frequently, mainly asking about the payment. DX 41 at 64; Tr. 201-202. Ms. Barial paid the $3,000 in December 2018. DX 41 at 68-69.

119. On February 26, 2019, Ms. Barial asked Respondent to reschedule her EEO interview. DX 41 at 77-78. He did not do so. DX 41 at 41, 83-85; Tr. 204.

120. On March 5, 2019, Ms. Barial emailed Respondent asking him if he

was still representing her. DX 41 at 41, 83-85; Tr. 204. She had to call the EEO investigator herself on the morning on which the EEO interview was scheduled to make sure that it did not go forward. DX 41 at 41; Tr. 204-205.

121. In April 2019, after the EEO investigator completed his interviews, Ms. Barial had to prepare her own rebuttal statement. Tr. 205-209. Respondent did not review the 23-page statement before it was filed. DX 41 at 93-97; Tr. 206-210. Ms. Barial began to believe that Respondent was too busy with other cases to give her case the attention it required. DX 41 at 95; Tr. 209. The only thing that Respondent filed for her was a list of 25 discovery questions that he prepared and submitted without discussing or reviewing them with Ms. Barial. Tr. 205.

122. On April 15, 2019, the Department of Veterans Affairs advised that Ms. Barial had a mixed-case complaint, and that "Claim D" of her complaint was being referred to the VA Office of Employment Discrimination Complaint Adjudication (OEDCA) for a Final Agency Decision (FAD) because it was appealable to the Merit Systems Protection Board (MSPB). DX 41 at 9. The agency explained that Ms. Barial could continue to pursue her other claims through the EEO hearing process. DX 41 at 10-12. Around this time, Respondent asked Ms. Barial for another $2,500 to complete the "Claim D" portion of her case that had been referred for an FAD and would need to be appealed to the MSPB. Tr. 194. Ms. Barial paid Respondent the additional $2,500, bringing the total fee she paid for the representation to $10,500. Tr. 194, 232.

123. On June 27, 2019, Respondent represented Ms. Barial at an initial

scheduling conference conducted by telephone, for the claims that were going through the EEO hearing process. DX 41 at 6. The next day, an order setting the discovery schedule was issued. DX 41 at 6-8.

124. On July 25, 2019, the agency sent its discovery requests to Respondent. DX 41 at 29.

125. On October 8, 2019, Ms. Barial sent Respondent her responses to the agency's discovery requests. DX 41 at 138; Tr. 213- 215. She asked Respondent to let her know if he had any questions after reviewing them. DX 41 at 138-139. Tr 216.

126. For the next two weeks, Ms. Barial did not hear from Respondent. Tr. 215-216. On October 22, 2019, she texted Respondent for an update. DX 41 at 140; Tr. 215. Respondent replied that he was working on the response. *Id*. Respondent also told Ms. Barial that he "got sucked into the impeachment." DX 41 at 141.

127. On October 29, 2019, Ms. Barial asked Respondent for another update on her case. DX 41 at 142. Tr. 217.

128. On October 30, 2019, Respondent texted Ms. Barial an apology for being "less responsive." DX 41 at 143. Respondent again mentioned his involvement in the impeachment of President Trump. DX 41 at 144; Tr. 217. He called Ms. Barial that afternoon, and they spoke about her case. Tr. 218-219.

129. That evening, Ms. Barial sent a follow-up email, thanking Respondent for the update and listing several documents that they had agreed he would obtain from the agency. DX 41 at 22-23; Tr. 218-219. The next day, October 31, 2019,

Respondent informed Ms. Barial that it would take a few weeks to obtain the documents. DX 41 at 145.

130. After October 31, 2019, Respondent stopped communicating with Ms. Barial entirely. Tr. 219-220.

131. On November 8, 2019, Ms. Barial asked Respondent about her case in a text message. DX 41 at 145-146. Respondent did not reply. Tr. 221, 225.

132. On December 4, 2019, Ms. Barial texted Respondent again about her case telling him she was "feeling definitely out of the loop about [her] EEO case." DX 41 at 146-147. Respondent did not reply. Tr. 221, 225.

133. On December 17, 2019, Ms. Barial sent a text message to Respondent asking if he was alive. DX 41 at 147. Respondent did not reply. Tr. 221, 225.

134. On January 28, 2020, the OEDCA issued a FAD on the "Claim D" portion of Ms. Barial's case. DX 41 at 14. Ms. Barial received the decision on January 31, 2020. DX 41 at 148; Tr. 221-222, 226-227.

135. After receiving the FAD, Ms. Barial immediately began calling and texting Respondent to inquire about next steps. DX 41 at 148; 226-227. Respondent did not answer any of Ms. Barial's calls or texts.

136. Ms. Barial had 30 days to appeal the FAD on the "Claim D" portion of her case to the MSPB. Tr. 226. Respondent did not communicate with Ms. Barial about an appeal or protect her interests by filing an appeal. Tr. 227. Ms. Barial tried to find another attorney to file the appeal but could not do so within the 30-day period. *Id*.

137. By ceasing all communication with Ms. Barial and failing to take action to move her case forward, Respondent abandoned her and effectively terminated the representation. Tr. 219-228.

138. Respondent never provided Ms. Barial an accounting showing that he had earned the fees she paid, and Respondent did not refund any of the fee. Tr. 227-228.

139. Ms. Barial eventually hired another attorney to proceed with the other claims in her case, which were still pending before an EEO administrative judge. Tr. 228. She had to pay the new attorney $10,000. Tr. 228.

140. Ms. Barial's hiring of Respondent "left her [emotionally] scarred and financially strapped." Tr. 231. Respondent cost her a chance at settlement and reinstatement to her job. Tr. 231.

141. In June 2020, Ms. Barial filed a complaint with Disciplinary Counsel. DX 41; Tr. 56.

142. On August 19, 2020, Disciplinary Counsel sent Respondent a letter with a copy of Ms. Barial's complaint via certified mail. DX 42; Tr. 56. The letter was delivered on August 24, 2020. DX 43; Tr. 56. Respondent never responded. Tr. 56.

III. CONCLUSIONS OF LAW

Disciplinary Counsel argues that it proved by clear and convincing evidence that Respondent misappropriated entrusted funds, commingled entrusted funds with

his own, and engaged in a pattern of serious neglect that culminated in his complete abandonment of four clients.[6]

A. Disciplinary Counsel Proved By Clear and Convincing Evidence that Respondent Violated Rule 1.15(a) by Engaging in Misappropriation that was at least Reckless.

Rule 1.15(a) prohibits misappropriation of entrusted funds. Misappropriation is "any unauthorized use of [a] 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 [the lawyer] derives any personal gain or benefit therefrom." *In re Nave*, 197 A.3d 511, 514 (D.C. 2018) (per curiam) (quoting *In re Anderson*, 778 A.2d 330, 335 (D.C. 2001) (alterations in original)). "The three elements of misappropriation are (1) that client funds were entrusted to the attorney; (2) that the attorney used those funds for the attorney's own purposes; and (3) that such use was unauthorized." *In re Harris-Lindsey*, 242 A.3d 613, 620 (D.C. 2020) (citing *In re Travers*, 764 A.2d 242, 250 (D.C. 2000)).

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[6] In its brief, Disciplinary Counsel asserts that it is no longer pursuing the charge that Respondent violated Rule 1.15(a) (failure to keep records of the handling of entrusted funds) because Respondent's records were sufficient to permit an audit of the trust account. Disciplinary Counsel is also no longer pursuing the charge that Respondent violated Rule 1.5(b) (failure to provide a written fee agreement charge alleged in Count IV) because the client at issue, Mr. Hautamaki, testified that he received a paper copy of the retainer agreement he signed with Respondent. *See* ODC Br. at 32 n.3. Having considered the record before us, we find that Disciplinary Counsel has not proven a violation of Rule 1.15(a)'s requirement that Respondent maintain records of his handling of entrusted funds, and has not proven a violation of Rule 1.5(b) in the Hautamaki matter. *See 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).

Misappropriation is essentially a *per se* offense and does not require proof of improper intent. *See Anderson*, 778 A.2d at 335. Thus, an attorney commits "unauthorized use" when either "the client did not consent to the attorney's use of the funds" or "the funds or assets were accessed without required prior approval by a court" where required. *Harris-Lindsey*, 242 A.3d at 624 (applying holding regarding court approval prospectively). It occurs where "the balance in [the attorney's] trust account falls below the amount due to the client [or third party]." *In re Ahaghotu*, 75 A.3d 251, 256 (D.C. 2013) (internal quotation marks and citations omitted). Thus, "when the balance in [a] [r]espondent's . . . account dip[s] below the amount owed to" the respondent's client or clients, misappropriation has occurred. *In re Chang*, 694 A.2d 877, 880 (D.C. 1997) (per curiam) (appended Board Report) (citing *In re Pels*, 653 A.2d 388, 394 (D.C. 1995)).

Disciplinary Counsel has proven that Respondent received advanced fees, which he was required to hold in trust until earned. *See* Rule 1.15(e) ("Advances of unearned fees and unincurred costs shall be treated as property of the client pursuant to [Rule 1.15](a) until earned or incurred unless the client gives informed consent to a different arrangement."). Respondent's billing statements reflected that he had not earned all of the fee advances, and he represented through the billing statements that he was holding the unearned fees in trust. However, his bank records show that the balance in the trust account was below the amount that he acknowledged he was required to hold in trust. No client consented to Respondent taking the advanced fees before they had been earned through the performance of legal services.

Respondent engaged in the unauthorized use of entrusted funds from at least November 1, 2015, to January 11, 2016, because the amount in his trust account was less than it should have been during this entire time. On November 1, 2015, Respondent should have been holding $11,189.00 in trust, but held only $6,288.96, or $4,900.04 less that he should have held. FF 4. On December 1, 2015, Respondent should have been holding $8,430.00 in trust, but held only $2,852.96, or $5,577.04 less than he should have held. FF 4. On January 1, 2016, Respondent should have been holding $3,960.00 in trust, but held only $543.96, or $3,416.04 less that he should have held. FF 4. On January 11, 2016, Respondent's trust account should have held $1,322.50 for Ms. Alexander. However, on that day, Respondent overdrew his trust account when he wrote a check made payable to his operating account. FF 5-6. The foregoing facts clearly and convincingly establish that Respondent engaged in the unauthorized use of entrusted funds.

Having proven that Respondent engaged in the unauthorized use of entrusted funds, Disciplinary Counsel must establish whether Respondent's conduct was intentional, reckless, or negligent. *See Anderson*, 778 A.2d at 336. Intentional misappropriation most obviously occurs where an attorney takes a client's funds for the attorney's personal use. *See id.* at 339 (intentional misappropriation occurs where an attorney handles entrusted funds in a way "that reveals . . . an intent to treat the funds as the attorney's own" (citations omitted)).

"Reckless misappropriation reveal[s] an unacceptable disregard for the safety and welfare of entrusted funds, and its hallmarks include: the indiscriminate

commingling of entrusted and personal funds; a complete failure to track settlement proceeds; the total disregard of the status of accounts into which entrusted funds were placed, resulting in a repeated overdraft condition; the indiscriminate movement of monies between accounts; and finally the disregard of inquiries concerning the status of funds." *Ahaghotu*, 75 A.3d at 256 (internal quotation marks and citation omitted); *see also Anderson*, 778 A.2d at 339 ("[R]ecklessness is a state of mind in which a person does not care about the consequences of his or her action." (internal citations and quotation marks omitted)). Further, "'[r]eckless misconduct requires a conscious choice of a course of action, either with knowledge of the serious danger to others involved in it or with knowledge of facts that would disclose this danger to any reasonable person.'" *Anderson*, 778 A.2d at 339 (quoting 57 Am. Jur. 2d *Negligence* § 302 (1989)). Thus, an objective standard should be applied in assessing whether a respondent's misappropriation was reckless. *See In re Gray*, 224 A.3d 1222, 1232 (D.C. 2020) (per curiam); *see also In re Delsordo*, 241 A.3d 305, 307 (D.C. 2020) (finding non-negligent misappropriation, and thus substantially different discipline in reciprocal matter, where respondent did not reconcile trust account and made some deposits into the wrong account, and despite a finding that "no money was actually missing according to the firm's records," and despite claims that he "had earned and was owed the money," and that he "did calculations in his head and . . . knew how much he was entitled to receive" (internal quotations omitted)). Extensive commingling and a poor system of record-keeping that results in misappropriation is not, in itself, sufficient to support a finding of

recklessness. *See In re Dailey*, 230 A.3d 902, 912 (D.C. 2020) (per curiam) (noting the absence of a "flagrant disregard for third-party or client funds" that might support a finding of recklessness).

Finally, where Disciplinary Counsel establishes the first element of misappropriation (unauthorized use), but fails to establish that the misappropriation was intentional or reckless, "'then [Disciplinary] Counsel proved no more than simple negligence.'" *Anderson*, 778 A.2d at 338 (quoting *In re Ray*, 675 A.2d 1381, 1388 (D.C. 1996)). "Negligent misappropriation is an attorney's non-intentional, non-deliberate, non-reckless misuse of entrusted funds or an attorney's non-intentional, nondeliberate, non-reckless failure to retain the proper balance of entrusted funds. Its hallmarks include a good-faith, genuine, or sincere but erroneous belief that entrusted funds have properly been paid; and an honest or inadvertent but mistaken belief that entrusted funds have been properly safeguarded." *In re Abbey*, 169 A.3d 865, 872 (D.C. 2017) (citations omitted); *see also Anderson*, 778 A.2d at 339 (providing that negligent misappropriation occurs where "the unauthorized use was inadvertent or the result of simple negligence" (citations omitted)).

Disciplinary Counsel argues that Respondent's unauthorized use of entrusted funds was intentional, or at least reckless. Disciplinary Counsel argues that Respondent engaged in intentional misappropriation if he reconciled his trust account with his billing statements, and thus knew that the trust account balance was less than it should have been. ODC Br. at 34. Alternatively, Disciplinary Counsel

argues that Respondent was reckless if he did not reconcile the trust account with his billing statements, and continued to write checks without knowing that the trust account was out of balance. ODC Br. at 34.

Although Respondent did not testify at the hearing, he explained in a response letter to Disciplinary Counsel that the January 11, 2016 overdraft that triggered the investigation was due to credit card processing fees that were withdrawn from his trust account without his knowledge for a period of time ending in January 2011. FF 9. Respondent asserted that he had learned in January 2011 that the credit card fees caused a deficit in his trust account that he calculated at $1,418.48, and that he was attempting to reimburse the deficit, but did not have the means to do so, at least as of his May 20, 2016 letter to Disciplinary Counsel. *Id*. In short, Respondent asserted that he bounced a trust account check in January 2016 because he had not fully reimbursed credit card fees that had been withdrawn before January 2011.

Accepting this explanation as true, it might account for a shortfall of $1,418.48 (or something less); however, as discussed above, Respondent was out of trust by at least $3,400 during the November 1, 2015, to January 11, 2016 time period, four years after he discovered the credit card problem. Respondent offered no explanation for the true state of his trust account. We may consider Respondent's failure to explain the use of the entrusted funds in determining whether Respondent's conduct was intentional, reckless or negligent. *In re Thompson*, 579 A.2d 218, 221 (1990); *In re Godfrey*, 583 A.2d 692, 693 (D.C. 1990).

By his own admission to Disciplinary Counsel, Respondent knew in 2011 that credit card fees had eaten away approximately $1,400 in entrusted funds. Although he terminated the credit card fee charges, he had not fully refunded the resulting deficit as late as May 2016. Yet, despite knowing that he had not reimbursed the credit card fees, he continued to withdraw his legal fees from the trust account. By intentionally withdrawing his fees from an account that he knew to be out of trust, we find that Respondent engaged in intentional misappropriation. In the alternative, we find that Respondent was reckless in failing to appreciate that his trust account was actually several thousands of dollars out of balance. *See, e.g.*, *Ahaghotu*, 75 A.3d at 257-58 (continued use of trust account with knowledge of uncorrected discrepancies was reckless).

B. Disciplinary Counsel Proved By Clear and Convincing Evidence that Respondent Violated Rules 1.15(a) (commingling), 1.15(b), and 1.15(e).

Timothy Kelly met and retained Respondent on April 24, 2017. Mr. Kelly paid Respondent $2,500 by credit card. FF 17-18. This payment was an installment of a $5,000 flat fee. The credit card payment was deposited into Respondent's operating account on April 24, 2017, at a time when that account held Respondent's own funds. *Id*. Respondent had not earned $2,500 on April 24. Indeed, after Mr. Kelly terminated Respondent the next day, Respondent asserted that he had only earned $465.00. FF 19. Disciplinary Counsel argues that Respondent violated Rule 1.15(a) (commingling); 1.15(b) (failure to deposit entrusted funds in a trust account); and 1.15(e) (failure to treat advance fees as entrusted funds until earned). We agree.

Rule 1.15(e) Treatment of Advance Fees – 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 (a) until earned or incurred unless the client gives informed consent to a different arrangement." Mr. Kelly's flat fee is an advance of unearned fees, and thus subject to Rule 1.15(e). *In re Mance*, 980 A.2d 1196, 1202 (D.C. 2009). As discussed below, Respondent did not treat this payment as Mr. Kelly's property, and thus violated Rule 1.15(e).

Rule 1.15(b) Trust Account Requirement – Rule 1.15(b) requires that entrusted funds be deposited in a trust account. Because Mr. Kelly's flat fee payment had not yet been earned, the payment constituted entrusted funds, and Respondent was required to deposit it into a trust account. His failure to do so violated Rule 1.15(b).

Rule 1.15(a) Commingling – Commingling occurs when an attorney fails to hold entrusted funds in an account separate from his own funds. *In re Moore*, 704 A.2d 1187, 1192 (D.C. 1997). Thus, "commingling is established 'when a client's money is intermingled with that of his attorney and its separate identity is lost so that it may be used for the attorney's personal expenses or subjected to the claims of its creditors.'" *In re Malalah*, Board Docket No. 12-BD-038 at 12 (BPR Dec. 31, 2013) (appended HC Rpt.) (quoting *In re Hessler*, 549 A.2d 700, 707 (D.C. 1988)), *recommendation adopted where no exceptions filed*, 102 A.3d 293, 293 (D.C. 2014) (per curiam); *see also Moore*, 704 A.2d at 1192 ("Commingling occurs when an attorney fails to hold entrusted funds in a special account, separate from his own funds."). Respondent engaged in commingling when he deposited Mr. Kelly's

unearned flat fee into his operating account at a time when the account held his own funds. FF 18.

C. Disciplinary Counsel Proved By Clear and Convincing Evidence that Respondent Violated Rule 8.4(c).

Rule 8.4(c) prohibits conduct involving dishonesty, which includes "not only fraudulent, deceitful or misrepresentative conduct, but also 'conduct evincing a lack of honesty, probity or integrity in principle; a lack of fairness and straightforwardness.'" *In re Samad*, 51 A.3d 486, 496 (D.C. 2012) (quoting *In re Shorter*, 570 A.2d 760, 767-68 (D.C. 1990)).

Disciplinary Counsel argues that Respondent violated Rule 8.4(c) because his billing statements to his clients misrepresented the amount that he was holding in trust for each of them. We agree that the billing statements contained misrepresentations. As discussed above, Respondent did not hold nearly the amount in trust as he represented to his clients.

To prove a Rule 8.4(c) violation, Disciplinary Counsel must also prove that Respondent provided the inaccurate billing statements with "the requisite dishonest intent." *In re Romansky*, 825 A.2d 311, 317 (D.C. 2003); *see also In re Uchendu*, 812 A.2d 933, 939 (D.C. 2002) ("some evidence of a dishonest state of mind is necessary to prove an 8.4(c) violation"). Dishonest intent can be established by proof of recklessness. *See In re Romansky*, 825 A.2d at 317. To prove recklessness, Disciplinary Counsel must establish by clear and convincing evidence that the respondent "consciously disregarded the risk" created by his actions. *Id.*; *see, e.g.*, *In re Boykins*, 999 A.2d 166, 171-72 (D.C. 2010) (finding reckless dishonesty where

the respondent falsely represented to Disciplinary Counsel that medical provider bills had been paid, without attempting to verify his memory of events from more than four years prior, and despite the fact that he had recently received notice of non-payment from one of the providers).

Disciplinary Counsel's intent argument here is similar to its intent argument concerning misappropriation: Respondent either knew that the billing statements were false, or he was reckless in failing to determine the amount actually held in trust for each client. We agree.

D. Disciplinary Counsel Proved By Clear and Convincing Evidence that Respondent Violated Rules 1.3(a) and 1.3(c).

Rule 1.3(a) states that an attorney "shall represent a client zealously and diligently within the bounds of the law." "Neglect has been defined as indifference and a consistent failure to carry out the obligations that the lawyer has assumed to the client or a conscious disregard of the responsibilities owed to the client." *In re Wright*, 702 A.2d 1251, 1255 (D.C. 1997) (per curiam) (appended Board Report) (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*")).

Rule 1.3(c) provides that an attorney "shall act with reasonable promptness in representing a client." "Perhaps no professional shortcoming is more widely resented by clients than procrastination," and "in extreme instances, as when a lawyer overlooks a statute of limitations, the client's legal position may be destroyed." Rule 1.3, cmt. [8]. The Court has held that failure to take action for a significant period of time to further a client's cause, whether or not prejudice to the

client results, violates Rule 1.3(c). *See, e.g.*, *In re Speights*, 173 A.3d 96, 101 (D.C. 2017) (per curiam). Comment [8] to Rule 1.3 provides that "[e]ven when the client's interests are not affected in substance . . . unreasonable delay can cause a client needless anxiety and undermine confidence in the lawyer's trustworthiness," making such delay a "serious violation." Disciplinary Counsel argues that Respondent violated these Rules when he not only failed to act diligently and promptly to prosecute his clients' cases, but also when he abandoned them completely.

In the Hautamaki matter, Respondent delayed for months when he was supposed to be responding to EPA's discovery requests and obtaining his own discovery. FF 38-49, 52. When he finally responded to EPA's requests, he did not turn over the documents it requested, even though Mr. Hautamaki had given the documents to him months before. FF 48. Respondent also waited until the last minute to draft a response to EPA's motion for summary judgment, despite numerous contacts from Mr. Hautamaki, which resulted at a minimum in the inability to consult with Mr. Hautamaki on key matters at the proverbial eleventh hour. FF 50-54. Similarly, in the Barial matter, Respondent failed to act with reasonable promptness and diligence in completing discovery. FF 123-133. Respondent did not file the answers to the agency discovery requests after Ms. Barial sent the answers to him. *Id*. In the Coughlin matter, Respondent filed a voluntary withdrawal of the case and promised to refile it. FF 95-96. He then delayed for months and ultimately never refiled the case. FF 97-108. In the Drayson matter, Respondent delayed for months participating in settlement negotiations with the

Postal Service. FF 70-77. Respondent also never filed Mr. Drayson's application for disability retirement. *Id*. These failures violated Rule 1.3(a) and 1.3(c).

E. <u>Disciplinary Counsel Proved By Clear and Convincing Evidence that Respondent Violated Rules 1.3(b)(1) and 1.3(b)(2).</u>

Rule 1.3(b) provides that:

> A lawyer shall not intentionally:
>
> (1) fail to seek the lawful objectives of a client through reasonably available means permitted by law and the disciplinary rules; or
> (2) prejudice or damage a client during the course of the professional relationship.

Rule 1.3(b)(1) – A negligent failure to pursue a client's interest is deemed intentional under Rule 1.3(b)(1) when "the neglect is so pervasive that the lawyer must be aware of it" or "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) (citations omitted). "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)). "[K]nowing abandonment of a client is the classic case of a Rule 1.3(b)(1) violation . . . ." *In re Lewis*, 689 A.2d 561, 564 (D.C. 1997). A Rule 1.3(b)(1) violation may be proven without 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).

Disciplinary Counsel argues that "[t]hroughout his representations of Ms. Edwards, Mr. Drayson, Mr. Coughlin, and Ms. Barial, Respondent knew that he was putting their cases aside in order to work on the impeachment of former President Trump," and that he ultimately abandoned these clients. ODC Br. at 40. We agree with Disciplinary Counsel that Respondent abandoned these clients. Respondent knew that he was neglecting his clients' matters, as discussed above, but, rather than working for his clients, he abandoned them.

Rule 1.3(b)(2) – To prove a violation of Rule 1.3(b)(2), Disciplinary Counsel must prove, at a minimum, that the respondent was "demonstrably aware" that the conduct at issue would damage or prejudice a client. Disciplinary Counsel need not prove that a respondent intended to harm the client. *In re Rachal*, 251 A.3d 1038, 1042 (D.C. 2021) (per curiam) (citing *In re Dory*, 528 A.2d 1247, 1248 (D.C. 1987) (Belson, J., concurring)); *see also In re Wright*, Bar Docket Nos. 377-99. 10-00, 294-00 & 20-01 at 24-25 (BPR Apr. 14, 2004) (Rule 1.3(b)(2) violated where the lawyer "knowingly created a grave risk" that the client would be harmed, and understood that harm was "substantially certain" to follow) (quoting *In re Robertson*, 612 A.2d 1236, 1250 (D.C. 1992) (appended Board Report))), *findings and recommendation adopted*, 885 A.2d 315, 316 (D.C. 2005) (per curiam). A 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); *see, e.g.*, *Rachal*, 251 A.3d at 1042 (clients were prejudiced by their attorney's accusation in a public filing that they acted deceitfully); *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).

Disciplinary Counsel argues that Ms. Edwards, Mr. Drayson, Mr. Coughlin, and Ms. Barial suffered financial prejudice because Respondent took advance fees, did not pursue their cases, and failed to refund those fees. ODC Br. at 40. Disciplinary Counsel cites no cases to support the contention that a lawyer's retention of fees after intentionally abandoning a client violates Rule 1.3(b)(2). Our research reveals that those facts are most often charged as violating Rule 1.16(d), as is the case here. However, the same conduct may violate multiple Rules. *See In re Drew*, 693 A.2d 1127, 1132 (D.C. 1992) (per curiam).

Although we have not located a Rule 1.3(b)(2) case involving identical facts, there is precedent to support Disciplinary Counsel's contention that intentional conduct resulting in financial harm to a client violates Rule 1.3(b)(2), and thus find that Disciplinary Counsel has proven this Rule violation. *See In re Alexander*, Bar Docket Nos. 202-98, *et al.*, at 26 (BPR May 6, 2004) ("Respondent took $73,850 from an estate that he represented and put it in his personal checking account."), *recommendation approved without discussion*, 865 A.2d 541 (D.C. 2005); *In re*

Rogers, Bar Docket No. 408-03, at 18 (BPR Nov. 30, 2004) (respondent took approximately $150,000 that his client "and her husband had saved over the years to support themselves in their declining years."), *recommendation approved without discussion*, 902 A.2d 103 (D.C. 2006); *see also In re Wright*, Bar Docket Nos. 377-99, *et al.*, at 24 (BPR Apr. 14, 2004) (respondent knowingly delivered "an erroneously issued insurance check to the client without warning her against cashing it."), *recommendation approved without discussion*, 885 A.2d 315 (D.C. 2005).

F. Disciplinary Counsel Proved By Clear and Convincing Evidence that Respondent Violated Rule 1.4(a).

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." Under Rule 1.4(a), an attorney must not only respond to client inquiries, but must also initiate contact to provide information when needed. *See, e.g.*, *In re Robbins*, 192 A.3d 558, 564-65 (D.C. 2018) (per curiam); *In re Bernstein*, 707 A.2d 371, 376 (D.C. 1998). The purpose of this Rule is to enable clients to "participate intelligently in decisions concerning the objectives of the representation and the means by which they are to be pursued." Rule 1.4, cmt. [1]. In determining whether Disciplinary Counsel has established a violation of Rules 1.4(a) and (b), the question is whether Respondent fulfilled his client's reasonable expectations for information. *See In re Schoeneman*, 777 A.2d 259, 264 (D.C. 2001) (citing Rule 1.4, cmt. [3]). Attorneys are obligated to respond to client requests for information even when there are no new developments to report. *See In re Lattimer*, 223 A.3d 437, 442 (D.C. 2020) (per curiam).

Disciplinary Counsel argues that Respondent initially communicated with Ms. Edwards, Mr. Drayson, Mr. Coughlin, and Ms. Barial, but then ceased communication, failing to provide requested status updates before abandoning them altogether. This argument accurately describes Respondent's conduct. In each case, he ceased communication with the client before abandoning them altogether. For example, in the case of Mr. Hautamaki, Respondent failed to provide status updates for months, failed to tell him that the EPA witnesses would not appear for deposition due to Respondent's late request, and failed for weeks to respond to the client's request to discuss the response to the EPA's motion for summary judgment. Thus, the evidence establishes that Respondent violated Rule 1.4(a).

G. Disciplinary Counsel Proved By Clear and Convincing Evidence that Respondent Violated Rule 1.16(d).

Rule 1.16(d) states that:

> 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.

Failure to refund any unearned portion of a fee violates Rule 1.16(d). *See, e.g.*, *In re Samad*, 51 A.3d 486, 497 (D.C. 2012) (per curiam) (finding a violation where the respondent claimed that he did some work on the case, but did not "suggest that he earned the entire flat fee or that he returned any portion of the fee"); *In re Martin*, 67 A.3d 1032, 1047 (D.C. 2013) (finding a violation of Rule 1.16(d) where the attorney failed to pay an ACAB award for unearned fees); *In re Carter*, 11 A.3d

1219, 1223 (D.C. 2011) (per curiam) (same); *In re Kanu*, 5 A.3d 1, 10 (D.C. 2010) (finding a violation of Rule 1.16(d) where the attorney failed to abide by a clause in her retainer agreement promising a refund if she failed to meet her clients' objectives). Also, "'a client should not have to ask twice' for [her] file." *In re Thai*, 987 A.2d 428, 430 (D.C. 2009) (quoting *In re Landesberg*, 518 A.2d 96, 102 (D.C. 1986)); *In re Hager*, 812 A.2d 904, 920 (D.C. 2002) (Rule 1.16(d) "unambiguously requires an attorney to surrender a client's file upon termination of the representation.").

Disciplinary Counsel argues that Respondent violated Rule 1.16(d) when, after abandoning his clients, he did not tell them to find new attorneys, he did not seek extensions of pending deadlines in their cases, he did not return their files, and he did not refund the unearned advanced fees. We agree with Disciplinary Counsel that, after abandoning his clients, Respondent violated Rule 1.16(d) by failing to return their files, and by failing to return their unearned fees. He also did not seek protective extensions of deadlines in their pending matters, or otherwise take any "reasonably practicable" steps to protect these clients' interests.

H. Disciplinary Counsel Proved By Clear and Convincing Evidence that Respondent Violated Rule 8.4(d).

Rule 8.4(d) provides that it is professional misconduct for a lawyer to "[e]ngage in conduct that seriously interferes with the administration of justice." Relevant to the charges here, failure to respond to Disciplinary Counsel's investigative inquiries and orders of the Court also constitutes a violation of Rule 8.4(d). Rule 8.4, cmt. [2]; *see, e.g.*, *In re Edwards*, 990 A.2d 501, 524 (D.C. 2010)

(failure to respond to Disciplinary Counsel's inquiry); *In re Carter*, 11 A.3d 1219, 1223 (D.C. 2011) (failure to respond to notices of an investigation from Disciplinary Counsel, failure to comply with court orders requiring compliance with Disciplinary Counsel's investigation, and dishonesty to the court about why he had missed filing deadlines); *In re Askew*, Board Docket No. 12-BD-037 (BPR July 31, 2013), appended Hearing Committee Report at 22-23 (failure to comply with a court orders requiring her to file a brief and to turn over client files), *recommendation adopted in relevant part*, 96 A.3d 52 (D.C. 2014) (per curiam).

Disciplinary Counsel argues that Respondent violated Rule 8.4(d) when he failed to respond to multiple inquiries from Disciplinary Counsel about complaints that had been filed against him. Despite repeated requests—sent via regular mail, certified mail, and e-mail—Respondent never responded to any of the five complaints at issue in Counts III-VII. Because Respondent chose not to participate here, Disciplinary Counsel's evidence is unrebutted. After responding to Disciplinary Counsel's investigative inquiries in the overdraft and Kelly matters, Respondent stopped responding and ignored Disciplinary Counsel's requests—again sent by regular mail, certified mail, and e-mail—that he respond to the disciplinary complaints filed by Ms. Edwards, Mr. Hautamaki, Mr. Drayson, Mr. Coughlin, and Ms. Barial. Disciplinary Counsel has thus proven that Respondent violated Rule 8.4(d).

IV. RECOMMENDED SANCTION

In this case, Disciplinary Counsel has asked the Hearing Committee to recommend that Respondent be disbarred. We agree, and hereby recommend that Respondent be disbarred as the sanction for his intentional, or at least reckless, misappropriation.

The law regarding misappropriation is clear and consistent: absent "extraordinary circumstances," disbarment is the presumptive sanction for intentional or reckless misappropriation. *In re Addams*, 579 A.2d 190, 191 (D.C. 1990) (en banc); *In re Hewett*, 11 A.3d 279, 286 (D.C. 2011); *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). The Court further held that "it 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. The Court recognized that extraordinary circumstances are present when a respondent is entitled to mitigation under *In re Kersey*, 520 A.2d 321, 326 (D.C. 1987), but the Court warned that "mitigating factors of the usual sort" are not sufficient to rebut the presumptive sanction of disbarment, and "[o]nly the most stringent of extenuating circumstances would justify a lesser disciplinary sanction." *Id.* at 191, 193.

Accordingly, once misappropriation involving more than simple negligence has been established, the inquiry turns to whether sufficient mitigating factors rebut the presumption of disbarment. *Anderson I*, 778 A.2d at 337-38 (citing *Addams*, 579 A.2d at 191). There are no such factors here.

V. CONCLUSION

For the foregoing reasons, the Committee concludes that Respondent violated Rules 1.3(a), 1.3(b)(1), 1.3(b)(2), 1.3(c), 1.4(a), 1.15(a) (in part), 1.15(b), 1.15(e), 1.16(d), 8.4(c), and 8.4(d), and should be disbarred.

We recommend that Respondent's attention be drawn to the requirements of D.C. Bar R. XI, §§ 14 and 16, relating to disbarred or suspended attorneys.

AD HOC HEARING COMMITTEE

Jason E. Carter

Jason E. Carter, Chair

Roxanne Littner

Roxanne Littner, Public Member

Shawn P. Davisson

Shawn P. Davisson, Attorney Member