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:	:	
	:	
SCOTT D. MILLS,	:	
	:	Board Docket No. 24-BD-063
Respondent.	:	Disc. Docket Nos. 2022-D075 &
	:	2022-D076
A Member of the Bar of the	:	
District of Columbia Court of Appeals	:	
(Bar Registration No. 984898)	:	

REPORT AND RECOMMENDATION OF AD HOC HEARING COMMITTEE

This matter is before the Ad Hoc Hearing Committee pursuant to the default procedure of D.C. Bar Rule XI, § 8(f) and Board Rule 7.8, arising from Respondent Scott D. Mills's failure to answer a Specification of Charges ("Specification"). Disciplinary Counsel alleges that Respondent violated Rules 1.1(a) and (b), 1.3(a), 1.4(a) and (b), 1.5(a), 1.15(a), 1.16(d), 8.1(b), and 8.4(d) of the District of Columbia Rules of Professional Conduct (the "Rules"), as well as D.C. Bar Rule XI, § 2(b)(3), arising from his representation of clients in two separate immigration matters. Disciplinary Counsel contends that Respondent committed each of the charged violations[1] and that disbarment is the appropriate sanction for his misconduct.

[1] Disciplinary Counsel originally charged reckless misappropriation under Rule 1.15(c), but in its post-hearing brief, it contends that the alleged misappropriation

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

Based on the undisputed evidence submitted in support of Disciplinary Counsel's Motion for Default, the Hearing Committee finds that Disciplinary Counsel has proven violations of Rules 1.1(a) and (b), 1.3(a), 1.4(a) and (b), 1.5(a), 1.15(a), 1.16(d), 8.1(b), and 8.4(d), as well as D.C. Bar Rule XI, § 2(b)(3), by clear and convincing evidence and recommends disbarment for reckless misappropriation.

I. PROCEDURAL HISTORY

On November 11, 2024, Respondent was personally served with a Specification. Respondent failed to file an Answer to the Specification by the December 2, 2024 deadline, or any time thereafter, and has not requested additional time to do so, nor been in contact with the Hearing Committee in any way. On May 2, 2025, Disciplinary Counsel filed a Motion for Default pursuant to Board Rule 7.8, supported by sworn proof of the charges in the Specification. Respondent did not respond to Disciplinary Counsel's Motion. In a June 3, 2025 Order, this Hearing Committee granted the Motion and (1) deemed that the allegations in the Specification were admitted, subject to Disciplinary Counsel submitting *ex parte* proof sufficient to prove the allegations by clear and convincing evidence; (2)

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violates Rule 1.15(a). *See* Disciplinary Counsel's Post-Hearing Brief ("ODC Br.") at 17-20, 26. Because Respondent was on notice of the reckless misappropriation charge, regardless of which subsection of Rule 1.15 is implicated, and because Disciplinary Counsel no longer contends that Respondent violated Rule 1.15(c) by failing to "promptly notify the client or third person" after "receiving funds . . . in which a client or third person has an interest," which overlaps with its argument that he violated Rule 1.16(d) (*see* ODC Br. at 21-22), we will analyze the misappropriation charge under Rule 1.15(a) and recommend that the Rule 1.15(c) charge be dismissed.

directed Disciplinary Counsel to notify Respondent of the entry of the Order by mail and email; and (3) directed the Executive Attorney to schedule a hearing to determine the sufficiency of the *ex parte* proof and the appropriate sanction.

A hearing was held on September 25, 2025. Disciplinary Counsel was represented at the hearing by Caroll Donayre, Esquire. Respondent did not appear. *See* Hearing Transcript ("Tr.") 24-25. During the hearing, Disciplinary Counsel introduced into evidence Disciplinary Counsel's Exhibits ("DCX") 1-47, which were submitted in advance of the hearing, as well as DCX 48-52, which consisted of affidavits and declarations that had been attached to the Motion for Default. Tr. 6-7. Disciplinary Counsel filed an exhibit list and a set of admitted exhibits on October 1, 2025. All exhibits on Disciplinary Counsel's October 1, 2025 exhibit list (DCX 1-52) are hereby admitted into evidence.

Disciplinary Counsel filed a post-hearing brief on October 27, 2025, and a corrected post-hearing brief on October 29, 2025. Respondent did not file a post-hearing brief or any other brief.

II. FINDINGS OF FACT

Based upon the undisputed evidence submitted in support of Disciplinary Counsel's Motion for Default, the Hearing Committee finds that the following facts have been 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 facts sought to be established." (internal quotations omitted)).

A. Disciplinary Docket No. 2022-D075 (De Lira)

1. On July 29, 2014, April De Lira[2] retained Respondent to assist her with an immigration matter involving her husband. DCX 48 at 1. Ms. De Lira wanted to petition for her husband to remain in the United States by filing an I-130 petition, but because he had previously been found inadmissible to the country, they needed to also seek a waiver of his inadmissibility, which required an I-601 hardship waiver along with filing supporting documents with the United States Department of State National Visa Center ("NVC"). *See id.* at 1-2; DCX 1 at 19; DCX 7 at 5. As part of the waiver process, a psychological evaluation was also required. *See* DCX 1 at 19; DCX 48 at 1.

2. Respondent presented Ms. De Lira with a retainer agreement that set the scope of the representation as "(a) Petition for Residency ([I]-130), (b) File for Hardship Waiver (I-601) and supporting petitions. (c) Attorney will pay for psychological evaluation." The fee was set at $6,000. DCX 1 at 19-20.

3. On July 29, 2014, Ms. De Lira signed the retainer agreement and paid Respondent $3,000. DCX 1 at 19-20; DCX 48 at 1; DCX 7 at 5.

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[2] Ms. De Lira referred to herself in her March 2022 disciplinary complaint as April De Lira-Villa (DCX 1 at 2), but in her affidavit for this proceeding, she refers to herself as April De Lira (DCX 48). This Report refers to her as Ms. De Lira in accordance with the more recent document.

4. Ms. De Lira paid Respondent additional fees totaling $1,800 during the representation:

- September 3, 2014: $300;
- October 1, 2014: $300;
- December 15, 2014: $300;
- January 17, 2015: $300;
- March 3, 2015: $300; and
- May 5, 2015: $300.

DCX 1 at 7-8.

5. In September of 2014, Respondent filed an I-130 petition—seeking to adjust Mr. De Lira's immigration status. DCX 1 at 9; DCX 7 at 5; DCX 48 at 2. That petition was denied on September 2, 2015, because Respondent did not include a copy of an official divorce decree for Mr. De Lira, from a previous marriage. *See* DCX 48 at 2; DCX 7 at 5; DCX 1 at 24.

6. Six months later, Respondent filed a second, I-130 petition, for which he received a receipt. DCX 7 at 5; DCX 50 at 1; *see* DCX 1 at 14.

7. On January 3, 2017, United States Citizenship and Immigration Services ("USCIS") approved the second I-130. DCX 50 at 2. USCIS verbally confirmed the approval with Respondent, but Respondent did not receive a written approval notice. DCX 7 at 5. Respondent advised the De Liras once the approval notice arrived, Mr. De Lira should always carry a copy in case he was questioned by immigration authorities. *See* DCX 1 at 4, 42. During the investigation, Respondent

admitted in his response that he did not follow up with USCIS to obtain a copy of the approval notice. *See* DCX 7 at 5.

8. On March 26, 2018, Respondent advised Ms. De Lira that he would file the I-601 form seeking a hardship waiver and his entry of appearance. He asked her for supporting documents. DCX 1 at 6, 40; DCX 48 at 2.

9. Ms. De Lira provided the information requested a few days later. DCX 48; *cf.* DCX 1 at 43, 45.

10. Respondent did not file an I-601 hardship waiver to continue the process in Mr. De Lira's case. DCX 50 at 2; *see* DCX 7 at 5.

11. To file the hardship waiver (I-601), Respondent first had to pay the NVC the Immigrant Visa Application Processing Fee and Affidavit of Support Fee. DCX 48 at 2; DCX 1 at 16-17. Respondent did not pay these fees. *See* DCX 1 at 16-17; DCX 48 at 2; DCX 50 at 2.

12. The NVC would review the waiver form and supporting documents before Mr. De Lira could receive his immigrant visa. *See* DCX 50 at 2 & n.1; DCX 1 at 29, 31.

13. Although Respondent received invoices from the NVC to pay the review fees, he never paid them. DCX 1 at 16-17; DCX 48 at 2; *see* DCX 50 at 2.

14. Almost two years later, the National Visa Center emailed Respondent and Ms. De Lira a letter terminating its review of the De Liras' materials because of lack of communication with NVC and failure to pay the required fees. *See* DCX 1 at 50; DCX 48 at 2.

15. Two weeks after receiving the NVC termination email, Respondent told Ms. De Lira that he would "get this hold up straightened out." DCX 1 at 50; *see* DCX 48 at 2-3.

16. During the next year, Ms. De Lira asked Respondent for information about the status of the matter in several emails, but Respondent often did not even respond. When he did, he stated that NVC was not responding to his inquiries, and it was only working on emergency cases because of the pandemic. DCX 1 at 50-57; DCX 48 at 3.

17. Respondent sent his last email to Ms. De Lira on February 8, 2021. DCX 48 at 3; DCX 1 at 57. For the next five months, Ms. De Lira tried to reach Respondent multiple times by different means of communication, but Respondent never responded. DCX 48 at 3; *see* DCX 1 at 4, 57.

18. On July 28, 2021, Ms. De Lira sent a letter to Respondent asking for an update and answers to her questions regarding the case. DCX 1 at 4-5; DCX 48 at 3. This letter was returned as undeliverable. DCX 1 at 5. Respondent received this letter as part of the disciplinary investigation underlying these proceedings. *See* DCX 3 at 12; DCX 7 at 3.

19. In this same letter, Ms. De Lira requested a refund and the client file. He has never returned Ms. De Lira's client file or refunded the fees. DCX 1 at 4; DCX 48 at 3.

20. In February of 2022, after NVC terminated its review, USCIS revoked its approval of the I-130 petition for lack of action. DCX 50 at 2.

B. Disciplinary Docket No. 2022-D076 (Lagana)

21. In April 2018, Letha Lagana retained Respondent to assist her with her immigration case, specifically to obtain lawful permanent resident status and work authorization. DCX 29 at 5-6; DCX 32 at 57-58; DCX 49 at 1-2. Ms. Lagana is a citizen of Canada married to a United States citizen. DCX 49 at 2. The representation required Respondent to prepare and file at least three (3) forms on behalf of the Laganas: (1) an I-130 petition to establish that Ms. Lagana's relationship with her husband was a qualifying relationship that would permit her to seek a green card; (2) an I-485 to adjust Ms. Lagana's status to lawful permanent resident; and (3) an I-765 application for work authorization. DCX 51 at 2.

22. Respondent quoted a legal fee of $4,000 for the representation and informed Ms. Lagana that she would be responsible for paying the filing fees, which totaled $1,760. DCX 29 at 7; DCX 32 at 57-58; DCX 29 at 5; DCX 49 at 2.

23. The Laganas paid Respondent $3,000 in cash so he would begin working on their matter. DCX 32 at 57; DCX 49 at 2.

24. Respondent told Ms. Lagana that she would have her green card and a social security number to begin working. DCX 29 at 5; DCX 41 at 3; DCX 49 at 2.

25. In January 2019, Mr. and Ms. Lagana met with Respondent to sign documents. At this meeting, the Laganas paid Respondent an additional $2,000 in cash—$1,760 for the filing fees and $240 toward the remaining $1,000 of the legal fee. DCX 29 at 5, 8. This was the last time the Laganas saw Respondent. DCX 49 at 2.

26. On December 11, 2019, Respondent filed the I-130 petition. DCX 51 at 2.

27. Three months later, Respondent filed the I-485 application to adjust Ms. Lagana's status. *Id.* He paid the $1,760 filing fee with a cashier's check drawn on a Chase bank account he shared with his wife. DCX 32 at 55; *see* DCX 52 at 1.

28. The I-485 application was immediately rejected because Respondent had used an outdated version of the application form. DCX 51 at 2.

29. USCIS sent Respondent a rejection notice, but he did not tell his clients about it, and he did not refile the application. DCX 51 at 2; *see* DCX 32 at 75; DCX 49 at 2.

30. USCIS refunded the filing fees (totaling $1,760)[3] for Ms. Lagana's I-485 application, but Respondent did not refund those fees to the clients or use them to refile the forms, and Respondent knew that he had not done so despite what he told Ms. Lagana. DCX 32 at 75; DCX 49 at 3; *see* DCX 51 at 2.

31. In July 2020, USCIS approved the I-130 petition for Ms. Lagana. DCX 51 at 2. The approval established that Ms. Lagana had a qualifying relationship that would permit her to seek lawful permanent resident status, but Respondent never filed the I-485 form to seek that status after his initial attempt was rejected. *See id.*

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[3] Respondent told Disciplinary Counsel that the filing fees were "refunded" to him, DCX 32 at 75, but it is unclear whether USCIS deposited the filing fees and then issued a refund check or whether it returned Respondent's original cashier's check without depositing it. *See* Tr. 30.

32. Respondent did not respond to many of Ms. Lagana's calls and emails. Their last communication was an email exchange in September 2020. DCX 29 at 5-6; DCX 49 at 2; *see* DCX 40 at 5-17.

C. Disciplinary Counsel's Investigation

33. Both Ms. De Lira and Ms. Lagana filed disciplinary complaints against Respondent with the Washington State Bar Association, which forwarded the complaints to the D.C. Office of Disciplinary Counsel. DCX 1 at 1-3; DCX 29 at 1-6; DCX 48 at 3; DCX 49 at 2.

34. In response to Disciplinary Counsel's request that he respond to Ms. De Lira's complaint, Respondent admitted that he "dropped the ball" in the case and did not effectively communicate with the client during the representation. DCX 7 at 5.

35. In response to Disciplinary Counsel's request that he respond to the Lagana complaint, Respondent admitted that he failed to appropriately follow up with USCIS about the I-485 application and failed to communicate with his clients. DCX 32 at 75.

36. On September 15, 2023, Disciplinary Counsel requested a complete copy of the client files and financial records for the representation in both matters. DCX 44. This request was also delivered by certified mail in October of 2023. DCX 23 at 6, 127-28.

37. Respondent did not respond to Disciplinary Counsel's further inquiries. DCX 23 at 4-6; DCX 52.

38. On January 30, 2024, Disciplinary Counsel filed a motion to enforce its subpoena, which the Court granted on March 29, 2024, directing Respondent to provide the documents responsive to the subpoena within ten days. DCX 23; DCX 24.

39. The Court's Order was sent to Respondent by certified mail, but Respondent did not provide any documentation or respond to Disciplinary Counsel. DCX 25; DCX 26; DCX 52 at 3.

III. CONCLUSIONS OF LAW

A. Choice of Law

D.C. Rule 8.5(b) governs choice of law and provides that only one set of rules can apply to particular conduct:

> (1) For conduct in connection with a matter pending before a tribunal, the rules to be applied shall be the rules of the jurisdiction in which the tribunal sits, unless the rules of the tribunal provide otherwise, and
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> (2) For any other conduct,
>
> > (i) If the lawyer is licensed to practice only in this jurisdiction, the rules to be applied shall be the rules of this jurisdiction, and
> >
> > (ii) If the lawyer is licensed to practice in this and another jurisdiction, the rules to be applied shall be the rules of the admitting jurisdiction in which the lawyer principally practices; provided, however, that if particular conduct clearly has its predominant effect in another jurisdiction in which the lawyer is licensed to practice, the rules of that jurisdiction shall be applied to that conduct.

The Specification only alleges violations of the D.C. Rules of Professional Conduct. To the extent USCIS served as a "tribunal," its disciplinary rules (8 C.F.R.

§ 1003.102) may apply to Respondent's representation of his clients in matters pending before it. *Cf. In re Vohra*, 68 A.3d 766, 781-82 (D.C. 2013) (appended Board Report) (finding that the respondent made a knowing false statement to a tribunal, in violation of D.C. Rule 3.3(a)(1), by forging signatures on visa applications to USCIS); *In re Kreiss*, Board Docket No. 23-BD-008, at 12-15 (BPR July 29, 2024) (applying 8 C.F.R. § 1003.102 to conduct before the Board of Immigration Appeals pursuant to Rule 8.5(b) and rejecting Disciplinary Counsel's argument that it should not address choice of law absent an argument from Respondent), *recommendation adopted where no exceptions filed*, 324 A.3d 294 (D.C. 2024) (per curiam). Because there is no apparent prejudice to Respondent regardless of which Rules apply, and due to the similar standards set forth in both sets of Rules,[4] we apply the D.C. Rules. *See Kreiss*, Board Docket No. 23-BD-008, at 18.

B. Rules 1.1(a) (lack of competence) and 1.1(b) (skill and care) (De Lira and Lagana)

Rule 1.1(a) requires a lawyer to "provide competent representation to a client," which requires utilizing the "legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation." *See In re Drew*, 693 A.2d 1127, 1132 (D.C. 1997) (per curiam) (lawyer who has requisite skill and knowledge,

[4] The rules governing immigration practitioners are not comprehensive, and the D.C. Rules would apply to conduct outside their scope—here, D.C. Rules 1.15(a), 1.16(d), 8.1(b), and 8.4(d). *See* Order, *In re Alexei*, Board Docket No. 21-BD-050 (BPR May 8, 2024), appended HC Rpt. at 26-28.

but who does not apply it for particular client, violates obligations under Rule 1.1(a)). A lawyer violates Rule 1.1 if there is a "serious deficiency" in the representation of a client, whereby the attorney commits "an error that prejudices or could have prejudiced a client and the error was caused by a lack of competence." *In re Yelverton*, 105 A.3d 413, 421-22 (D.C. 2014) (quoting *In re Evans*, 902 A.2d 56, 70 (D.C. 2006) (per curiam) (appended Board Report)).

Rule 1.1(b) requires a lawyer to "serve a client with skill and care commensurate with that generally afforded to clients by other lawyers in similar matters." The Rule is "better tailored [than Rule 1.1(a)] to address the situation in which a lawyer capable to handle a representation walks away from it for reasons unrelated to his competence in that area of practice." *In re Lewis*, 689 A.2d 561, 564 (D.C. 1997) (per curiam) (appended Board Report).

A violation of the standard of care may be established through expert testimony, or by demonstrating that the attorney's "conduct is so obviously lacking that expert testimony showing what other lawyers generally would do is unnecessary." *In re Nwadike*, Bar Docket No. 371-00, at 28 (BPR July 30, 2004), *findings and recommendation adopted*, 905 A.2d 221, 227, 232 (D.C. 2006); *In re Schlemmer*, Bar Docket Nos. 444-99 & 66-00, at 13 (BPR Dec. 27, 2002) (noting, in a case where the respondent attorney failed to file an immigration appeal after the client paid the initial fee for the appeal, that Disciplinary Counsel need not "necessarily produce evidence of practices of other attorneys in order to establish a Rule 1.1(b) violation"), *recommendation adopted in relevant part*, 840 A.2d 657

(D.C. 2004) (remanding to the Board for further consideration of the appropriate sanction).

The competency, skill, and care of an attorney under Rules 1.1(a) and (b) must be evaluated in terms of the representation required and provided in the particular matter at issue:

> Competent handling of a particular matter includes inquiry into and analysis of the factual and legal elements of the problem, and use of methods and procedures meeting the standards of competent practitioners. It also includes adequate preparation and continuing attention to the needs of the representation to assure that there is no neglect of such needs. The required attention and preparation are determined in part by what is at stake; major litigation and complex transactions ordinarily require more elaborate treatment than matters of lesser consequence.

Rule 1.1, cmt. [5].[5]

Disciplinary Counsel contends that Respondent violated Rules 1.1(a) and (b) in the De Lira matter by failing to file a hardship waiver for Mr. De Lira and failing to refile the I-485 application for Ms. Lagana or consult with her about an alternative. ODC Br. at 14-15; *see* FF 10, 30-31. These failures prejudiced both clients: Mr. De Lira's I-130 petition was revoked by USCIS for lack of action, while Ms. Lagana's adjustment of status was delayed. ODC Br. at 15; *see* FF 20, 30-31. Both examples demonstrate that Respondent's conduct was "obviously lacking" and demonstrate a serious deficiency in the representation, and thus support a finding that Respondent

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[5] Comment [5] was amended on April 7, 2025, to clarify that competent handling of a matter includes the use of technology meeting the standards of competent practitioners.

failed to provide competent representation to Respondent's clients and failed to serve them with requisite skill and care, in violation of Rules 1.1(a) and (b). *See Yelverton*, 105 A.3d at 421-22; *Nwadike*, Bar Docket No. 371-00, at 28; *Schlemmer*, Bar Docket Nos. 444-99 & 66-00, at 13.

C. Rule 1.3(a) (diligence and zeal) (De Lira and Lagana)

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)). Rule 1.3(a) "does not require proof of intent, but only that the attorney has not taken action necessary to further the client's interests, whether or not legal prejudice arises from such inaction." *In re Bradley*, Board Docket No. 10-BD-073, at 17 (BPR July 31, 2012), *adopted in relevant part*, 70 A.3d 1189, 1191 (D.C. 2013) (per curiam); *see also Lewis*, 689 A.2d at 564 (appended Board Report) (Rule 1.3(a) violated even where "[t]he failure to take action for a significant time to further a client's cause . . . [does] not [result in] prejudice to the client").

The Court has found violations of Rule 1.3(a) where an attorney persistently and repeatedly failed to fulfill duties owed to the client over a period of time. *See, e.g.*, *In re Ukwu*, 926 A.2d 1106, 1135 (D.C. 2007) (appended Board Report)

(respondent violated Rule 1.3(a) when he repeatedly failed to inform his clients about the status of their cases, prepare his clients for hearings and interviews with immigration officials, or prepare himself for court appearances); *Wright*, 702 A.2d at 1255 (appended Board Report) (respondent violated Rule 1.3(a) by failing to respond to discovery requests, a motion to compel, and a show cause order); *In re Chapman*, Bar Docket No. 055-02, at 19-20 (BPR July 30, 2007) (respondent violated Rule 1.3(a) where he did virtually no work on the client's case during the eight-month term of the representation, failed to conduct any discovery, and did not respond to discovery requests from the opposing party), *recommendation adopted*, 962 A.2d 922, 923-24 (D.C. 2009) (per curiam).

Disciplinary Counsel contends that Respondent violated Rule 1.3(a) for the same reasons he violated Rules 1.1(a) and (b). *See* ODC Br. at 15. We agree that Respondent's failure to file a hardship waiver for Mr. De Lira and failure to refile the I-485 application for Ms. Lagana demonstrated a "conscious disregard" for his responsibilities to his clients, *see Wright*, 702 A.2d at 1255, and thus violated Rule 1.3(a).

D. Rules 1.4(a) and (b) (failure to communicate and explain matters to clients) (De Lira and Lagana)

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]. To that end, a lawyer must provide the client with "accurate information about [the] lawyer's actions on his behalf" throughout the representation. *See In re Brown*, 310 A.3d 1036, 1047 (D.C. 2024). 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, 440, 442-43 (D.C. 2020) (per curiam). In addition to responding to client inquiries, a lawyer must initiate communications when necessary. *See In re Hallmark*, 831 A.2d 366, 374 (D.C. 2003) (citing Rule 1.4, cmt. [1]).

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

Disciplinary Counsel contends that Respondent violated Rules 1.4(a) and (b) by failing to inform the De Liras about his failure to file the I-601 waiver for Mr. De Lira as promised. *See* ODC Br. at 16; FF 16-19. Disciplinary Counsel further contends that Respondent violated Rules 1.4(a) and (b) by failing to inform the Laganas about the rejected I-485 application and then failing to respond to their inquiries. *See* ODC Br. at 16; FF 29, 31-32. We agree with Disciplinary Counsel that Respondent's failure to consult with his clients, provide important status updates, and respond to their requests for information clearly did not fulfill their reasonable expectations for information, *see Schoeneman*, 777 A.2d at 264, and thus violated Rules 1.4(a) and (b).

E. Rule 1.5(a) (unreasonable fee) (De Lira and Lagana)

Rule 1.5(a) provides that:

A lawyer's fee shall be reasonable. The factors to be considered in determining the reasonableness of a fee include the following:

> (1) The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
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> (2) The likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
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> (3) The fee customarily charged in the locality for similar legal services;
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> (4) The amount involved and the results obtained;
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> (5) The limitations imposed by the client or by the circumstances;
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> (6) The nature and length of the professional relationship with the client;

(7) The experience, reputation, and ability of the lawyer or lawyers performing the services; and

(8) Whether the fee is fixed or contingent.

The Court of Appeals has held that "Rule 1.5(a) can be violated by the act of charging an unreasonable fee without regard to whether the fee is collected." *In re Cleaver-Bascombe*, 892 A.2d 396, 403 (D.C. 2006).

"The prototypical circumstance of charging an unreasonable fee is undoubtedly one in which an attorney did the work that he or she claimed to have done, but charged the client too much for doing it." *Id.* However, "[i]t cannot be reasonable to demand payment for work that an attorney has not in fact done." *Id.* Keeping an entire flat fee without completing the representation, even if the matter becomes more complicated than the lawyer initially anticipated at the outset of the case, also violates Rule 1.5(a). *See Brown*, 310 A.3d at 1047-48. Disciplinary Counsel contends that Respondent violated Rule 1.5(a) because he charged a fee, but did not perform the duties as promised. ODC Br. at 20. By keeping fees for work he had not done, as evidenced by the violations of Rules 1.1(a) and (b) and 1.3(a) discussed above, Respondent charged an unreasonable fee, in violation of Rule 1.5(a). *See Cleaver-Bascombe*, 892 A.2d at 403.

F. Rule 1.15(a) (record-keeping and misappropriation) (De Lira and Lagana)

1. Record-Keeping

Rule 1.15(a) requires lawyers to keep "complete records of . . . account funds and other property" and preserve them "for a period of five years after termination of the representation." *See In re Edwards*, 990 A.2d 501, 522 (D.C. 2010) (per

curiam) (appended Board Report) ("Financial records are complete only when an attorney's documents are 'sufficient to demonstrate [the attorney's] compliance with his ethical duties.'" (quoting *In re Clower*, 831 A.2d 1030, 1034 (D.C. 2003) (per curiam))). The purpose of the requirement of "complete records is so that 'the documentary record itself tells the full story of how the attorney handled client or third-party funds' and whether, for example, the attorney misappropriated or commingled a client's funds." *Edwards*, 990 A.2d at 522; *see also In re Pels*, 653 A.2d 388, 396 (D.C. 1995) (finding Rule 1.15(a) violation when attorney showed a "pervasive failure" to maintain contemporaneous records accounting for the flow of client funds within various bank accounts). Thus, "[t]he records themselves should allow for a complete audit even if the attorney or client is not available." *Edwards*, 990 A.2d at 522. A hearing committee may infer that an attorney failed to keep the records required by Rule 1.15(a) from the attorney's failure to produce such records. *In re Doman*, 314 A.3d 1219, 1229 (D.C. 2024) (per curiam).

Disciplinary Counsel alleges that Respondent failed to keep complete records of entrusted funds based on his failure to produce such records in response to its inquiries and subpoenas. *See* ODC Br. at 19; FF 36-39. As in *Doman*, we will infer that Respondent's failure to produce complete records demonstrates his failure to keep them as required by Rule 1.15(a). 314 A.3d at 1229.

2. Reckless Misappropriation

The Court has defined misappropriation as "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)).

Misappropriation occurs where (1) client funds were entrusted to the attorney; (2) the attorney used those funds for the attorney's own purposes; and (3) 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)). Funds are "entrusted" when the lawyer is "imbued with authority to prevent their unauthorized use." *Id.* at 624 (applying holding prospectively); *see Anderson*, 778 A.2d at 335; *In re Harrison*, 461 A.2d 1034, 1036 (D.C. 1983) (Misappropriation is defined as "any unauthorized use of client[] [or third party] funds entrusted to [the lawyer], including not only stealing but also unauthorized temporary use for the lawyer's own purpose, whether or not he derives any personal gain or benefit therefrom." (citation and quotation marks omitted)). When filing fees paid by the client are refunded to the lawyer, they become entrusted, and spending the refunded fees for personal expenses constitutes misappropriation. *See In re Schuman*, 251 A.3d 1044, 1052 (D.C. 2021).

Misappropriation is essentially a *per se* offense, *see Anderson*, 778 A.2d at 335, though the Court has "never sustained a Rule 1.15(a) charge absent some finding of a culpable mindset at least rising to the level of negligence," *In re Krame*, 284 A.3d 745, 767 n.11 (D.C. 2022) (citations omitted).

Disciplinary Counsel must establish whether the misappropriation 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.

In re Ahaghotu, 75 A.3d 251, 256 (D.C. 2013) (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). 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 defined as

> 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).

Disciplinary Counsel contends that Respondent misappropriated the refunded I-485 fee, which should have been sent back to Ms. Lagana, but did not present direct evidence that Respondent used the funds from the I-485 fee refund without authorization, nor that Respondent used them for his personal benefit. Rather, Disciplinary Counsel contends that Respondent was not authorized to do anything with those funds other than refund them to Ms. Lagana or file a new I-485 application. ODC Br. at 18-19. Disciplinary Counsel contends that Respondent did neither, relying instead on Respondent's response to its inquiry in which he concedes

that he received a refund for the I-485 application filing fees and could not verify that he filed a new petition, DCX 32 at 75; USCIS's sworn representation that a second petition was not filed, DCX 51 at 2; and Ms. Lagana's sworn statement that Respondent never provided a refund, DCX 49 at 3. Thus, Disciplinary Counsel contends, "whatever use he made of the funds was not an authorized use and therefore amounted to misappropriation." ODC Br. at 19.

Disciplinary Counsel cites no authority for the proposition that the "unauthorized use" element of misappropriation can be inferred from these circumstances, nor does it account for the possibility that the funds were never used at all.[6] While it has not ruled on this specific issue, the Court of Appeals has been reluctant to shift the burden of production on any element of misappropriation. *Cf. In re Thompson*, 579 A.2d 218, 220-23 (D.C. 1990) (providing that an attorney's explanation, or lack thereof, could be considered as one factor in determining whether Disciplinary Counsel carried its burden of proving that misappropriation was intentional). Nevertheless, allowing a respondent to escape liability for

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[6] If USCIS had sent back Respondent's original cashier's check without having deposited it, which Disciplinary Counsel concedes is a possibility, *see* Tr. 30, Respondent could have redeposited it into his Chase account, canceled it, or held onto it. *See* DCX 32 at 55 (providing instructions for canceling cashier's check). If it still has not been redeposited or canceled to this day, the check became void seven years after it was issued: January 23, 2026. *See id.* If the check has not been redeposited or canceled and it is still in Respondent's possession, there would be no misappropriation. *See In re Ingram*, 584 A.2d 602, 603 (D.C. 1991) (per curiam) (finding no misappropriation based on evidence that the respondent kept the money owed to the client intact in the client's file, rather than in a trust account whose balance dropped below the amount required to be held in trust).

misappropriation, and avoid disbarment, by intentionally failing to provide financial documentation to Disciplinary Counsel or participate in disciplinary proceedings would undermine the purpose of Rule 1.15(a): to keep entrusted funds available to clients and third parties who are entitled to those funds at any given time.

In *In re Thai*, the Board addressed an analogous circumstance in which a client paid a fee in cash, and there was no evidence of how the respondent handled that cash due to his failure to participate in the disciplinary proceedings after providing an initial response to the disciplinary complaint. In finding misappropriation despite no direct evidence of "use," the Board explained:

> Respondent took a $2,000 cash fee from his client, failed to earn it, ignored his client's repeated demands to refund the money, and failed to provide any explanation (not even an implausible story about keeping the money in his office safe) in response to Disciplinary Counsel's requests for information. Additional circumstantial evidence suggests that there were other occasions when Respondent failed to deposit entrusted funds (for example his implausible story about losing Mr. Tang's tuition deposit in a briefcase in the men's room) and instead used the funds for his own purposes. Thus, we agree with the Hearing Committee's conclusion that "we find the probability that Respondent promptly deposited [Ms.] Huynh's deposit in an escrow account, where it has remained ever since, to be vanishingly small. Accordingly, Respondent must have done something else with the funds. Whatever that was, it was unauthorized."

In re Thai, Board Docket Nos. 14-BD-026 *et al.*, at 10-11 (BPR May 13, 2016) (quoting Hearing Committee Report at 31), *recommendation adopted after no exceptions filed*, 157 A.3d 760 (D.C. 2017) (per curiam).

Thus, *Thai* provides a basis for us to draw an inference from Respondent's failure to demonstrate what he did with the refunded filing fees, failure to explain

his actions to his clients, failure to respond to Disciplinary Counsel's subpoena, and failure to participate in these proceedings. On the record before us, we conclude that Disciplinary Counsel has proven unauthorized use of entrusted funds.

Next, in support of its argument that Respondent's misappropriation was reckless, Disciplinary Counsel cites his "pattern of taking fees from clients and not performing the work." ODC Br. at 19. Disciplinary Counsel cites no authority for the proposition that taking fees without performing work in two matters constitutes "'conscious indifference' to the treatment of legal fees." *Id.* Unlike in *Thai*, where the Board found intentional misappropriation, there was no circumstantial evidence that Respondent engaged in unauthorized use of other entrusted funds. *Thai*, Board Docket Nos. 14-BD-026 *et al.*, at 11. And there is only evidence of one of the five "hallmarks" of recklessness: disregard of inquiries into the status of funds. *See Ahaghotu*, 75 A.3d at 256. Still, we may consider Respondent's lack of explanation as to his handling of entrusted funds as "one factor—and an important one—in the decision whether misappropriation has been intentional" or reckless. *Thompson*, 579 A.2d at 223. Respondent's failure to refund the filing fees even after his client inquired about the status of the application and even after Disciplinary Counsel demanded proof of what he did with the refunded fees demonstrated that he does not care about the consequences of his actions. *See Anderson*, 778 A.2d at 339. Accordingly, we find that Disciplinary Counsel has proven that Respondent's misappropriation was reckless.

G. Rule 1.16(d) (termination of representation) (De Lira and Lagana)

Rule 1.16(d) provides:

> In connection with any termination of representation, a lawyer shall take timely steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled, and refunding any advance payment of fee or expense that has not been earned or incurred. The lawyer may retain papers relating to the client to the extent permitted by Rule 1.8(i).

Furthermore, "'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)). Comment [9] to Rule 1.16 further states that even if a lawyer has been unfairly discharged, "a lawyer must take all reasonable steps to mitigate the consequences to the client."

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 of Rule 1.16(d) 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 Carter*, 11 A.3d 1219, 1223 (D.C. 2011) (per curiam) (finding a violation of Rule 1.16(d) where the attorney failed to pay a fee arbitration award for unearned fees); *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).

Disciplinary Counsel contends that Respondent violated Rule 1.16(d) by (1) failing to refund the Laganas' filing fees for the I-485 application; (2) failing to communicate with the Laganas after receiving legal fees, which he did not earn; and (3) failing to return documents and refund unearned fees to the De Liras upon request. *See* ODC Br. at 21-22. We agree that failing to provide refunds and documents upon termination of the representation is a straightforward violation of Rule 1.16(d). *See Samad*, 51 A.3d at 497.

H. Rule 8.1(b) (knowing failure to respond to Disciplinary Counsel) (De Lira and Lagana)

Rule 8.1(b) provides, in relevant part:

> [A] lawyer . . . in connection with a disciplinary matter, shall not . . . fail to disclose a fact necessary to correct a misapprehension known by the lawyer . . . to have arisen in the matter, or knowingly fail to respond reasonably to a lawful demand for information from . . . [a] disciplinary authority . . . .

Thus, a knowing failure to respond to a request from Disciplinary Counsel regarding an ethical complaint constitutes a violation of Rule 8.1(b). *See, e.g.*, *In re Lea*, 969 A.2d 881, 888 (D.C. 2009).

Disciplinary Counsel contends that Respondent violated Rule 8.1(b) by "disappear[ing]" and failing to respond to inquiries and subpoenas after initially cooperating with its investigation. ODC Br. at 22-23; FF 36-39. We agree that Respondent's failure to comply with Disciplinary Counsel's requests for information violates Rule 8.1(b).

I. Rule 8.4(d) (serious interference with the administration of justice) (De Lira and Lagana)

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." Failure to respond to Disciplinary Counsel's inquiries and (multiple) orders of the Board and the Court constitutes a violation of Rule 8.4(d). Rule 8.4, cmt. [2]; *see, e.g.*, *Doman*, 314 A.3d at 1231 (failure to respond to Disciplinary Counsel's inquiries); *In re Daniels*, 299 A.3d 541 (D.C. 2023) (per curiam) (failure to comply with Board order compelling a response); *In re Thompson*, 195 A.3d 64 (D.C. 2018) (per curiam) (failure to comply with Court order compelling a response).

Disciplinary Counsel contends that Respondent violated this Rule for the same reason he violated Rule 8.1(b), adding that his failure to respond or participate in the disciplinary proceedings impeded its ability to investigate the matters. ODC Br. at 22-23; FF 36-39. We agree that Respondent's failure to respond to Disciplinary Counsel's inquiries and subpoenas interfered with Disciplinary Counsel's investigation and thus violated Rule 8.4(d). *See Doman*, 314 A.3d at 1231.

J. D.C. Bar Rule XI, § 2(b)(3) (De Lira and Lagana)

D.C. Bar Rule XI, § 2(b)(3) provides that failure to comply with "any order of the Court or the Board issued pursuant to this rule" is "grounds for discipline."

Disciplinary Counsel contends that Respondent violated this Rule for the same reason he violated Rules 8.1(b) and 8.4(d). We agree that Respondent violated

Rule XI, § 2(b)(3) by failing to comply with the Court's order enforcing Disciplinary Counsel's subpoena. FF 39.

IV. RECOMMENDED SANCTION

In this case, Disciplinary Counsel has asked the Hearing Committee to recommend the sanction of disbarment.[7] For the reasons described below, we concur and recommend the sanction of disbarment.

A. Standard of Review

The sanction imposed in an attorney disciplinary matter is one that is necessary to protect the public and the courts, maintain the integrity of the legal profession, and deter the respondent and other attorneys from engaging in similar misconduct. *See, e.g.*, *In re Hutchinson*, 534 A.2d 919, 924 (D.C. 1987) (en banc); *In re Martin*, 67 A.3d 1032, 1053 (D.C. 2013); *Cater*, 887 A.2d at 17. "In all cases, [the] purpose in imposing discipline is to serve the public and professional interests . . . rather than to visit punishment upon an attorney." *In re Reback*, 513 A.2d 226, 231 (D.C. 1986) (en banc) (citations omitted); *see also In re Goffe*, 641 A.2d 458, 464 (D.C. 1994) (per curiam).

The sanction also must not "foster a tendency toward inconsistent dispositions for comparable conduct or . . . otherwise be unwarranted." D.C. Bar R. XI, § 9(h)(1);

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[7] In the District of Columbia, an attorney who has been disbarred may apply for reinstatement five years after the effective date of the disbarment. *See* D.C. Bar R. XI, § 16.

see, e.g., *Hutchinson*, 534 A.2d at 923-24; *In re Berryman*, 764 A.2d 760, 766 (D.C. 2000).

In determining the appropriate sanction, the Court of Appeals considers a number of factors, including: (1) the seriousness of the conduct at issue; (2) the prejudice, if any, to the client which resulted from the conduct; (3) whether the conduct involved dishonesty; (4) the presence or absence of violations of other provisions of the disciplinary rules; (5) whether the attorney has a previous disciplinary history; (6) whether the attorney has 3acknowledged his wrongful conduct; and (7) circumstances in mitigation or aggravation. *See, e.g.*, *Martin*, 67 A.3d at 1053 (citing *In re Elgin*, 918 A.2d 362, 376 (D.C. 2007)). The Court also considers "'the moral fitness of the attorney' and 'the need to protect the public, the courts, and the legal profession . . . .'" *In re Rodriguez-Quesada*, 122 A.3d 913, 921 (D.C. 2015) (per curiam) (quoting *In re Howes*, 52 A.3d 1, 15 (D.C. 2012)).

B. Presumptive Sanction of Disbarment

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 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."); *see also In re Hewett*, 11 A.3d 279, 286 (D.C. 2011). 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. *In re Anderson*, 778 A.2d at 337-38 (citing *Addams*, 579 A.2d at 191). There being no evidence presented in mitigation of sanction, we agree with Disciplinary Counsel's recommendation of disbarment.

V. CONCLUSION

The sworn proof and documentary evidence Disciplinary Counsel attached to its Motion for Default and filed with the Hearing Committee constitute clear and convincing evidence that Respondent violated Rules 1.1(a) and (b), 1.3(a), 1.4(a) and (b), 1.5(a), 1.15(a), 1.16(d), 8.1(b), and 8.4(d), as well as D.C. Bar Rule XI, § 2(b)(3). For that misconduct, the Hearing Committee recommends that Respondent receive the sanction of disbarment. We further recommend that

Respondent's attention be directed to the requirements of D.C. Bar Rule XI, § 14, and their effect on eligibility for reinstatement. *See* D.C. Bar R. XI, § 16(c).

AD HOC HEARING COMMITTEE

Mark E. Schamel

Mark E. Schamel, Chair

Cameron Walker-Miller

Cameron Walker-Miller, Public Member

KB Havener

Kathleen Havener, Attorney Member