THIS REPORT IS NOT A FINAL ORDER OF DISCIPLINE*

DISTRICT OF COLUMBIA COURT OF APPEALS
BOARD ON PROFESSIONAL RESPONSIBILITY

Issued
July 15, 2021

In the Matter of:	:	
	:	
JOHN E. ROSENBAUM,	:	
	:	Board Docket No. 20-BD-003
Respondent.	:	Disc. Docket No. 2015-D090
	:	
A Member of the Bar of the District of Columbia Court of Appeals (Bar Registration No. 457617)	:	

REPORT AND RECOMMENDATION OF THE
BOARD ON PROFESSIONAL RESPONSIBILITY

This matter arises from Respondent John E. Rosenbaum's role as a fiduciary to the estate of a Pennsylvania resident who died intestate, in which he assisted a friend, who served as special counsel to the estate, with distributing funds to heirs in France. Prior to the hearing, on March 3, 2020, Respondent filed a motion for deferral due to the existence of a parallel disciplinary investigation in California based on the same underlying conduct. The Ad Hoc Hearing Committee recommended that Respondent's motion be denied, and a hearing was held on September 8-11 and 14, 2020.

Following the hearing, on February 22, 2021, the Hearing Committee issued a Report and Recommendation concluding that Respondent violated Pennsylvania Rules of Professional Conduct 1.5(a) (excessive fee), 1.15(b) (commingling and intentional misappropriation), 1.15(e) (failure to promptly deliver funds and provide accounting), 8.4(a) (assisting another to violate Rules), 8.4(b) (committing a crime),

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

8.4(c) (dishonesty, fraud, deceit, and misrepresentation), and 8.4(d) (conduct prejudicial to the administration of justice), and recommending that he be disbarred for intentional misappropriation, with restitution as a condition of reinstatement. Following the issuance of the Hearing Committee Report, on May 17, 2021, Respondent was suspended in California for three years, partially stayed in favor of probation with a fitness requirement and other conditions. *In re Rosenbaum*, State Bar Court No. SBC-20-O-30930 (Cal. May 17, 2021) (en banc). Respondent does not challenge the Hearing Committee's findings and recommendations, but urges the Board to (1) find that the Hearing Committee erred in recommending against deferral pending the outcome of the California proceedings, (2) set aside the Hearing Committee Report on that basis, and (3) wait for the Court to initiate reciprocal discipline proceedings. Disciplinary Counsel supports the Hearing Committee's findings and recommendations.

We agree with the Hearing Committee's findings of fact, conclusions of law, and recommended sanction, and adopt and incorporate its Report and Recommendation, attached hereto. We are unpersuaded by Respondent's arguments, for the following reasons:

Though the Board has not issued a final ruling on Respondent's motion for deferral, as provided by Board Rule 4.2, neither party raised the issue during the almost six months between the Hearing Committee's recommendation and the start of the hearing. Instead, they proceeded with the hearing with the understanding that the disciplinary proceedings would not be deferred. We agree with the Hearing

Committee's conclusion that deferral was not appropriate in March 2020.[1] But even if we agreed with Respondent's position, however, he cites no authority supporting his proposed remedy of vacating the entire record below.

Respondent's argument that the Board should recommend initiation of reciprocal disciplinary proceedings instead of considering the Hearing Committee's findings and recommendations is similarly unpersuasive. D.C. Bar R. XI, § 11(c) provides that reciprocal discipline "shall" be imposed following discipline in a foreign jurisdiction (unless certain conditions are met). However, Respondent argues that the Court must impose only reciprocal discipline and cannot consider the result of an original contested case when a foreign jurisdiction has already imposed a sanction for the same misconduct. The Court has consistently declined to defer to foreign discipline where there has already been a full hearing on the merits. *See In re Robbins*, 192 A.3d 558, 566 (D.C. 2018) (per curiam); *In re Cerroni*, 683 A.2d 150, 151 (D.C. 1996) (per curiam); *In re Perrin*, 663 A.2d 517, 522-23 (D.C. 1995). Both *Perrin* and *Cerroni* involved a similar procedural posture to this case: After hearings had been conducted, but before the hearing committees had issued their reports, the Court received notice that the respondents had been disciplined in a foreign jurisdiction. Thus, in both cases, the Board faced the question of whether to act on the hearing committee's findings and recommendations or whether to recommend reciprocal discipline. In both cases, the Court declined to impose

[1] Since the California Supreme Court has imposed final discipline, Respondent's motion is now moot.

reciprocal discipline. *See Cerroni*, 683 A.2d at 151 (agreeing that the Board "was not required to follow the doctrine of reciprocal discipline because the Hearing Committee had already conducted proceedings on the matter"); *Perrin*, 663 A.2d at 522-23 ("[W]here the Hearing Committee had already held an evidentiary hearing on the allegations against the attorney at the time Perrin was disbarred elsewhere, it simply makes no sense to disregard the Committee's findings and the Board's recommendation in favor of the other jurisdiction's sanction.").

Notably, reciprocal discipline is imposed as a matter of comity based on the misconduct found in a foreign disciplinary proceeding. It does not prevent Disciplinary Counsel from conducting its own investigation simply because another jurisdiction has already imposed discipline. For example, in *In re Naegele*, the Court recognized that Disciplinary Counsel could open an original investigation following the imposition of reciprocal discipline if further fact-finding was necessary to understand the full scope of the alleged misconduct. 225 A.3d 984, 986, 998-99 (D.C. 2020) (per curiam). Thus, nothing in Rule XI or the reciprocal discipline case law mandates that the Court of Appeals must impose only reciprocal discipline.

Accordingly, for the reasons set forth in the Hearing Committee's Report and Recommendation, we recommend that Respondent be disbarred with reinstatement conditioned upon the restitution recommended in the attached Report and Recommendation. We further recommend that Respondent's attention be directed

to the requirements of D.C. Bar R. XI, § 14, and their effect on eligibility for reinstatement. *See* D.C. Bar R. XI, §§ 3(b), 16(c).

BOARD ON PROFESSIONAL RESPONSIBILITY

By: Bernadette C. Sargeant

Bernadette C. Sargeant

All members of the Board concur in this Report and Recommendation.

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:	:	
	:	
JOHN E. ROSENBAUM,	:	
	:	Board Docket No. 20-BD-003
Respondent.	:	Disciplinary Docket No. 2015-D090
	:	
A Member of the Bar of the	:	
District of Columbia Court of Appeals	:	
(Bar Registration No. 457617)	:	

REPORT AND RECOMMENDATION OF THE
AD HOC HEARING COMMITTEE

Respondent, John E. Rosenbaum, is charged with violating Pennsylvania Rules of Professional Conduct ("Pa. Rules") 1.5(a) (excessive fee), 1.15(b) (commingling and misappropriation), 1.15(e) (failure to promptly deliver funds and provide accounting), 8.4(a) (assisting another to violate Rules), 8.4(b) (committing a crime), 8.4(c) (dishonesty, fraud, deceit, and misrepresentation), and 8.4(d) (conduct prejudicial to the administration of justice), arising from his conduct as a fiduciary for the estate of a Pennsylvania resident who died intestate.[1] The Hearing

[1] Under D.C. Rule 8.5(b)(l), the rules to be applied for "conduct in connection with a matter pending before a tribunal" are "the rules of the jurisdiction in which the tribunal sits." Our rules do not require that Respondent be licensed to practice in Pennsylvania or that he be admitted *pro hac vice* for the administration of the estate, but merely that the conduct in question be "in connection with" a court proceeding. Here, where Respondent acted as a fiduciary to the Estate of Petit that was being administered in Pennsylvania, we apply the Pennsylvania Rules of Professional Conduct, 204 Pa. Code § 81.4. Unless specified otherwise, references to the Rules are those of Pennsylvania.

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

Committee finds clear and convincing evidence of each of the violations charged by Disciplinary Counsel and that Respondent engaged in intentional misappropriation. The Hearing Committee recommends that Respondent be disbarred and be required to disgorge funds withdrawn from the estate as a condition of reinstatement.

I. PROCEDURAL HISTORY

Origin of Disciplinary Complaint

In an order dated March 12, 2014, Judge Emil Giordano, sitting in the Orphans' Court Division of the Court of Common Pleas of Northampton County, Pennsylvania, found that Richard L. Denman had unlawfully used funds from the Estate of Gerard S. Petit for his personal use in the amount of $829,719.54 while he served as special counsel to the Estate. DCX 8.[2] The order directed that it be served on the appropriate disciplinary board of Washington, D.C. "for investigation into Richard Denman's actions." *Id.* at 81. The order also terminated the power of Respondent, who served as a private fiduciary to the Estate, to take action on behalf of the Estate. *Id.* On March 28, 2014, a Pennsylvania attorney sent a letter to the Office of Disciplinary Counsel forwarding a copy of the order of March 12, 2014. *Id.* at 79-82. On March 25, 2015, Disciplinary Counsel forwarded this letter to Respondent to answer, thereby initiating this matter as Bar Docket No. 2015-D090. *Id.* at 77-78.

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[2] "DCX" refers to Disciplinary Counsel's exhibits. "RX" refers to Respondent's exhibits. "Tr." refers to the transcript of the hearing held on September 8-11 and 14, 2020.

Pre-Hearing and Hearing Procedures

The Office of Disciplinary Counsel investigated this complaint for almost five years, during which it obtained Respondent's files, subpoenaed bank records, and deferred the investigation for nearly a year while Respondent was under federal investigation. On January 9, 2020, Disciplinary Counsel served Respondent with a Specification of Charges ("Specification"). Respondent filed an Answer on March 10, 2020. Respondent twice sought to defer the proceedings: on March 3, 2020 due to an ongoing investigation by the California State Bar, and again on June 29, 2020 due to the inability to hold an in-person hearing during the COVID-19 pandemic. Both motions were denied, and a hearing was held on September 8-11 and 14, 2020, via Zoom video conference before this Ad Hoc Hearing Committee. Disciplinary Counsel was represented at the hearing by Hamilton P. Fox, Esquire. Respondent was present during the hearing and was represented by William J. Murphy, Esquire and Kyle Crawford, Esquire.

Prior to the hearing, Disciplinary Counsel submitted DCX 1 through 961.[3] During the hearing, Disciplinary Counsel called as witnesses Annette Landes,

[3] The following exhibits were received into evidence without objection or later stipulated to by the parties: DCX 3-5, 7-8, 17, 37 (pages 365-67), 44, 46, 48, 50, 51, 53-57, 61, 74, 79, 92, 104, 108, 112, 116, 117, 131, 139-142, 149-151, 154, 155, 160, 161, 166, 168, 176, 179, 182, 196, 199, 205-06, 213, 224, 225, 228, 234-240, 246, 251, 256, 264, 265, 269, 274, 276, 280, 283-285, 293-298, 302, 307, 314, 326, 329, 330, 343, 350, 351, 389, 393, 405, 406, 413, 415, 421, 422, 424, 426, 429, 430, 441, 455, 465, 469, 471, 474, 490, 492, 495, 496, 502, 519, 520, 531, 537, 539, 544, 547, 549, 552, 554, 558-560, 573, 575, 581, 585, 609, 628, 633, 637, 640, 642, 645, 650-654, 657, 661, 689, 703, 713, 724, 729, 747, 757, 762, 769, 774, 776, 787, 793, 821, 823, 831, 851-852, 902-951, and 962-963. Where an exhibit is marked with a †, it has not been offered for admission into the record by either party, but is being admitted by the Hearing Committee *sua sponte*.

Esquire (the Estate's administrator), Philippe Farcy (a grandson of one of the Estate's beneficiaries who resides in the United States), H. Carter Hood, Esquire (Disciplinary Counsel's expert witness), Charles Anderson (Disciplinary Counsel's investigator), and Respondent.

Also prior to the hearing, Respondent submitted RX 1 through 84.[4] Respondent testified on his own behalf and did not call any additional witnesses during the violations phase. Upon the conclusion of the hearing, the Hearing Committee made a preliminary non-binding determination that Disciplinary Counsel had proven at least one of the Rule violations set forth in the Specification. Tr. 1242; *see* Board Rule 11.11. In the mitigation phase of the hearing, Respondent offered RX 76 through 87, which were admitted into evidence, and testified further on his own behalf.

Post-Hearing Procedures

On September 15, 2020, the Hearing Committee set a briefing schedule. Pursuant to this schedule, Disciplinary Counsel submitted its Proposed Findings of Fact, Conclusions of Law, and Recommendation as to Sanction on October 9, 2020. Respondent filed his Proposed Findings of Fact, Conclusions of Law, and Recommendation as to Sanction on October 28, 2020. Disciplinary Counsel filed its Reply on November 6, 2020.

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[4] The following exhibits were received into evidence without objection or later stipulated to by the parties: RX 1-4, 6, 8-17, 19, 23, 24, 27-32 36, 37, 39, 40, 43, 44, 54, 58, 61, 65-67, 69, 70, 72, 74, and 75.

In his reply brief, Disciplinary Counsel takes issue with the Hearing Committee's Order of September 15, in which we stated:

> Any proposed findings of fact set forth in Disciplinary Counsel's opening brief or Respondent's response brief shall contain specific references to the parts of the record that support the proposed finding. If one party has a material disagreement with any of the other party's proposed findings of fact, the contested finding(s) of fact shall be identified by number, and the nature of the disagreement shall be clearly stated and supported by specific references to the record.

Disciplinary Counsel is correct that this procedure is modeled off of motions for summary judgment in civil litigation. *See, e.g.*, United States District Court for the District of Columbia LCvR 7(h). Disciplinary Counsel argues that this process does not work for disciplinary matters "because there are inevitably nuances in the proposed findings to which the opposing party is unwilling to agree." DC Reply Br. at 1. A motion for summary judgment must be premised on the lack of any disputes as to material facts. Fed. R. Civ. P. 56(a). Thus, not every civil lawsuit is subject to summary judgment. We suspect that few contested disciplinary matters would be subject to summary judgment.

While not directly applicable, rules related to motions for summary judgment have some benefit to the post-hearing briefing process by requiring the parties to directly address each other's facts and not simply speak over one another. This is such a case. Many of the relevant facts are undisputed here. We appreciate both parties' efforts to comply with the Hearing Committee's order of September 15, 2020, and find that it has helped clarify the parties' disagreements. We will not,

however, deem any fact not countered as having been admitted, because the Board on Professional Responsibility has not established any such rule. *See* Board Rule 12.1.

II. FINDINGS OF FACT

Summary

As explained in more detail in the numbered findings of fact below, this case involves Respondent's service as a private fiduciary to the Estate of Gerard Petit. In January 2012, the Northampton County (PA) Court with jurisdiction over his Estate directed that $450,000 of the Estate be held in reserve to address any late-filed claims, and the remainder (approximately $920,000) be disbursed to five of Mr. Petit's heirs. Distribution was complicated by the fact that they were all elderly, lived in France, and spoke little to no English. Respondent was brought into the Estate to serve as the fiduciary for the reserve by his friend Richard Denman, who was acting as special counsel to the Estate. Notwithstanding their relatively straightforward task, between February 2012 and May 2013, Respondent took control of the amount to be distributed, not the reserve, and proceeded to distribute over $400,000 to himself and Mr. Denman, while making false statements to the heirs about their ability to receive disbursements. Respondent also repeatedly denied the heirs' and their representatives' inquiries and requests for accountings. Both parties agree that this conduct was improper, but Respondent contends that he was only acting at the direction of Mr. Denman.

* * *

On the basis of the record as a whole, the Hearing Committee makes the following Findings of Fact by clear and convincing evidence:

Respondent's Bar Membership

1. Respondent was admitted to the Bar of the District of Columbia Court of Appeals on February 6, 1998, and assigned Bar number 457617. Answer at ¶ 1. Respondent was first admitted to practice law in California in 1995 and was admitted to practice in New York in 1997. Tr. 786-87 (Rosenbaum). Respondent is not admitted to practice in Pennsylvania.

The Estate of Petit

2. On March 4, 2005, Gerard S. Petit died intestate in Hanover Township, Northampton County, Pennsylvania, leaving behind an estate of about $1.5 million, but no next of kin in the United States. DCX 55; DCX 56; Tr. 96-97 (Landes). The Northampton County Court appointed Annette P. Landes, a Pennsylvania attorney, as the Administratrix of his estate. DCX 37 at 383[†]; Tr. 95-96, 101 (Landes). Ms. Landes determined that she needed to hire a genealogical search firm to identify the closest relatives of Mr. Petit. At the suggestion of the French consulate, she contacted a firm named Archives Genealogiques Andriveau ("Andriveau") in France, but did not hire it because the firm charged a contingency fee on the estate beneficiaries, which is unacceptable under Pennsylvania estate law. Tr. 101-03 (Landes); DCX 48 at 1084. Ultimately, she hired a genealogical search firm in

Vancouver, B.C. that, in 2009, identified the five closest next of kin to Mr. Petit, all residing in France. Tr. 103-04 (Landes); DCX 48 at 1085.

3. These five heirs[5] ultimately approved by the court were:

a. Marie Lions, a sister of Mr. Petit's mother, a centenarian residing in a nursing home in Marseille;

b. Colette Veran, a first cousin of Mr. Petit, who lived in a village more than 100 miles north of Marseille;

c. Etiennette Gardey, a first cousin of Mr. Petit, who lived in Bordeaux;

d. Raoul Lions, a first cousin of Mr. Petit, who lived in Marseille; and

e. Nicole Bezier, the widow of a first cousin of Mr. Petit, who lived in Orthez, south of Bordeaux.

DCX 55 at 1186; DCX 51; DCX 405; DCX 920-924; Specification ¶ 18. All of the heirs were elderly at the time of Mr. Petit's death and none spoke English. Tr. 247-48 (Farcy).

4. In 2009, Philippe Farcy, the grandson of Marie Lions, contacted Ms. Landes. Tr. 104 (Landes). Mr. Farcy is a French native who has lived in the United States since 1981. Tr. 244 (Farcy). On a visit to France, Mr. Farcy gathered documents from the heirs and engaged French lawyers. Tr. 247-49 (Farcy). Mr.

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[5] Throughout the record, these five individuals are referred to as both "heirs" and "beneficiaries." In Pennsylvania, the estate of a decedent that is not disposed of by will "passes to his heirs." 20 Pa. Cons. Stat. § 2101(a). Because any distinction is irrelevant here, we will use the terms interchangeably.

Farcy was often assisted in France by his first cousin, Evelyne Benjamin, a granddaughter of Marie Lions. Tr. 255 (Farcy).

5. In the Fall of 2009, Ms. Landes received a letter from a French lawyer representing Andriveau making a substantial claim against the heirs. Tr. 105-06 (Landes); DCX 48 at 1085. In September 2011, at the recommendation of Mr. Farcy, Ms. Landes hired Richard L. Denman as "Special Counsel" to the Estate. Tr. 106-110, 186-88 (Landes); 252-53 (Farcy); DCX 37 at 365-67; DCX 48 at 1085. In a letter dated September 15, 2011, captioned as a "Retention and Fee Arrangement/Action Plan," Mr. Denman set his fee for "services as special counsel using my Washington, D.C. status" at $400 per hour. DCX 37 at 365-66.

6. Upon Mr. Denman's advice, Ms. Landes recommended to the Northampton County Court that $450,000 of the Estate funds be reserved to deal with any claims made by Andriveau or other late-filed challengers. Tr. 111-12 (Landes). Ms. Landes was unsuccessful in identifying a bank willing to serve as fiduciary for the $450,000 reserve. Mr. Denman recommended Respondent, an old friend, to serve as a "private fiduciary." Tr. 114-16 (Landes).

7. Respondent represented to Ms. Landes that he had prior experience consistent with being a private fiduciary, including that he: "Represented Genentech, Inc. and the Roche Group in various real estate acquisition and lending transactions." DCX 108 at 1610. However, Respondent's international fiduciary experience was limited to real estate transactions, and his experience with France-USA tax treaties

was limited to real estate tax issues to which he deferred to tax experts. Tr. 436-39 (Rosenbaum).

8. Pursuant to an escrow agreement drafted by Mr. Denman, the Estate funds were to be transferred by Ms. Landes to him. According to the agreement, an unnamed private fiduciary would be responsible for managing the reserved funds, with the remaining funds being paid to the heirs. Tr. 128-131 (Landes); DCX 53 at 1181. The role of the fiduciary under the escrow agreement included the following description:

> Any Fiduciary will act under the sole direction of the Special Counsel to respond to any threat or Proceeding as defined in the Indemnification Agreement signed by the Heirs pursuant to a Fiduciary Agreement.

DCX 53 at 1181. Respondent was not a party to, nor identified in the escrow agreement. *Id.*

9. On December 27, 2011, Ms. Landes filed the first and final accounting of the Petit estate, and on January 12, 2012, Ms. Landes filed a petition for adjudication and proposed distribution in the Northampton County Court in charge of the Petit estate. DCX 48; Tr. 119-121 (Landes). The Petition for Adjudication provided for a $450,000 reserve for any potential defense against the Andriveau claim. The rest of the Estate was to be distributed to the five heirs. Tr. 123-27 (Landes); DCX 48 at 1087-88.

10. On January 27, 2012, Ms. Landes and Mr. Denman appeared in chambers before a judge of the Northampton County Court of Common Pleas to seek approval of the final accounting and distribution of the Petit estate. RX 13; Tr. 185

(Landes). When asked by the judge whether the heirs were represented, Mr. Denman replied, "They have French counsel and they have United States counsel and Mr. Rosenbaum acting as their private fiduciary." RX 13.005.

11. The Northampton County Court confirmed the final accounting and issued a Certificate of Confirmation that same day, authorizing distribution of the assets of the Estate in accordance with a Decree of Confirmation and Distribution. DCX 54 at 1184. The Decree of Confirmation and Distribution contained a Schedule of Distribution, which provided that $450,000 was to be reserved and $919,515.51 was to be distributed to the five heirs. DCX 55 at 1186-87; Tr. 131-34 (Landes). Three of the heirs (Marie Lions, Colette Veran, and Etiennette Gardey) were to receive a one-quarter distribution of $229,878.88 each, and two of the heirs (Raoul Lions and Nicole Bezier) were to receive a one-eighth distribution of $114,939.44 each. DCX 55. The $450,000 reserve was to be held in escrow for up to three years in the event of any late-filed challenges to the Estate. *Id.*; DCX 48 at 1087; RX 13.006-.007.

12. On February 9, 2012, Ms. Landes transferred a total of $1,369,515.51 in Estate funds to Mr. Denman's IOLTA account in two separate wire transfers. DCX 934; Tr. 197 (Landes); DCX 141. This ended her responsibilities as administrator of the Petit estate except for filing a final fiduciary income tax return due in June 2012. Tr. 134-35 (Landes).

Respondent's Control of Estate Funds

13. Respondent testified that he was advised that a proceeding in a Pennsylvania court approved his role as fiduciary for the Estate of Petit. Tr. 995 (Rosenbaum). On February 6, 2012, Respondent opened Client Funds Checking Account #9829 ("checking account") with JPMorgan Chase Bank, N.A. ("Chase Bank") with $100 cash. DCX 902.

14. On February 8, 2012, before the Estate assets were transferred to Respondent, Mr. Denman asked Respondent to send "a bill for 20 hours for Fiduciary Preparation work a[t] $400 per hour. $8,000." DCX 139; *see* DCX 140 at 1698. In doing so, Respondent and Mr. Denman agreed that Respondent had earned fees for 20 hours of work he completed on Estate matters before Respondent assumed his fiduciary duties and that he would bill his time at $400 per hour. Tr. 420-24, 440-41 (Rosenbaum). There was no itemization of Respondent's services provided to support this invoice. DCX 44 at 486. With Mr. Denman's approval, Respondent billed his time on the Petit estate at $400 per hour, even when he was performing non-legal tasks. DCX 117 at 1626; Tr. 415-17, 433-34, 714-15, 1046-47 (Rosenbaum).

15. On February 13, 2012, rather than remit the $450,000 reserve, Mr. Denman wire-transferred $858,000 to Respondent's Chase Bank checking account, representing the bulk of the Estate that was to be distributed to the heirs. DCX 902. Mr. Denman told Respondent that he was keeping the $450,000 reserve. *See* DCX 142; Tr. 464-65 (Rosenbaum).

16. The amount Respondent received was almost $62,000 less than the $919,515.51 the Northampton County Court ordered to be distributed. According to an email from Mr. Denman to Respondent on the date of the transfer, he was sending Respondent $858,000 and distributing the remaining $62,000 as follows: $24,000 was being sent to Mr. Farcy, "$3,000 to Evelyne Benjamin (Family representative in Marseille for Veran, Raoul and Granny [Marie] Lions)," $9,000 to each of these three heirs, and $8,000 to Respondent personally. DCX 142; *see also* DCX 139-DCX 142; DCX 934 at 4042. Mr. Denman did not send the $27,000 to the heirs. *See* DCX 962 at 4183; DCX 213 at 1877-78.

17. On February 27 and 28, 2012, Respondent opened Client Funds Savings Accounts ("sub-accounts") at Chase Bank in the names of each of the heirs. DCX 902; DCX 920-DCX 924. Respondent deposited $200,000 into the sub-accounts for each of the three one-quarter heirs and $100,000 into the accounts for each of the two one-eighth heirs. *Id.* The remaining $58,000 stayed in the Chase Bank checking account. DCX 902.

18. Each of the five savings accounts were designated as belonging to the respective heir "by John Rosenbaum Attorney at Law Agent Escrow Account," and listed the name and address in France of the heir. DCX 920-DCX 924. Respondent was the only person with authority to draw on the Chase Bank checking account and the five savings sub-accounts. DCX 901† at 3577; Tr. 466-67 (Rosenbaum).

Respondent's Early Estate Fund Activity – "Advances" to the Heirs

19. On March 7, 2012, Respondent transferred into the Client Funds Checking Account #9829 $9,500 each from the sub-accounts of Gardey and Bezier, and wrote them each a check for that amount the same day. DCX 903 at 3584, 3592-93.

20. On March 13, 2012, Respondent transferred into the Chase Bank checking account a total of $65,060 from the heirs' five sub-accounts ($21,020 each from Ms. Lions and Ms. Veran, $20,020 from Raoul Lions, $2,000 from Ms. Gardey, and $1,000 from Ms. Bezier) and on the same day made three withdrawals from the checking account totaling $82,860: cashier's checks made payable to Mr. Denman's Attorney Client Trust Account in the amounts of $57,060 and $25,000, and a cash withdrawal to himself of $800. DCX 903 at 3584-85, 3588-3590. All of these transfers were made at the instruction of Mr. Denman. DCX 149; DCX 150; DCX 151. Although some of these amounts were for Mr. Denman to forward funds to the heirs, Respondent received no documentation that these funds were sent to the heirs, nor did he ask for any. DCX 962 at 4183; *see* DCX 149; DCX 903 at 3588; DCX 213.

21. Respondent's own payment by cash withdrawal on March 13 was similarly directed by Mr. Denman for two hours at $400 per hour. DCX 151. Despite his previous payment of fees, Respondent was unsure of the rate at which he would be paid for spending "1.2 hours doing accounting, transferring funds, drive to Chase branch, get cashiers checks, drive to UPS store, dispatch checks." DCX 151. In

response, Mr. Denman directed Respondent to charge $400 per hour and to "[a]dd communications to 2 hours. Self pay on this approval." *Id.* Respondent testified that even when he performed menial tasks, he billed at $400 per hour because "[m]y responsibilities were to Mr. Denman in that my role was limited to act according to his instruction to me." Tr. 434 (Rosenbaum).

22. At some point prior to April 2, 2012, the daughter of Etiennette Gardey made inquiries as to her mother's inheritance. *See* DCX 154. On April 2, Mr. Denman directed Respondent to send Ms. Gardey a check for $9,500 by UPS, and to charge "all out [of] pocket expenses including the tank of gas to get it, etc. to the Gardey account." *Id.* The following day, Respondent sent a check for $9,500 to Ms. Gardey, and charged her sub-account a total of $693.90: $6 for the toll at the Golden Gate bridge; $47.90 for a tank of gas; and $640 in fees for his time of 1.6 hours. DCX 155; DCX 904. The check Respondent wrote himself on April 3 for $693.90 is identified as being for "Legal Fees." DCX 904 at 3599. Starting in April, Respondent's practice was to pay himself his legal fees out of Estate assets after obtaining Mr. Denman's approval by writing and signing a check to himself from the Chase Bank checking account. *See, e.g.*, DCX 905 at 3611; DCX 234.

23. On April 18, 2012, Respondent made two additional transfers of $9,500 each from the Gardey sub-account to the Chase Bank checking account. DCX 904. On the same day, Respondent sent two $9,500 wire transfers to Marie Lions. DCX 904 at 3595; DCX 161. On the same day, Respondent wrote himself a check for $4,000 for "Legal Fee Petit." DCX 904 at 3602. Later in April, Respondent

transferred $9,500 to the Chase Bank checking account from each of the sub-accounts for Bezier and Veran and sent them wire transfers in this amount. *Id.* at 3594-95. On April 24, Respondent wrote himself another check for $400 for "Legal Fee – Estate of Petit." *Id.* at 3603.

24. Between May 2 and May 4, 2012, Respondent made two transfers of $9,500 each from the sub-account of Marie Lions into the checking account, and two more transfers of $9,500 each from the sub-accounts of Gardey and Raoul Lions into the Chase Bank checking account. DCX 905. During this same week, Respondent made four wire transfers to France of $9,500 each. *Id.* at 3605. On May 4, Respondent wrote himself a check for $3,200 for "Legal Fee." *Id.* at 3608. This was for eight hours spent on May 2 on the following tasks: "conferences re tax treaty issues, meeting with Chase banking officers re fiduciary account, fiduciary services, accounting of the heirs accounts and arranging wire transfer advances through Chase." RX 29.001.

25. Respondent and Mr. Denman referred to these distributions to the heirs of their inheritance as "advances" or "payments," virtually all of which were in amounts of $9,500. DCX 213. In response to Disciplinary Counsel's question whether he thought there "was some kind of reporting requirement to the treasury if

you made a distribution more than $10,000," Respondent failed to answer, stating only that he was following Mr. Denman's instructions.[6] Tr. 471, 845 (Rosenbaum).

26. On May 12, 2012, Mr. Denman cut off any additional "advances" to the heirs until at least September. DCX 213. Denman's stated rationale for not sending the heirs any more money from their accounts was a combination of trying to protect the heirs ("I think that Gardey's daughter is taking the money") and an amalgam of contrived legal issues: "The problem is first the French taxman, not USA. We'll get the [Individual Taxpayer Identification Numbers ("ITINs")]. Also, Andriveau in France wants to go after the heirs directly. It's a mistake to give them anymore [sic] until resolutions." *Id.* at 1877.

27. Pursuant to the U.S.-French Estate Tax Treaty, the jurisdiction in which the decedent resides at the time of death collects the estate or inheritance tax. Tr. 1103-04 (Hood); DCX 963 at 4202-03. Mr. Petit resided in Pennsylvania at the time of his death, and his Estate paid the Pennsylvania and U. S. estate taxes in 2006 and 2007. DCX 46; Tr. 99, 123, 134-35 (Landes). Neither the Estate nor the heirs had tax liability in France. Tr. 1103-04 (Hood); DCX 963 at 4202-06. The only reporting left to complete after Denman and Respondent took control of the Estate's assets was the fiduciary income tax return for 2011. DCX 46 (Estate Final Accounting); Tr. 134-35 (Landes). Although the forms for this final return contained

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[6] The Bank Secrecy Act requires banks to report cash transactions exceeding $10,000. 31 U.S.C. § 5313(a); 31 C.F.R. § 1010.311.

a space for the heirs' ITINs, they were not required. Tr. 1100-02 (Hood); DCX 963 at 4195-4200. Moreover, the penalty for filing a fiduciary income tax return without the identification numbers was $100 per beneficiary or a maximum of $500. Tr. 1102-03 (Hood); Tr. 136-39 (Landes). Ms. Landes sent Respondent the IRS publication that disclosed the extent of these minor penalties. DCX 421 at 2374.

28. In an email sent on May 12, 2012, Denman asked Respondent for a list of all checks and wire transfers. "Tell me what is now in each subaccount so I can reverse engineer what's occurred." DCX 213 at 1878. At the same time, Denman forbad Respondent from engaging with or taking direction from either Mr. Farcy or Ms. Landes. *Id.*

Heir's First Request for an Accounting

29. On May 18, 2012, one of the heirs, Etienette Gardey, emailed Respondent asking him to explain withdrawals from her sub-account at Chase Bank. DCX 224. Respondent understood this to be a request for an accounting. Tr. 490-91 (Rosenbaum). Unknown to Respondent, Chase Bank had been sending out statements to the heirs. DCX 224; Tr. 492 (Rosenbaum). Respondent "shut that down" and prevented any further statements from being sent to anyone but himself. DCX 224; Tr. 494-97 (Rosenbaum). *Compare* DCX 920 at 3715 (Ms. Gardey's April 2012 Chase Bank statement with her address in France), *with* DCX 920 at 3716 (Ms. Gardey's May 2012 Chase Bank statement with Respondent's address in California). Respondent also began working with his local Chase Bank branch in

San Francisco, pulling the business from the New York office where he had opened the accounts. Tr. 496-97 (Rosenbaum).

30. To answer the inquiries from Ms. Gardey, Respondent drafted a letter replete with lies and subterfuge, but without substantively responding to her legitimate inquiries regarding her money. DCX 235. Respondent asserted that he was "directed to say" what was in the letter. Tr. 508-09 (Rosenbaum). *But see* DCX 232† (Email from Denman approving Respondent's draft of letter). Regardless of the original author, the letter was sent under Respondent's letterhead as "Attorney at Law" and signed over his title, "Fiduciary to Estate of Petit." DCX 235. Respondent testified that at the time he believed it was a reasonable response. Tr. 508-09 (Rosenbaum).

31. Respondent's letter to Ms. Gardey, dated May 25, 2012, claimed that Chase Bank "had made some mistakes in intra-heir postings." DCX 235 at 1925. The letter explained three "advances" and that, "there have been administrative expenses." *Id.* Respondent insisted that Ms. Gardey "stop any further non-professional, inappropriate comment on the administration and distribution of the estate . . ." and informed her that additional legal fees would be applicable if she persisted. *Id.* at 1926. The letter concluded: "Continued hectoring, letters and phone calls do not serve your interests whatsoever, and have caused much disturbance. Your demands that we bypass required legal steps are rejected by this document." *Id.* Respondent told Ms. Gardey that he and Mr. Denman would no longer communicate with her through her daughter, whom they suspected as having

authored the May 18 email, *id.* at 1925, but that they would do so with a "credible representative, such as a lawyer . . . ." *Id.* at 1926. At the hearing, Respondent testified that his sole responsibility for accounting was to Mr. Denman and his "obligation to the heirs was to provide them information as it was vetted by Mr. Denman." Tr. 454-57 (Rosenbaum).

32. On May 25, 2012, Respondent wrote himself a check for $2,640 for "Legal Fees—May 2012." DCX 905 at 3610. This payment was for 6.6 hours spent since May 2 on, among other things, reconciling accounts and conferring with Mr. Denman. DCX 234. In the email approving Respondent's time, Mr. Denman warned that "[a]ll other payments to you [should be] audited and accounted." *Id.* On May 30, 2012, Respondent wrote himself another check for $2,800 for "Legal Fees." DCX 905 at 3611. The record does not provide an explanation for this payment. Beginning in June, Respondent prepared more formal invoices in letter-format addressed to Mr. Denman. DCX 251.

Respondent's Estate Activity – June to August 2012

33. On June 10, 2012, Denman directed Respondent to send $6,000 to a neighbor of his "as payment to me for legal advice surely done." DCX 240; *see* DCX 44 at 461 (identifying neighbor). There was no other explanation for the basis of Mr. Denman's "legal advice." The following day, Respondent wire transferred $6,000 to Mr. Denman's neighbor. DCX 906.

34. In a second letter to Ms. Gardey, dated June 26, 2012, Respondent again announced his refusal to communicate with her through her daughter, even though

he recognized that her daughter might have better command of English. DCX 246 at 1953; Tr. 511 (Rosenbaum). Respondent erroneously advised Ms. Gardey that the applicability of the tax treaty to the Estate had not been established and that it would require Mr. Denman's "specialized tax and financial experience and skills" to take advantage of the provisions of that treaty. DCX 246 at 1953-54. The letter goes on to repeat the earlier letter's admonishment that further communications must either be hand-written notes from Ms. Gardey herself or from a lawyer. DCX 246 at 1954. Finally, he wrote that: "I regret to inform you that such continued contact that requires our attention and professional services serves only to incur costs directly allocable to you." DCX 246 at 1955.

35. On June 26, at Denman's direction, Respondent sent him an itemized bill identifying time spent on general matters and work specific to Ms. Gardey's account. DCX 251. Respondent billed 1.9 hours to the general account for work including teleconferences with Mr. Denman regarding "tax treaty issues," and another 1.7 hours, or $680, to Ms. Gardey. *Id.* at 1962-63.[7] On June 28, 2012, Respondent transferred $680 from Ms. Gardey's account into the checking account and wrote himself a check for $1,440 for "June Legal Fees." DCX 906 at 3612, 3616; DCX 251 at 1963; Tr. 519-20 (Rosenbaum).

[7] In the billing and time records attached to Respondent's response to Disciplinary Counsel's request for information, dated April 3, 2019, the time record for June 2012 is a single sheet of paper detailing only 2.6 hours of time. DCX 44 at 487. The entries and descriptions do not match the June invoice sent to Mr. Denman on June 26.

36. Starting with this June invoice and continuing through August 2013, Respondent prepared monthly detailed invoices for work he billed to the Estate of Petit. DCX 44 at 487-547. The invoices identify the client, "Estate of Petit," the matter (either "General" or the name of one of the heirs), the time spent in six-minute increments, and a description of the work completed. They are each prepared as letters addressed to Richard Denman.

37. On July 9, 2012, Respondent transferred $9,500 from the sub-account for Veran and sent a wire transfer in this amount to Ms. Veran. DCX 907.

38. On July 10, 2012, Respondent emailed Ms. Gardey and repeated his refusal to deal with any other representative other than herself or a "duly qualified and appointed legal representative." DCX 256. In a letter dated July 19, 2012, Ms. Gardey's husband responded and informed Respondent that his 91-year-old wife could not write at the moment and that they had no financial means to hire a lawyer. He explained that they relied on their children to help with translations. DCX 269 at 2002; Tr. 522-23 (Rosenbaum). Respondent continued to insist that she hire a lawyer, and said that if she did not do so, he would hire one for her and bill the fees to her portion of the Estate. DCX 274. At the hearing, Respondent could not recall a circumstance in which a fiduciary could properly engage in such conduct. Tr. 525-26 (Rosenbaum).

39. For July, Respondent billed Ms. Gardey's account for 3.4 hours and the general Estate account for another 2.3 hours. DCX 264 at 1988-89. On July 31, 2012, Respondent wrote a check to himself for $2,280 for "Legal Fee – Estate of Petit."

DCX 908 at 3623. On August 1, 2012, Respondent transferred $1,360 from Ms. Gardey's sub-account to the Chase Bank checking account. *Id.* at 3619.

40. On August 2, 2012, Mr. Farcy urged Denman to distribute the Estate funds to the heirs. DCX 276. "I am imploring you to double your efforts to remove all these senseless obstacles that are constantly coming out of nowhere . . . ." *Id.*

41. On August 13, 2012, after obtaining Mr. Denman's approval, Respondent sent an email to Mr. Farcy, suggesting that what Mr. Farcy was asking him to do "may be illegal or in breach of . . . my duty." DCX 280.

> Please be assured that we work in the heirs' best interest, always and in an expeditious but laboring and exhaustive fashion, to minimize the modest US tax exposure and the confiscatory French tax exposure of the Estate of Petit and the heirs' interest in the Estate, within the boundaries of the law. . . . I prudently advise that funds remain in the USA as there will be a substantive tax in France that will clawback nearly all of the funds.

Id. at 2044.

42. On August 17, 2012, Mr. Farcy sent a lengthy email to Respondent and Mr. Denman addressing their arguments and trying to obtain distribution of all Estate assets. DCX 283. In the email, Mr. Farcy states that "the heirs were advised repeatedly and by many competent sources, including directly from the French FISC, that there is no taxation in France because of the binding US/France fiscal treaty and that 'claw back' or 'co-sanguine adjustments' do not apply in this case." DCX 283 at 2050. The day after receiving this email, Respondent researched the U.S. tax treaty with France and obtained an Ernst and Young tax guide for France. DCX 284; DCX 285; *see also* DCX 234 (5/21/2012 entry "Research re tax treaty

issues and ITIN documentation). Nevertheless, Respondent relied on Mr. Denman who told him that Mr. Farcy was incorrect. Tr. 873 (Rosenbaum).

43. Respondent testified that, "out of my own curiosity" he found these documents through a "generalized Google search to look at what was out there" but did not reach any conclusion from reviewing these sources. Tr. 478-482 (Rosenbaum). "I was not seeking to verify what Mr. Farcy said. I was in fact relying on Mr. Denman and it was his role to resolve whatever French tax issues may have existed." Tr. 480 (Rosenbaum).

44. In his August 2012 fee invoice, Respondent billed 1.5 hours for, among other things, drafting correspondence to Mr. Farcy and researching US/France Tax Treaties." DCX 44 at 490. In addition, Respondent billed 0.5 hours to the Gardey account for a call with Mr. Denman "re Gardey problem and avocat fiscaliste." *Id.* at 491. On August 31, Respondent wrote himself a check for $800 for "August 2012 Legal Fee." DCX 909 at 3630.

Emergency Trip to New York – September 2012

45. In late August, 2012, Mr. Farcy decided to confront Mr. Denman, who lived in the same New York apartment building as a friend of Mr. Farcy. Tr. 280, 312 (Farcy); *see* Tr. 275 (Farcy). According to Mr. Farcy, he entered Mr. Denman's apartment unannounced, woke him up, and insisted that he pay his grandmother, Marie Lions, the remainder of her share of the Petit estate. Tr. 280-81 (Farcy). Mr. Denman apparently agreed on the condition that Ms. Lions sign a release. *Id.*

46. In the early morning hours of September 2, 2012, Denman forwarded an email to Respondent from a French attorney for Marie Lions. Denman noted that Mr. Farcy had "barged into my apartment." DCX 293 at 2072. At 12:40 pm, Denman emailed Respondent that he should "[u]se client money to come to NY on the redeye. You will bill, help and clean up." DCX 293 at 2073. A minute later, Denman sent a new email with the subject line "Travel Approval" directing Respondent "[a]s the Fiduciary of Estate of Petit" to fly to New York "on an emergency basis." DCX 294.

47. On the evening of September 2, 2012, Respondent flew to New York to meet with Mr. Denman to resolve matters with Mr. Farcy. Tr. 697-700, 707 (Rosenbaum). Respondent arrived in New York on September 3, met with Mr. Denman to create a release for the funds for Marie Lions, and returned to California later that day. DCX 297; Tr. 700, 707 (Rosenbaum). On September 4, upon his return home, Respondent submitted his bill for legal fees for August "and the meeting today." DCX 297.[8]

48. On September 5, 2012, Respondent transferred $7,966.85 from Ms. Gardey's sub-account to the Chase Bank checking account. DCX 909. The same day, Respondent wrote himself a check for $1,766.85 for "9/3/12 Gardey NY Mtg

[8] Respondent's September 2012 trip to New York was one of at least six trips to New York that he made while serving as a fiduciary for the Estate of Petit, all paid for with Estate funds. Tr. 692-712 (Rosenbaum). When initially asked how many trips he had taken at the Estate's expense, Respondent testified, "I think two or three trips. I don't recall exactly." Tr. 692 (Rosenbaum).

Travel." DCX 909 at 3628. The following day, Respondent wrote a check to himself for $6,000 for "9/3/12 Mtg Gardey." *Id.* at 3629.

49. In an email dated September 12, 2012, Respondent notes that he and Mr. Denman had agreed to release all of the funds in Marie Lions' sub-account. DCX 307. By that time, her account balance was only $141,060.01. *Id.* According to the ledger Respondent maintained, Ms. Lions had received $38,000 of her portion of the $229,878.88 that the Northampton County Court had ordered to be distributed to her, so there should have been $191,878.88 in her sub-account. *See Id.*; DCX 55 at 1186-87. Thus, Ms. Lions' sub-account was missing $50,800.[9] Because the amount seemed too low, on September 12, Mr. Denman directed Respondent to "re-credit" Ms. Lions "for anything transferred to me," which was $21,020. DCX 307. Other than monthly interest on the balance, no deposits were made to Ms. Lions' sub-account after September 12, 2012. DCX 921 at 3739-3748.

50. As a prerequisite to distributing further funds to Marie Lions, Respondent prepared a document for her signature in which she was to accept some as-yet unspecified sum of money "as full and final settlement for all amounts due and owing to me in the matter of the Estate." DCX 307 at 2094. The release also prohibited Ms. Lions and all of her direct descendants from disparaging the Estate

[9] The discrepancy is due in part to Respondent's placement of only $200,000 in Ms. Lions' sub-account rather than the entire $229,878.88. The sub-account also accrued some interest each month.

and from having any further communication with Mr. Denman or anyone else associated with the Estate. *Id.* at 2094-95.

51. In an exchange of emails on September 12-13, 2012, Respondent acknowledged receipt of account information for Ms. Lions for the purpose of "transferring all of the funds I am holding for Marie Louise Lions." DCX 314 at 2120. Respondent did not state the amount he was holding for Ms. Lions.

52. Ms. Lions did not sign the release. Tr. 281-82 (Farcy); Tr. 574 (Rosenbaum). Instead, Mr. Farcy's cousin, Ms. Benjamin, hired a lawyer in France, Lionel Leon, to recover the funds. Tr. 282-85 (Farcy); *see, e.g.*, DCX 405. In mid-October 2012, Denman traveled to France where he met with Mr. Leon in Marseille. DCX 392†.

53. On October 24, 2012, Attorney Leon emailed Respondent requesting an accounting on behalf of three heirs. DCX 405. Attached to the email were powers of attorney signed by Marie Lions, Raoul Lions, and Etiennette Gardey, and copies of identification cards for each. DCX 405; DCX 406. The following week, Mr. Leon again emailed Respondent, asking him "once again to please" provide accurate accounts for his clients and the timing of payments due to them. DCX 426. Respondent did not provide the accounting. DCX 430; Tr. 538-543 (Rosenbaum).

54. On October 25, 2012, Mr. Denman emailed Respondent that Mr. Leon had not provided proper documentation of his representation of Marie Lions and directed Respondent to "[d]isregard his entreaties as I do not find him a member of the Washington D.C. Bar." DCX 413. Respondent could not explain why Mr.

Denman had made this statement, but followed his directions. Tr. 1010-11 (Rosenbaum).

55. Mr. Denman offered Mr. Farcy $75,000 as a consulting fee to continue serving as a coordinator for the Estate, as he did not wish to continue working with Ms. Benjamin and her attorney, Mr. Leon. Tr. 282-84 (Farcy). On October 25, 2012, Respondent transferred $75,000 from Ms. Lions' sub-account into the Chase Bank checking account and wired Mr. Farcy $75,000 the next day. DCX 910 at 3631-32. Mr. Farcy put this money in his grandmother's account. Tr. 284 (Farcy).

56. By the end of October, Mr. Farcy became suspicious of Respondent's continued excuses for failing to distribute the funds to the heirs. Tr. 284-85 (Farcy). The heirs had provided Mr. Denman with documents in March in order to obtain their ITINs, but Respondent repeatedly expressed why those documents were insufficient. Tr. 267-68 (Farcy); DCX 276; DCX 280.

57. In his September 2012 fee invoice, Respondent billed 5.5 hours to the Estate and another 2.8 hours to the Gardey sub-account. DCX 44 at 492-93. On September 30, 2012, Respondent wrote himself a check for $3,320 for "Sept 2012 Legal Fee." DCX 910 at 3635. In his October 2012 fee invoice, Respondent billed 4.2 hours to the Gardey sub-account and another 4.5 hours to the Marie Lions sub-account. DCX 44 at 494-96. On November 1, 2012, Respondent wrote himself a check for $3,480 for "October 2012 Legal Fee." DCX 911 at 3642.

Increasing Account Activity Without Distribution

58. On November 5, 2012, Respondent transferred $1,800 from Marie Lions' sub-account into the Chase Bank checking account and another $1,680 from the Gardey sub-account. DCX 911. On November 8, 2012, Respondent transferred $12,751 from the Veran sub-account into the checking account and made a withdrawal in that amount on that same day to Mr. Denman. DCX 911 at 3638-39, 3643.

59. Respondent told Mr. Farcy that complete distributions to the heirs could not be made because of tax issues in the United States and in France and cited the absence of the heirs' ITINs as one reason why the U.S. tax issues were not being resolved. Tr. 262-64 (Farcy). Respondent informed Mr. Farcy that the fiduciary tax return was due on November 15, 2012. Tr. 344-45 (Farcy). The following week, Mr. Farcy emailed Respondent to ask when the heirs would finally have access to their funds. DCX 469. In response, Respondent advised Mr. Farcy that Ms. Veran's ITIN application was incomplete and that "[e]xperts[ ]say that will probably trigger an audit of the tax return for the estate." DCX 471. Respondent testified that the "experts" to whom he was referring were Mr. Denman and Ms. Landes. Tr. 587 (Rosenbaum). In response to a follow-up email, Respondent asserted that there is likely to be "an IRS examination of the entire estate return, which will result in further delay." DCX 471.

60. On November 28, 2012, Respondent transferred $12,946.18 from the Veran sub-account into the Chase Bank checking account and made a withdrawal in

that amount on that same day to Mr. Denman. DCX 911 at 3638-39, 3644. Also on November 28, Respondent transferred $3,107.25 from Marie Lions' sub-account into the checking account and made a withdrawal in that amount on that same day to Mr. Denman. DCX 911 at 3638-39, 3645. The only documentation in the record to support these final two transfers and withdrawals is an email from Respondent to himself detailing Mr. Denman's instructions. DCX 474.

61. In his November 2012 fee invoice, Respondent billed 1.2 hours to the Gardey sub-account, 5.7 hours to the Veran sub-account, and another 4.7 hours to the Marie Lions sub-account. DCX 44 at 498-500. On December 6, 2012, Respondent wrote himself a check for $4,640. DCX 912 at 3651.

62. In December, Respondent made no Estate sub-account activity. *See* DCX 912. On December 6, 2012, Respondent withdrew $2,000 from the Chase Bank checking account for Mr. Denman. DCX 912 at 3650. On December 10, 2012, Mr. Denman emailed Mr. Farcy, copying Respondent, notifying him that he expected the IRS to "rule" on the ITIN applications by January, but if it delays "there is surely an audit." DCX 502. Denman also informed Mr. Farcy that he and Respondent would be traveling to France in late February or mid-March to meet with the heirs. *Id.*

63. In his December 2012 fee invoice, Respondent billed 2.5 hours to the Gardey sub-account, four hours to the Bezier sub-account, 4.9 hours to the Veran sub-account, 8.6 hours to the Marie Lions sub-account, and two hours to the Raoul Lions sub-account. DCX 44 at 501-07. On January 7, 2013, Respondent wrote himself a check for $8,800 for "Dec. 2012 Legal Fee." DCX 913 at 3657.

64. On January 7, 2013, Respondent transferred $14,400 from each of the heirs' sub-accounts into the Chase Bank checking account, totaling $72,000, and withdrew that amount on the same day for Mr. Denman. DCX 913 at 3652, 3656. This amount was credited by Respondent on his ledger for the Estate as "2013 Legal Retainer." RX 69.003. The following day, Respondent made nine transfers from the heirs' sub-accounts totaling $15,440. DCX 913 at 3652-53. Five of these transfers were for the amount Respondent billed various sub-accounts for his December fee check. *Id.*; *see* DCX 44 at 501-07.

65. On January 11, 2013, Respondent wrote an email to "the Heirs in Estate of Gerard Petit" in which he claimed that he had not received any identification documentation for Marie Lions. DCX 520.

> The heirs are still noncompliant with our very simple repeated requests that each heir complete a W-7 application for an ITIN and provide the necessary documentation consisting of a French national identification card or French passport, either in the form of an original document or a copy that is notarized in a US embassy or consulate in France or has a French apostille affixed to it in conformance with the Hague convention.

Id. at 2630.

66. In his January 2013 fee invoice, Respondent billed 1.3 hours to the Gardey sub-account, 1.3 hours to the Bezier sub-account, 2.2 hours to the Veran sub-account, 3.8 hours to the Marie Lions sub-account, and 1.7 hours to the Raoul Lions sub-account. DCX 44 at 508-513. On February 1, 2013, Respondent wrote himself a check for $4,120 for "January 2013 Legal Fees." DCX 914 at 3664.

67. On February 1, 2013, Respondent transferred into the checking account amounts from each of the heirs' sub-accounts corresponding to the amount he billed for his January legal fees. DCX 914.

68. On February 6, 2013, Respondent transferred into the Chase Bank checking account $1,000 from each of the heirs' sub-accounts. *Id.* On February 5, 2013, Respondent withdrew $5,000 from the checking account for the school that Mr. Denman's son attended. DCX 914 at 3665; Tr. 722 (Rosenbaum). This was done at Mr. Denman's direction in an email with the subject line "Giving," and copying the Development Director of the school. DCX 539.

Respondent Demands the Return of Estate Funds

69. On February 11, 2013, Respondent emailed Ms. Benjamin (Mr. Farcy's cousin), copying "All Heirs and Family Member Contacts," accusing her of stealing the $38,000 of "advances" made to Marie Lions. DCX 549 at 2730-31. Respondent made a "formal request and demand" that these funds "be returned to me as Fiduciary immediately for reallocation to her interest in trust" and threatening that "[c]ourts will be involved [if] the funds are not returned immediately." *Id.* at 2731. The email concludes "[a]fter the funds are returned, we insist for an independent personage to administer any funds that belong to Marie Lions. Sadly, they are being dissipated by your conduct." *Id.*

70. On February 12, 2013, Respondent made two transfers of $1,000 and $600 from each of the heirs' sub-accounts into the checking account. DCX 914 at 3657-58. On the same day, Respondent withdrew $3,000 for Mr. Denman's neighbor

and another $5,000 for a program being attended by Mr. Denman's son. DCX 914 at 3666-67; Tr. 725 (Rosenbaum); DCX 44 at 865-66. This was done at Mr. Denman's direction in an email with the subject line "Expenses." DCX 547.

71. On February 18, 2013, Mr. Farcy emailed Respondent to summarize their telephone call "to confirm the position and understanding of the heirs as well as their children/guardians regarding the previous advances made by the Estate." DCX 585 at 2853. Mr. Denman replied to Mr. Farcy the same day, copying Respondent, demanding that Mr. Farcy return the $38,000 sent to Marie Lions and that he advise his family of the $150,000 paid to him for consulting. *Id.*

72. On February 22, 2013, Respondent emailed Mr. Farcy with the subject line "SECOND OFFICIAL REQUEST by the Fiduciary to the Estate of Petit for you to prove your disgorgement of monies belonging to Marie Lions." DCX 628. Respondent accused Mr. Farcy of "pathological dissembling" and threatened him with "severe civil and possible criminal consequences." *Id.* at 2948. On February 24, Respondent sent a lengthy letter on his stationery to Mr. Farcy's accountant, accusing Mr. Farcy of international wire fraud, having an extra-marital affair, and dishonoring the memory of the late Mr. Petit. DCX 633 at 2967-2970; *see* Tr. 604-07 (Rosenbaum). Respondent requested that the accountant provide him with "the engagement letter documenting your representation of [Mr. Farcy] for our records." *Id.* at 2968. According to Respondent, the letter was drafted by Mr. Denman. Tr. 606 (Rosenbaum). Respondent had never previously asked a lawyer or an accountant for

such an engagement letter and had never been asked by anyone to prove that he represented a client. Tr. 607 (Rosenbaum).

73. There are two withdrawals in February of a kind that had not previously been made in the Chase Bank checking account. On February 25, a debit card for the checking account was used to pay a cell phone bill of $255.58. DCX 914 at 3659; RX 69.004. The following day, a check wire was made in the amount of $3,400 to a credit card. DCX 914 at 3659.

74. On February 28, 2013, a New York attorney representing Mr. Farcy emailed Respondent and Mr. Denman a letter about the accusations contained in the February 18 email and February 24 letter. DCX 640. The letter noted that threats of criminal prosecution in a civil matter are violations of the disciplinary rules and that the letter to the accountant was libelous. *Id.* at 2984-85. The attorney demanded a retraction and to "cease and desist from further defamatory conduct." *Id.* at 2985. In conclusion, the attorney expressed his client's "desire to resolve all of the issues between you and him in an amicable manner and in such a way as to expedite the closure of the Estate." *Id.* at 2987. In a response letter, dated March 1, 2013, Respondent questioned the attorney's experience, asked him to "identify exact disciplinary rules *both* in New York and California that you believe Mr. Denman and I may have violated" and "remind[ed him] that truth is an absolute defense to any claim of defamation." DCX 642 at 3002 (emphasis in original); *see also* Tr. 608-615 (Rosenbaum). Respondent's letter counters statements in the attorney's letter by paragraph, but does not respond to the request to "enumerate the issues that you

believe require redress from" Mr. Farcy. *Compare* DCX 640 at 2985, *with* DCX 642 at 3002.

75. In his February 2013 fee invoice, Respondent billed 2.4 hours to the Gardey sub-account, 2.4 hours to the Bezier sub-account, 2.4 hours to the Veran sub-account, 19.1 hours to the Marie Lions sub-account, and 2.4 hours to the Raoul Lions sub-account. DCX 44 at 514-522. On March 1, 2013, Respondent wrote himself a check for $7,960 for "Feb 2013 Legal Fees." DCX 915 at 3681. This payment was $3,520 less than what Respondent had billed because Mr. Denman found the amount too high. DCX 645 ("Cut to $8,000. Carry the rest.").

76. The Chase Bank checking account activity reached its zenith in March 2013. DCX 915. On March 1, Respondent made ten separate transfers from the heirs' sub-accounts, totaling $13,160. *Id.* In addition to his $7,960 fee, Respondent also made a withdrawal for Mr. Denman on March 1 in the amount of $5,200. DCX 915 at 3680. On March 8, Respondent wrote himself a check for $2,549.61 for "Reimb. Visa France exp." DCX 915 at 3682.

77. On March 5, 2013, a French lawyer representing Marie Lions, Marie-Christine Sari, emailed Mr. Denman and copied Respondent, demonstrating her knowledge of the Northampton County Court's order and Ms. Landes' accounting. DCX 650; *see also* DCX 46; DCX 55. In her email, Ms. Sari notes that she is aware of Ms. Lions' inheritance of $229,878.88, and that the Administrator of the Estate has already paid over $300,000 in taxes. DCX 650. Ms. Sari requested: "to know the amount of the claimed taxes and the reasons for which [her client] has to pay those

taxes;" "the amount of your fees and the method of calculation;" and an "accounting for the past period to 24 of December 2011 till present day." *Id.* The 43-page final accounting filed by Ms. Landes with the Northampton County Court detailed all Estate activity from Mr. Petit's death to December 23, 2011. DCX 46. On the same day, Ms. Sari emailed Ms. Landes, copying Mr. Denman and Respondent, with a similar request for accounting. DCX 651. Ms. Sari also emailed Respondent, copying Mr. Denman and Ms. Landes, asking: "why a sum of [$200,000] was recorded in an account opened at the CHASE Bank . . . in the name of my client and under your mandate;" "why was [a] withdraw[al] of [$21,020] [made] on 13 March 2012;" and "the reason why Mrs. LIONS is no longer receiving bank statements since May of last year." DCX 652.

78. Respondent deferred to Mr. Denman for a response to these letters. Tr. 555-56 (Rosenbaum). On March 13, Mr. Denman emailed Ms. Sari asking her to "produce a document that is verifiable showing that you represent" Ms. Lions and, if she does, either he and/or Respondent would be available to meet her in Paris on March 15 between 9:00 am and noon. DCX 689. Mr. Denman complained that he had "***never*** received any communication from you directly via email or confirmed mail," noting that Ms. Sari had omitted the middle initial in his email address. *Id*. (emphasis in original).

Respondent's Trip to France in March 2013

79. In February and March 2013, Respondent booked flights to Paris and various hotel accommodations for himself and Mr. Denman while in France.

DCX 554; DCX 44 at 735-855. Respondent made these arrangements in accordance with Mr. Denman's specific instructions that sometimes changed for fabricated reasons. *See, e.g.*, DCX 44 at 840 (changing hotel in Bordeaux from €158 Hotel Continental, DCX 44 at 768, to €380 Grand Hotel, DCX 44 at 846, as "Best security location to meet anyone"). Denman instructed Respondent to "not tell any non-lawyer our plans until last minute." DCX 44 at 817. As originally planned, Denman and Respondent were to establish dates and times for each heir to meet with them in France, identifying only three relatives of heirs who would be "allowed at our meetings" and expressly forbidding any lawyers to be present. DCX 502; Tr. 547-551 (Rosenbaum).

80. On March 14, Respondent made ten transfers from the Chase Bank sub-accounts to the checking account, in amounts of $1,120 and $800 from each, totaling $9,600. DCX 915 at 3672-73. On this same day he wrote himself a check for $5,600 for "Reim to Denman expenses," another check for $849.22 for "Part France exp on Bezier visa," and made a withdrawal of $4,000 for Mr. Denman. *Id.* at 3683-85.

81. On Friday March 15, Respondent departed San Francisco on the red-eye flight and arrived in Paris on March 16. DCX 554. From the Paris airport, Respondent met Mr. Denman where the two took the TGV train, first class, to Bordeaux (near the homes of Ms. Bezier and Ms. Gardey), for $181. DCX 44 at 751, 904; Tr. 736 (Rosenbaum). In Bordeaux on March 17, Respondent and Mr. Denman stayed in a junior suite at the Grand Hotel & Spa, ordered room service, and spent €792 of Estate funds. DCX 44 at 898-99. On Monday March 18 at 7:45 a.m., the two

flew to Marseille on Air France. DCX 575; DCX 581; DCX 44 at 817. Despite this early morning departure, Respondent billed three hours each to Ms. Bezier and Ms. Gardey for "availability in Bordeaux" on March 18, and another three hours to Raoul Lions for "availability in Marseille" along with 9.6 hours to Marie Lions for "availability in Marseille" along with travel to her nursing home. DCX 44 at 523-29; Tr. 738-742 (Rosenbaum); *see also* DCX 729 (Mr. Denman approving Respondent's March 2013 invoice); DCX 916 at 3693 (showing a check paid from the Chase Bank checking account on April 2, 2013 in the amount of $18,400, the total amount reflected on Respondent's March 2013 invoice).

82. In Marseille, Respondent and Mr. Denman shared a room at the Sofitel, ordered room service and drinks, and paid the €1,705 tab directly from the Estate's Chase Bank checking account. DCX 44 at 907-08; DCX 915 at 3674; Tr. 732-33 (Rosenbaum).

83. On March 18, while in Marseille, Mr. Denman and Respondent arrived unannounced at Ms. Lions' nursing home, seeking to meet her and have her sign papers, without notifying her family and without informing Ms. Sari, the lawyer who represented her. Tr. 291-93 (Farcy); Tr. 883-85 (Rosenbaum). Respondent testified that he and Mr. Denman went to the nursing home

> in an attempt to get the documentation necessary to complete the ITIN, and . . . there was a U.S. Consulate located in Marseille . . . and would have facilitated actually bringing her with her documentation so that it

> could be notarized by a U.S. Notary in the consulate, which would be acceptable to the IRS to obtain an ITIN.

Tr. 883-84 (Rosenbaum). At this time, Ms. Lions was 102 years old, *see* DCX 519 at 2623, and the Estate's fiduciary tax return without the heirs' ITINs had been filed four months earlier. Tr. 545, 730 (Rosenbaum).

84. On March 19, Respondent and Mr. Denman traveled to Nice, where Respondent stayed at Le Negresco for his final two nights in France. Respondent's hotel, bar, and room service tab totaled €685 and was charged directly to the Estate's Chase Bank checking account. DCX 44 at 900-01; DCX 915 at 3674. Mr. Denman stayed next door at the West End. DCX 44 at 753, 909. His hotel accommodations and other purchases at the West End were also charged directly to the Estate's checking account, totaling $328.05. DCX 915 at 3674. On March 19 while in Nice, Respondent made four separate ATM withdrawals within the span of five minutes from the Estate's Chase Bank checking account, in the amounts of €500, €100, €100, and €50. DCX 44 at 912; DCX 915 at 3674. The following day, Respondent withdrew an additional €600 and, on March 21, withdrew €750. DCX 44 at 910; DCX 915 at 3674. With the adjusted exchange rate and non-Chase Bank ATM fees, these six withdrawals totaled $2,838.06. DCX 915 at 3674-75. Also on March 19, Respondent transferred $8,000 from each of the Chase Bank sub-accounts to the checking account. DCX 915 at 3673.

85. Respondent did not meet with Ms. Sari at any time during his trip to France. Tr. 556-58 (Rosenbaum). According to Respondent's travel receipts, he and Mr. Denman dined with Ms. Sandra Van Essche "re conservator issues" at his Nice

hotel's restaurant, charging €742 directly to the Estate's checking account.[10] DCX 44 at 905-06; DCX 915 at 3674; *see also* DCX 44 at 528 (time entry for meeting with Sandra van Essche "re conservatorships in France" for Ms. Lions). Although Respondent testified that there was an "arranged meeting place" to meet with heirs in Bordeaux, Marseille, and Nice, there is no evidence of arrangements being made. Tr. 737-741, 885 (Rosenbaum). According to Respondent, aside from the unannounced visit to Marie Lions' nursing home, he and Mr. Denman only met with the daughter of Ms. Veran while in Nice. Tr. 885 (Rosenbaum).

86. Respondent described his trip to France as "extremely intensive and time consuming." Tr. 746 (Rosenbaum). He testified that the purpose of the trip was to arrange meetings with the heirs to get documents in order to obtain the ITINs. *Id.* They did not obtain these documents. During his four days in France, Respondent billed a total of 37.3 hours of time. DCX 44 at 523-29. During this time, the Estate checking account also incurred four withdrawals by debit card purchases for translation services, totaling $330. *Id.*

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[10] A thank you note sent by Ms. Van Essche the next day does not support connection to Estate business, but does illustrate the extravagance of the dining:

> Thank you for a lovely dinner last night at Chantecler. I enjoyed the quirkiness of the hotel, the fact that Madame Augier was there, the waiters and their preciousness and everything we tasted from the master butterer's butter to the 20-pear [sic] sparkling wine! (Some people have great jobs!). Anyway, I hope you have a productive day and a safe trip back. Keep me posted on developments at 530 Park!

DCX 716.[†]

87. Respondent's return flight departed Nice, France in the afternoon of March 21, 2013, arriving back in San Francisco that evening. DCX 44 at 911; DCX 554. Respondent charged his $92.76 airport parking fee directly to the Estate. DCX 915 at 3674; DCX 44 at 911. Despite his return to California on the 21st, Respondent's time records reflect that he billed 2.1 hours to the Veran sub-account on March 22 for "[a]vailability in Nice." DCX 44 at 525; *see also* DCX 729; DCX 916 at 3693 (showing a withdrawal in the amount reflected on Respondent's March 2013 invoice).

88. On March 21, Respondent transferred $106,184.39 from the Gardey sub-account into the Chase Bank checking account, leaving only $1,000 in Ms. Gardey's account. DCX 915 at 3673; DCX 920 at 3727. On March 25, Respondent wrote a check in this same amount ($106,184.39) payable to his client trust account. DCX 915 at 3686. On March 29, Respondent deposited $18,000 into the Chase Bank checking account by a check written on his client trust account #2215. DCX 915 at 3688-89.

89. On March 21, Respondent transferred $36,944.67 from Raoul Lions' sub-account and $17,263.52 from Marie Lions' sub-account to the Chase Bank checking account, leaving only $1,000 in each of their sub-accounts. DCX 915 at 3673; DCX 921 at 3746; DCX 922 at 3764. On March 25, two wire transfers in these amounts ($36,944.67 and $17,263.52) were made to Respondent's client trust account. DCX 915 at 3675. The three transfers to Respondent's client trust account were made at Mr. Denman's direction "to make sure no one can jump on it."

DCX 713. Respondent transferred all but $90,000 of this money back to the Chase Bank sub-accounts by May 6, 2013. Tr. 620 (Rosenbaum); DCX 962; DCX 915 at 3688-89, 3673 ($18,000 deposit); DCX 917 at 3700 (deposits of $100,184.39, $30,944.67, and $11,263.52); RX 69.004-.005; DCX 44 at 1007.

90. On March 25, 2013, Respondent transferred $10,000 from the Veran sub-account to the Chase Bank checking account and sent a wire transfer of $9,500 to Ms. Veran's account in France. DCX 915 at 3673, 3675.

91. On March 27, 2013, Respondent wrote a check to Mr. Denman for $22,800 for "March 2013 Legal Fees." DCX 915 at 3687.

92. On March 29, 2013, Respondent made a single cash deposit of $500 to the Chase Bank checking account from an ATM in Corte Madera, California. DCX 915 at 3673, 3690. Moments later, Respondent made a cash withdrawal of $500 from the same ATM. *Id.* at 3674, 3691. This give-and-take is not recorded in Respondent's ledger for the account. *See* RX 69.004.

93. In March, Respondent billed a total of 46 hours to the five heirs. DCX 44 at 529. On March 29, he wrote himself a check for $18,400 for "Legal Fees – March 2013." DCX 916 at 3696.

The Heirs' Growing Adversarial Relationship with Respondent and Denman

94. Mr. Farcy and his cousin, Ms. Benjamin, hired lawyers in New York and Pennsylvania to initiate proceedings against Respondent and Mr. Denman. Tr. 293-95 (Farcy). In an email dated April 11, the French attorney Ms. Sari notified Respondent and Mr. Denman that they would be contacted by Jack Seitz, an attorney

in Pennsylvania. DCX 747 at 3209-3210. Mr. Denman responded, copying Respondent, asserting various conspiracies and unsupported allegations, and recommending that her firm check its "malpractice carrier as we are obliged to claim hereafter." DCX 747 at 3209. Despite the bravado, Denman directed Respondent to engage a lawyer to defend them. DCX 747 at 3208. On April 19, Respondent engaged Stephen Wiener of Allentown, Pennsylvania, and wrote him a retainer fee of $2,500. DCX 757; DCX 916 at 3699; DCX 44 at 913-14. Mr. Wiener was Respondent's freshman year roommate in college. Tr. 1253 (Rosenbaum).

95. On April 26, Respondent retained two investigators to obtain the Social Security number for Mr. Farcy on a rush basis. RX 46.001.† Respondent paid $1,750 for this and other investigative services from the Estate's checking account. DCX 916 at 3693; Tr. 615-17 (Rosenbaum). Respondent needed Mr. Farcy's Social Security number to issue him an IRS Form 1099 for consulting fees. Tr. 612-614 (Rosenbaum); DCX 769 at 3241. This was the only Form 1099 prepared by Respondent, who did not report his own income from the Estate until 2015, a week before being interviewed by an FBI agent. Tr. 614 (Rosenbaum).

96. In an April 28 email to Respondent, Denman described their respective roles: "Do the logistics as I do the fighting. Ok?" DCX 769 at 3242. According to Denman, the Form 1099 to Mr. Farcy was "ammo" that he needed to do the fighting. *Id.* at 3241-42. In response to Respondent's message that he had filed the Form 1099 on April 28, Denman stated "Thanks for the ammo. You have to put certain people on their heels. By the end of this week, I will put them on their knees." *Id.* at 3241.

At Denman's direction, Respondent prepared "packages with cover notes" to the Illinois Department of Revenue, and a dozen individuals including Mr. Farcy, his wife, Ms. Benjamin, Marie Lions, and her attorney, Ms. Sari. *Id.*

97. On April 22, 2013, Respondent transferred $500 from each of the heirs' sub-accounts to the Chase Bank checking account. DCX 916. Three days later he deposited $3,200 cash into the Chase Bank checking account from an unidentified source. DCX 916 at 3697-98. During April, Respondent paid a total of $198 for translation services on a debit card from the Chase Bank checking account. DCX 916 at 3693; DCX 962 at 4186-87.

98. In April, Respondent billed 2.5 hours to Gardey, 1.8 hours to Bezier, 1.8 hours to Veran, 16.5 hours to Marie Lions, and 1.8 hours to Raoul Lions, for a total of 24.4 hours. DCX 44 at 530-37. On April 30, 2013, Respondent wrote himself a check for $9,760 for "April 2013 legal fee." DCX 917 at 3704.

99. On May 1, 2013, Denman emailed Respondent that his bill for April was $27,500, including billing "for harassment time." DCX 774. Respondent testified that he did not know what Denman meant by "harassment time," but paid the bill anyway because "it was not my role to question the legal work that [Denman] was doing or monitor his activity." Tr. 757 (Rosenbaum). Denman requested Respondent pay him $21,500, to be made via purchase of a custom Moynat briefcase from Paris for his son ("[c]ould be $10,000")[11] and expensive clothes for his son,

[11] The briefcase appears to have cost €5,336.72. DCX 781.†

and the "[r]est to me in an overnight check." DCX 774. In an email the next day, Respondent noted that it "would be better if the money came out of the account payable to you so that it showed paying your April invoice." DCX 776. Denman responded, "Just get it done." *Id.*

100. On May 1, 2013, Respondent paid another $250 to his investigator using a debit card connected to the Chase Bank checking account. DCX 917 at 3701. The next day he paid $900 to his personal physician using this same debit card. *Id.*; Tr. 758 (Rosenbaum). Denman had approved payment of Respondent's medical bills because he claimed they were necessary to treat "injuries incurred during the trip to France for Estate of Petit." DCX 762. On May 6, 2013, Respondent deposited $142,392.58 in three separate checks into the Chase Bank checking account from his personal client trust account. DCX 917 at 3705-3710. On May 10, Respondent withdrew $21,500 from the Chase Bank checking account. *Id.* at 3711. On May 13, Respondent wired $90,000 from the Chase Bank checking account into his client trust account. DCX 917 at 3701. On May 20, only $34,303.71 remained in the Chase Bank checking account. *Id.* At the same time, the heirs Gardey, Raoul Lions and Marie Lions each had approximately $500 in their sub-accounts, DCX 920 at 3729; DCX 921 at 3748; DCX 922 at 3766, Ms. Bezier had $44,906.47 in her sub-account, DCX 923 at 3784, and Ms. Veran had $88,782.22 in her sub-account. DCX 924 at 3802.

The Northampton County Court's Order of Preliminary Injunction

101. On May 20, 2013, four of the five heirs filed a motion for preliminary injunction without prior notice or hearing. DCX 60.† That same day, the court froze the Chase Bank accounts holding Estate funds for the four heirs, as well as Mr. Denman's account. DCX 61; Tr. 147-48 (Landes); Tr. 626-27 (Rosenbaum). The court ordered Ms. Landes, Mr. Denman, and Respondent to show cause why the preliminary injunction should not be continued. DCX 61.

102. In an email on May 20, 2013, counsel for the heirs wrote to Respondent, Mr. Denman, and Ms. Landes, notifying them of the Northampton County Court's injunction and attaching the court's order, the heirs' motion for preliminary injunction, and related filings. DCX 787. Thus, no later than May 20, 2013, Respondent was aware that in January 2012, the Northampton County Court had ordered $450,000 in Estate funds to be held in escrow and the remaining unreserved funds to be distributed to the heirs. Tr. 458-59, 820-21 (Rosenbaum) (testifying he first became aware of the Estate distribution order "at the time that the heirs sued us in court in Pennsylvania."); *cf.* DCX 652 (Ms. Sari informed Respondent on March 5, 2013 that Marie Lions was to receive a sum of $229,878.88).

103. After the order freezing the heirs' accounts was entered, Mr. Denman demanded that Respondent turn over all the Chase Bank funds to him. DCX 793. This would have violated the court's freezing order, and Respondent did not comply. Tr. 893-95, 1030-31 (Rosenbaum).

104. In May, Respondent billed a total of 23.3 hours to the five heirs, including time reviewing the Northampton County Court's preliminary injunction and conference calls to discuss litigation strategy. DCX 44 at 538-543.

105. Colette Veran was the only heir who had not joined the motion for preliminary injunction. *See* DCX 61. The lawyer for Respondent and Mr. Denman moved the Northampton County Court to unfreeze the Veran sub-account. The court granted the motion on June 28, 2013. DCX 823 at 3409; Tr. 627 (Rosenbaum). In expectation of regaining access to the Veran account, Denman directed Respondent to send Ms. Veran $7,500 with a "good news" email. DCX 821. In addition, Denman directed Respondent to pay him $9,000, and to pay himself $5,000 for "service." *Id.* In response to Respondent's question about how he wanted to be paid, Denman replied, "cash best in sealed envelopes." *Id.*

106. In June, Respondent billed a total of 8.7 hours to "Fiduciary" for communications with his Pennsylvania lawyer. DCX 44 at 544-45.

Respondent's Post-Injunction Account Activities

107. On July 3, 2013, Respondent transferred virtually all of the funds remaining in Ms. Veran's sub-account, $88,789.01, to his personal checking account, #4038, which contained some of his personal funds. DCX 924 at 3804; DCX 927 at 3853; RX 70.002; Tr. 628-29 (Rosenbaum). Respondent never transferred the Veran funds back into an IOLTA or trust account, although he transferred the funds back and forth between his personal checking account (#4038)

and his personal savings account (#0966). Tr. 627-630, 645-47 (Rosenbaum); DCX 962 at 4187; Answer at ¶¶ 34-37; DCX 44 at 595-97.

108. On the same day that he transferred the Veran funds into his personal checking account, Respondent withdrew $9,000, reportedly for Mr. Denman's legal fees, and another $5,000 for his own legal fees. RX 70.002. He also paid Ms. Veran $7,500, the only amount she received from the more than $88,000 of her funds under Respondent's control at that time. RX 70.007. Thereafter, he and Denman spent all the remaining Veran funds over the next two months. DCX 44 at 594-97; Tr. 652-53 (Rosenbaum). These expenditures included paying Mr. Denman's cable bill (Tr. 631-32 (Rosenbaum)), making cash payments to Mr. Denman (Tr. 635 (Rosenbaum)), sending "moneygrams" and Western Union transfers to Mr. Denman in Italy (DCX 44 at 595-96, 942-46), paying Mr. Denman's air fare to Poland (Tr. 651-52, 728-29 (Rosenbaum)), and purchasing a second and larger Moynat briefcase from Paris that cost over $9,000.[12] Tr. 759-760 (Rosenbaum). Respondent paid expenses of Mr. Denman upon Mr. Denman's undocumented assurances for legal work he said he completed. Tr. 647-49; 759-760; 899-900 (Rosenbaum).

109. Respondent testified that he "tracked the Veran account funds very closely on a separate ledger spreadsheet." Tr. 629 (Rosenbaum). That ledger was produced as part of Disciplinary Counsel's investigation. DCX 44 at 594-629. Respondent's ledger contains more than 30 "ATM withdrawal[s] made by Denman"

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[12] The charge for this briefcase appears to have been €7,176.19. DCX 815.†

from Respondent's personal checking account (#4038). DCX 44 at 595-97. The transaction details for Respondent's personal checking account where the Veran funds were held do not correlate to Respondent's ledger and all of the ATM charges were made in the Bay Area of California where Respondent lives. *Id.* at 615-18. Instead, Denman appears to have had an ATM/debit card for Respondent's personal savings account (#0966), from which he withdrew on a regular basis. *Id.* at 626-29.

110. In July, Respondent billed 3.8 hours to Veran, primarily to release the freeze on her funds "and establish separate Veran account." DCX 44 at 546. Mr. Denman approved Respondent's time sheet by email, as usual. DCX 851. On August 5, Respondent paid himself $1,520 for his "Legal Fee July 2013" by simply keeping the money in his personal checking account. RX 70.002; DCX 44 at 595 ("remained in Chase –4038").

111. In August, Respondent billed 4.8 hours to Veran, mainly for teleconferences with Mr. Denman. DCX 44 at 547. The record does not reflect whether Respondent paid himself his legal fees for August. According to Respondent's ledger for his personal checking and savings accounts, there was only approximately $2,000 of Veran funds remaining by September 5, 2013. DCX 44 at 597; RX 70.004.

Summary of Respondent's Actions After Depletion of Estate

112. In late 2013, with the Estate funds depleted or frozen and the heirs pursuing relief in the Northampton County Court, Respondent's relationship with Mr. Denman deteriorated quickly. Tr. 907 (Rosenbaum). On January 9, 2014,

Disciplinary Counsel received a formal Bar complaint from Mr. Denman, asserting that Respondent had failed to meet the standards of a fiduciary. DCX 3. Attached to this complaint were two typed pages, one dated December 27, 2013, and the other January 3, 2014, both purporting to be notices of non-performance or violation of fiduciary requirements, but not identifying the legal basis for Respondent's fiduciary duties. DCX 3 at 29-30.

113. On February 11, 2014, Respondent wrote a response to Denman's Bar complaint, in which he attached the court's May 20th Order freezing all assets of the Estate, detailing his increasingly erratic behavior and threats, and enclosing a series of threatening emails from Mr. Denman. DCX 5. In March 2014, Mr. Denman provided a half-page response to Respondent's answer to his disciplinary complaint without any reference to the Northampton County Court order. DCX 6.† On July 22, 2014, Disciplinary Counsel dismissed Mr. Denman's complaint. DCX 7.

114. Meanwhile, the Northampton County Court received briefings by all the parties regarding the distribution of the Estate. On March 12, 2014, the court found that Mr. Denman had unlawfully used $829,719.54 in Estate funds for his personal use, removed all authority of both Mr. Denman and Respondent, and made the preliminary injunction entered on May 20, 2013 permanent. DCX 8 at 80-82.

115. Of the $858,000 of the heirs' money that Respondent took control of on February 13, 2012, he only transferred $149,000 to the heirs and $75,000 to Mr. Farcy. DCX 8 at 83; DCX 903; DCX 907; DCX 915; RX 70.007; DCX 910 at 3631-32. At the conclusion of the litigation brought by the heirs, Respondent returned

$170,741.63 pursuant to court order — the $90,000 he had moved to his client trust account, plus the amounts that had been frozen in his Chase Bank checking account and savings sub-accounts, excluding the Veran sub-account, all of which had been spent. DCX 91†; DCX 962. Besides the amounts transferred to the heirs and Mr. Farcy, and the amount returned pursuant to court order, Respondent spent all of the assets for which he was entrusted to protect as a fiduciary -- $463,258.37, or 54% of the Estate.[13] Of that amount, Respondent appears to have received about $100,000 for legal services, not including his expenses, payment to his doctor, and miscellaneous withdrawals in cash. DCX 962; Tr. 770-71 (Rosenbaum). Respondent has not returned any of the legal fees or expenses that he was paid. Tr. 297-98 (Farcy).

Credibility of the Witnesses

116. The five days of hearing in this matter were conducted by video conference with Disciplinary Counsel, both counsel for Respondent, Respondent, the other four witnesses, and each of the members of the Hearing Committee attending from separate locations. Transmission was not flawless, but the hearing proceeded in a timely manner that provided sufficient time for all parties to be heard. Conducting the hearing in this manner allowed members of the Hearing Committee

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[13] This amount is $858,000, minus the amount ultimately received by the heirs and Mr. Farcy, with no accounting for interest. Because the sub-accounts were interest-bearing, the total amount spent by Respondent on himself and Mr. Denman was greater than $463,258.37. A precise accounting is impossible given the numerous unidentified cash withdrawals, ATM withdrawals, and direct purchases. *See, e.g.*, DCX 915 at 3674; DCX 916 at 3693; RX 70.

to more closely examine the facial expressions of the witnesses as they were testifying than if the hearing had been conducted in person. Our review of the evidence and ability to ascertain the credibility of the witnesses was not diminished by the remote setting.

117. Much of Respondent's defense relied on his professed sincere and reasonable belief in Mr. Denman's directions, which we do not find credible. Nor do we find much of Respondent's other testimony credible, except that which is corroborated by verifiable documents in the record. His testimony was consistently evasive. *Compare* Tr. 444-45, *with* Tr. 447. *See, e.g.*, 499-500; 533-36; 727-29; 979-981 (Rosenbaum); *see also* Tr. 1036-37 (answering the Public Member's question as to whether he ever asked Denman for important legal documents only after she asked it three times). He blamed all of his own misconduct on the late Mr. Denman, including the content of letters that Respondent himself had signed and sent. He denied being the fiduciary to the Petit estate even though he represented himself as such in writing, including in communications to the heirs and their representatives, and on the Chase Bank accounts. Instead, he claimed he was a fiduciary to Mr. Denman. He relied on an escrow agreement between Mr. Denman and Ms. Landes that he claims to have not seen until after he ceased being a fiduciary. Tr. 801 (Rosenbaum).

118. Respondent provided conflicting and contradictory stories. *Compare* DCX 44 at 457 (telling Disciplinary Counsel, "There is no attorney-client relationship between Richard Denman, and myself"), *with* Tr. 1044 (Rosenbaum)

(confirming to the Hearing Committee that Mr. Denman was his "client"). He had no credible explanation for why he refused to comply with requests for accountings and had attempted to prevent future requests by threatening to charge legal fees if he was troubled again.

119. Respondent could not explain why he disbursed Estate funds for blatantly improper purposes, other than to say that Mr. Denman told him to do so. These disbursements included the last $81,244.01 in the Veran account which he disbursed to himself and Mr. Denman. He testified that he followed Mr. Denman's instructions in disbursing this money even though (1) he knew that Mr. Denman had tried to have him evade a court order freezing the heirs accounts, (2) he had been served with the court's 2012 order to disburse all of the funds he held to the heirs, and (3) there was no reason why Mr. Denman needed to perform substantial legal work for Ms. Veran after the lawsuit was initiated. Tr. 649-650, 819-821, 893-94 (Rosenbaum); DCX 962 at 4187; *see* Answer at ¶¶ 34-37.

120. Respondent had no credible rationale for not asking Mr. Denman for any time charges or other proof that he had performed the legal services for which he was seeking compensation from entrusted funds. He did not declare the $100,000 he "earned" in fees on his income tax return in 2012 and 2013 and only amended his returns in 2015 when the FBI called him in for an interview. Tr. 613-14 (Rosenbaum). Finally, he dissembled to the California Client Security Fund in an attempt to lead it to believe that there were no pending disciplinary matters against him in the District of Columbia. Tr. 760-67 (Rosenbaum).

121. In contrast, we find the testimony of the other witnesses to be largely credible. For the fact witnesses Mr. Farcy and Ms. Landes, the passage of time and their own limited access to information makes their testimony subject to the inherent inaccuracies of being human. We find that their testimony was not intentionally misleading and is otherwise credible. Disciplinary Counsel's expert witness, Mr. Hood, was similarly credible and his description of the applicable domestic and international tax laws helpful.

III. CONCLUSIONS OF LAW

On the basis of the record as a whole and the preceding findings of fact, the Hearing Committee makes the following conclusions of law:

A. Motion to Dismiss

Respondent moves to dismiss this case on the grounds that Disciplinary Counsel's delay in charging him violates his right to due process. R. Br. at 25-28. The Court of Appeals has held that "undue delay in prosecution is not in itself a proper ground for dismissal of charges of attorney misconduct." *In re Williams*, 513 A.2d 793, 796 (D.C. 1986) (per curiam). As Respondent points out, however, "[a] delay coupled with actual prejudice could result in a due process violation" that warrants dismissal of the charges. *Id.* at 797; *see* R. Br. at 26; *In re Saint-Louis*, 147 A.3d 1135, 1148 (D.C. 2016); *In re Morrell*, 684 A.2d 361, 368 (D.C. 1996). Here, we find neither delay nor prejudice.

Respondent argues that the delay began on January 9, 2014, when Mr. Denman submitted a Bar complaint against him. DCX 3. That matter was dismissed

later that year. DCX 7. Instead, the starting point against which delay should be measured is March 25, 2015, when Disciplinary Counsel initiated this investigation. DCX 8. To use an earlier date would be to impose on Disciplinary Counsel an obligation to actively search for all misconduct immediately upon the receipt of any complaint – a responsibility that the Court of Appeals has not bestowed on the office.

On January 3, 2020, less than five years after initiating its investigation, Disciplinary Counsel filed charges on Respondent. For nearly a year during this time, Disciplinary Counsel formally deferred this matter, pursuant to Board Rule 4.1, while the FBI investigated Respondent. Thus, the total length of time from opening the investigation to filing the charges was approximately four years. Given the jurisdictional and financial complexity of this matter, we do not find that four years is an unreasonable delay.

In any event, Respondent has not made a showing of actual prejudice in this case. Respondent argues that Mr. Denman's death in June 2019 deprived him of a key witness. As Respondent testified and Mr. Denman's Bar complaint against Respondent suggests, their relationship soured considerably in the waning days of their work on the Petit estate. It seems more likely that Mr. Denman's testimony, if deemed credible, would have been detrimental to Respondent's defense. But even if Mr. Denman's absence could be considered prejudicial to Respondent, it was not Disciplinary Counsel's delay that caused this prejudice. Due to a disability that arose prior to November 2, 2017, Mr. Denman was unable to defend the charges against himself, much less participate in Respondent's disciplinary matter. *See In re*

Denman, 172 A.3d 392 (D.C. 2017) (per curiam) (suspending Mr. Denman indefinitely pursuant to D.C. Bar R. XI, § 13(c)). It is clear, therefore, that Respondent has not demonstrated that he suffered actual prejudice to his defense to these charges caused by any delay of Disciplinary Counsel, and there is no basis for finding any due process violation that would warrant dismissing the charges against him.

B. Evidence Considered

The Hearing Committee waded through a considerable amount of evidence and testimony provided by both parties that we found irrelevant. Disciplinary Counsel took pains to show that Respondent was in financial distress when Denman offered him a position as a private fiduciary. Presumably this was proffered to show Respondent's motivation for his actions, but not all individuals in financial distress can be presumed to be unethical. Nor is unethical behavior exhibited only by the poor and financially distressed. We did not rely on any evidence of Respondent's bankruptcy or comments regarding his income in finding that he had violated the Rules.

Similarly, Respondent testified to his spotless record, his many accomplishments, and his good deeds, and proffered several letters of character reference. He went so far as to imply that his legal work was vital to the development of virus testing in the current pandemic. *See* Tr. 784 (Rosenbaum). At most, this evidence demonstrates that Respondent has not had any previous disciplinary actions taken against him. None of this evidence, however, was even tangentially related to

the allegations of misconduct at issue in this matter. For example, character references from infirm or distant heirs for whom he had served in a fiduciary role may have been of value to the Hearing Committee. If anything, however, the character evidence that was offered, which focused on his credentials and statements from personal friends who were not subjected to cross-examination, suggests that Respondent was too arrogant to appreciate the privileged life he has had. We did not rely on any of the character evidence offered by Respondent as evidence that he had not violated the Rules, nor did we find that this character evidence mitigated his violations.

We have, however, reviewed the documents offered by the parties and the five days of testimony in detail. In doing so, we focus primarily on the Chase Bank records for the accounts for which Respondent served as a fiduciary. DCX 902-932. Bank records tell only a piece of the story, but they are unambiguous and independently credible. The numerous emails in the record, in contrast, are subject to interpretation and mainly authored by Mr. Denman, whose statements are sometimes coded and often lack credibility.

C. Rule 1.15(b) (Commingling and Intentional or Reckless Misappropriation)

Respondent is charged with violating Pa. Rule 1.15(b) by commingling funds owned by the Estate with his own funds and by recklessly or intentionally misappropriating funds owned by the Estate. To address this charge, we believe that it is important to first define Respondent's relationship to the funds he held.

Respondent's Responsibility to the Estate of Petit

Respondent asserts that he was solely answerable to Mr. Denman as special counsel to the Estate and owed no independent duty to the heirs. According to Respondent, his only duty was to distribute money from the accounts he held in accordance with Mr. Denman's instructions. So long as Mr. Denman's instructions were reasonable – and because Respondent found all of his instructions reasonable at the time – he cannot be held responsible. FF 30. In Respondent's view, he had no direct responsibility to any of the heirs, including responding to questions about their funds. FF 31.

To support this view, Respondent points primarily to the Estate escrow agreement, which states that "[a]ny Fiduciary will act under the sole direction of" Mr. Denman. DCX 53 at 1181; *see* R. Br. at 1, 9.[14] The entire sentence quoted by Respondent from the Estate escrow agreement, attached as Exhibit K to Ms. Landes' petition for distribution, reads as follows:

> Any Fiduciary will act under the sole direction of the Special Counsel to respond to any threat or Proceeding as defined in the Indemnification Agreement signed by the Heirs pursuant to a Fiduciary Agreement.

FF 8. We do not read this sentence as broadly as Respondent. Nor do we find the Estate escrow agreement or any of the other documents crafted by Mr. Denman or Respondent to be dispositive of our inquiry.

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[14] Respondent also points to statements in an email from Mr. Denman in October 2011, and the powers of attorney drafted by Mr. Denman and signed by the heirs. R. Br. at 9-10. Neither of these documents were filed with the Northampton County Court.

At all relevant times, Respondent acted in a professional capacity when he held funds that he knew were not his. FF 13, 18, 102. As such, he was obligated to hold this property "with the care required of a professional fiduciary." Pa. Rule 1.15, cmt. 1; *see also* Pa. Rule 1.15(a)(2) ("A Fiduciary is a lawyer acting as a personal representative, guardian, conservator, receiver, trustee, agent under a durable power of attorney, or other similar position."). The preservation of the estate's assets is central to a fiduciary's duties. This title is consistent with how Respondent identified himself to Mr. Farcy and the heirs with whom he communicated. *See, e.g.*, DCX 235 (email to Gardey includes signature "Fiduciary to Estate of Petit"); DCX 251 ("Invoice for Fiduciary Services provided on *Estate of Petit—General*"); DCX 280 (email to Phillipe Farcy includes signature "Attorney at Law and Fiduciary to Estate of Petit"); DCX 426 (email to Lionel Leon includes signature "Attorney at Law and Fiduciary Estate of Petit"). It is also consistent with the way in which he identified his relationship on each of the Client Savings Accounts he established for the heirs. FF 18 ("By John Rosenbaum Attorney at Law Agent Escrow Account"). And it is consistent with Pa. Rule 1.15(a)(2) *supra*.

In carrying out this role, Respondent made little if any effort to independently verify the reasonableness of Mr. Denman's instructions. Instead, Respondent relies on a "pure heart, empty head" defense. According to Respondent, he acted in good faith in everything he did, but was completely unaware of what Mr. Denman was doing. Respondent "sincerely regrets that the heirs did not receive all the money to which they were entitled. But it was Mr. Denman who misled the heirs and who stole

their inheritances, and along the way misled Mr. Rosenbaum as part of his fraudulent scheme." R. Br. at 2. At the hearing, Respondent repeatedly asserted that he wished he had had not been so trusting of his friend and had questioned Mr. Denman's actions more, Tr. 453 (Rosenbaum), but he accepted no responsibility for failing to do so because his role was limited to carrying out Mr. Denman's instructions. To accept this excuse is to treat Respondent's role as more akin to a day laborer than a legal fiduciary.

First, we find Respondent's ignorance of Mr. Denman's fraudulent scheme is contrived. The evidence of Mr. Denman's fraud was so pervasive that Respondent's blindness could only be considered willful. Respondent went so far as to personally research the tax consequences of the heirs' inheritance, but ignored the results of his research. FF 43. The very fact that Respondent claims to have spent all of the Estate assets on himself and Mr. Denman to "protect" those assets, simply proves too much. Thus, even if we were to credit Respondent's explanation that his fiduciary duty to the heirs was limited in that he was required to comply with Mr. Denman's instructions "so long as [they] seemed within the bounds of reason,"[15] Tr. 994 (Rosenbaum), he violated his duty when he complied with instructions well outside the bounds of reason. For instance, he complied with instructions to use Estate funds

[15] Respondent's statement suggests that it would be his specific subjective assessment as to whether Mr. Denman's instructions were within the bounds of reason. However, in *In re Gray*, 224 A.3d 1222 (D.C. 2020) (per curiam), the Court used an objective standard when it "declined to hold that an attorney's good faith belief was sufficient to reduce reckless misappropriation to mere negligence, *where the facts demonstrated that such a belief, even if honestly held, was not reasonable*." *Id*. at 1232 (emphasis added) (internal citations omitted).

to buy briefcases and clothes for Mr. Denman's son, to make payments to Mr. Denman's neighbor, and to make charitable contributions.

Moreover, as a fiduciary for assets from the Estate of Petit, Respondent had a responsibility to the Northampton County Court to learn of and follow its orders with respect to the money he held. Respondent asserts that if he had known of the Northampton County court's distribution order, he would have followed it. Tr. 450, 819-822 (Rosenbaum). We find that as a fiduciary of these assets, Respondent had a duty to inform himself of the court's order. He cannot avoid his responsibility to preserve the assets of the Estate by actively avoiding knowledge of the Northampton County Court's order. Our analysis of the charges against Respondent is informed by this view.

Commingling in Violation of Rule 1.15(b)

Pa. Rule 1.15(b) provides that "[a] lawyer shall hold all Rule 1.15 Funds and property separate from the lawyer's own property. Such property shall be identified and appropriately safeguarded." Rule 1.15 funds are

> funds which the lawyer receives from a client or third person in connection with a client-lawyer relationship, or as an escrow agent, settlement agent or representative payee, or as a Fiduciary, or receives as an agent, having been designated as such by a client or having been so selected as a result of a client-lawyer relationship or the lawyer's status as such.

Pa. Rule 1.15(a)(10). All Rule 1.15 funds held in the lawyer's capacity as a fiduciary must be deposited into a trust account, and the lawyer is required to maintain a second account to hold any personal funds in order to avoid commingling. *See* Pa. Rule 1.15(j) and (l); Pa. Rule 1.15, cmt. 1. Respondent admits to placing Veran funds

into his personal checking account, which at the time contained personal funds, and the bank records are similarly unequivocal.[16] FF 107. Respondent concedes this violation in his post-hearing brief. *See* R. Br. at 43. Therefore, we conclude that Respondent engaged in commingling.

Misappropriation

As in the District of Columbia, the failure to "safeguard" entrusted funds, as required by Pa. Rule 1.15(b), by using those funds without authorization, constitutes misappropriation.[17] *See ODC v. Keranko*, No. 105 DB 2010, at 23 (Pa. Disc. Bd. Apr. 23, 2012) (finding a violation of Rule 1.15(b) where the balance in the respondent's IOLTA fell below the amount entrusted to him due to his "unauthorized conversion of client funds to his own use by means of unaccounted for withdrawals"), *recommendation adopted*, No. 1844 Disc. Docket No. 3 (Pa. Sept. 5, 2012). Respondent states he "did not misappropriate any funds," R. Br. at 32, because the funds he withdrew from the Estate represented fees and expenses earned by himself or Mr. Denman. He further asserts that withdrawals made from Estate funds were at either the express direction of, or with the express authorization of

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[16] Despite the irrefutable evidence of commingling, during his testimony, Respondent would not admit to commingling funds. Instead, he obfuscated, blaming a Chase Bank officer who suggested that he move the money into his checking account, and claiming that he "kept careful notation of the amounts and what was being disbursed in order to insure that I wouldn't spend any of the Veran money on my own personal matters." Tr. 928 (Rosenbaum).

[17] The D.C. Court of Appeals defines misappropriation as "any unauthorized use of client's funds entrusted to [an attorney], including not only stealing but also unauthorized temporary use for the lawyer's own purpose, whether or not [the attorney] derives any personal gain or benefit therefrom." *In re Cloud*, 939 A.2d 653, 659 (D.C. 2007) (internal citation omitted).

Mr. Denman as special counsel and therefore, does not constitute unauthorized use of client funds. Respondent further asserts that if it is in fact misappropriation, it is neither intentional nor reckless because Respondent operated under the sincere and reasonable belief that his work was necessary and that he was following the express directives of Mr. Denman. We are not persuaded by these contentions.

We cannot overlook three fundamental points: (1) Respondent is a lawyer who was entrusted with Estate funds; (2) at no time did Mr. Denman possess singular authority to authorize use of Estate funds in the manner in which Respondent did nor did the escrow agreement grant Respondent or Mr. Denman authority to use Estate funds in the manner which he did regardless of position, role, or title; and (3) Respondent initiated affirmative actions to spend down funds and obscure account activities from the owners of the Estate property.[18] Tr. 495 (Rosenbaum). No other party except Respondent had control of the Estate funds, FF 18, and thus, no additional signature was required to move or disburse any Estate funds beyond that of Respondent. At no time did Respondent ever seek consent from any beneficiary prior to disbursement of any funds knowing at all relevant times that the Estate funds were not his property.

[18] Respondent testified that Chase Bank had "made some mistakes in intra-heir postings, now cleaned up" and that "mistakes may have been debits to certain of the heirs' accounts that we straightened out," or in alternative, the "information [being provided to the heirs on account statements] was incomplete" as a rationale for "shut[ting] . . . down" bank statements being sent to beneficiaries. Tr. 495-502 (Rosenbaum).

Further, Respondent's comingling of Estate funds with his own, FF 107; refusal to provide accounting information to beneficiaries, FF 30, 31, 51, and 74; his affirmative step to discontinue the bank's remittance of statements to beneficiaries, FF 29; refusal to engage with the heirs' attorneys, FF 53, 74; rapidly depleting accounts, FF 108; purchases of two briefcases for Mr. Denman and his son totaling over $16,000, FF 99, 108; numerous ATM withdraws without memorialization, FF 84, 108-109; shuffling money amongst accounts, FF 48, 58, 64, 107; taking expensive trips with luxury accommodations, FF 79, 81, 84-85; disbursing Estate funds to third parties on dubious instructions without proper documentation, FF 33, 70, 73; characterizing disbursements to beneficiaries as "advances" subject to recall, FF 25, 69; the material deprivation of funds to rightful beneficiaries, FF 115; and the use of Estate funds for payment of personal medical bills, FF 100; confine us to conclude that Respondent did in fact derive personal gain and benefit from funds entrusted to him. Therefore, we conclude that Respondent's use of funds was at relevant times unauthorized and constituted misappropriation of funds.

Intentional, Negligent, or Reckless Misappropriation

Since we have concluded that Disciplinary Counsel proved misappropriation, we must decide whether it was intentional, reckless, or negligent, since such a finding is necessary to determine the appropriate sanction. *See In re Anderson*, 778 A.2d 330, 339 (D.C. 2001). As such, we rely on precedent from the District of Columbia, rather than Pennsylvania. *See, e.g.*, *In re Bynum*, Board Docket No. 16-BD-029, at 2 n.2, 13-19 (BPR Apr. 4, 2018) (citing *In re Ponds*, 876 A.2d 636, 637

(D.C. 2005) (per curiam)) (analyzing D.C. cases to determine the appropriate sanction for a violation of South Carolina Rule 8.4(d) (dishonesty)), *recommendation adopted where no exceptions filed*, 197 A.3d 1072, 1074 (D.C. 2018) (per curiam).

It is well settled law that "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*." *In re Addams*, 579 A.2d 190, 191 (D.C. 1990) (en banc) (emphasis added). Likewise, in *In re Hines*, the Court put the Bar on notice that "in disciplinary cases involving attorneys who misappropriate their clients' funds, disbarment will be the norm unless it appears that the misconduct resulted from nothing more than simple negligence." 482 A.2d 378, 386-87 (D.C. 1984) (per curiam).

However, even if there is a finding of intentional or reckless misappropriation, it is appropriate to evaluate whether mitigating factors substantially outweigh aggravating factors such that the presumption of disbarment is rebutted. *In re Hewett*, 11 A.3d 279, 286 (D.C. 2011) (noting that respondent engaged in intentional misappropriation for the benefit of the client and that the client did in fact benefit); *see also In re Addams*, 579 A.2d at 201 (holding "'mitigating factors of the usual sort' . . . will suffice to overcome disbarment only if they are especially strong . . . ." (citation omitted)). Typical mitigating factors include "(1) an admission of wrongdoing, (2) full cooperation with the disciplinary authorities, (3) prompt return of the disputed funds, and . . . (4) an unblemished record of personal conduct." *In re*

Hewett, 11 A.3d at 287 (citations omitted). To date, the Court has found extraordinary circumstances only once, in *In re Hewitt*, where the respondent committed misappropriation in order to benefit his ward. *Id.* at 287-290. *See generally In re Gray*, 224 A.3d at 1234 (listing cases in which ordinary mitigating factors have been insufficient to overcome the presumptive sanction of disbarment).

In *In re Addams*, respondent took entrusted funds, made false accountings to the client, presented conflicting accounts of his actions, and bounced a check written to stave off foreclosure of his client's home. 579 A.2d at 199.

Like in *In re Addams*, here, Respondent took funds entrusted to him, and on more than one occasion, failed to present *any* accounting to the beneficiaries or their attorneys respectively, spent down the corpus of the Estate funds, and presented conflicting explanations of his actions. R. Br. at 31; Tr. 455, 457, 489-494, 497 (Rosenbaum); *cf. In re Hewett*, 11 A.3d at 287 (holding respondent had met mitigating factors and finding no question that respondent's actions were in the best interest of his ward). Further, although Mr. Rosenbaum contests all charges, he like respondent in *Hewitt*, admits that in retrospect he "would have acted differently and asked more questions." Tr. 543 (Rosenbaum); R. Br. *passim*.

Intentional Misappropriation

Intentional misappropriation most obviously occurs where an attorney takes entrusted funds for the attorney's personal use. *See In re Anderson*, 778 A.2d 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; . . . 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) (alteration in original) (internal quotation marks and citation omitted); *see also In re 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.'" *In re Anderson*, 778 A.2d at 339 (quoting 57 Am. Jur. 2d Negligence § 302 (1989)). A good-faith belief that an attorney is entitled to entrusted funds is not enough to preclude a finding of recklessness unless it is objectively reasonable. *See In re Gray*, 224 A.3d at 1232. *Compare, e.g.*, *In re Delsordo*, 241 A.3d 305, 307-09 (D.C. 2020) (per curiam) (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)), *with In re Haar*, 698 A.2d 412, 422 (D.C. 1997) (finding negligent misappropriation based on a lawyer's good faith, negligent mistake of established law and on his good faith of failing to address a controlling question of fact).

* * *

Since its ruling in *Addams*, the Court of Appeals has had many occasions to examine facts and law where misappropriation was either intentional, reckless, or negligent.

In *In re Pleshaw*, after being appointed as conservator of an estate, the respondent made payments to himself both with and without the court's prior approval. The Court held that after being appointed conservator, the respondent properly withdrew his initial fee pursuant to court authority, and in so doing, demonstrated he was aware of and understood rules pertaining to conservators. Because he paid himself twice without approval of the court, he demonstrated a "disregard[] [for the rules] for his own convenience."[19] The Court held this to constitute a "conscious indifference" and concluded that the respondent had thus committed reckless misappropriation. *In re Pleshaw*, 2 A.3d 169, 173-75 (D.C.

[19] The Court in *Pleshaw* noted that there was some ambiguity in the circumstances surrounding the second of the respondent's misappropriations that made it difficult to determine if the conduct was in fact knowing and deliberate. However, the Court concluded that it "must disbar Pleshaw for his first reckless misappropriation"; the Court did not reach a determination on the second misappropriation. *In re Pleshaw*, 2 A.3d at 173 n.17.

2010); *see also In re Anderson*, 778 A.2d at 339. *See generally* Pa. Rule 1.15(a)(2) (A fiduciary is "a lawyer acting as a personal representative, guardian, conservator, receiver, trustee, agent under a durable power of attorney, or other similar position.").

The Court summarized additional relevant cases in *In re Berryman*:

> The Board [in *In re Micheel*, 610 A.2d 231 (D.C. 1992)] rejected the hearing committee's finding of negligent misappropriation, finding instead, that the respondent's [handling of client funds was reckless]. *Id.* at 234. We agreed . . . and held that "'[a] clear rational basis exists for [the] conclusion that attorneys who knowingly misappropriate client funds stand in a different position than attorneys who commit other acts involving dishonesty.'" *Id.* at 237 (quoting *In re Dulansey*, 606 A.2d 189, 190 (D.C. 1992).]
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> . . . .
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> [In *In re Pierson*, 690 A.2d 941 (D.C. 1997),] [w]e refused to accept Ms. Pierson's argument that her misappropriation was inadvertent, and that "when coupled with her past history of pro bono work, the absence of a prior disciplinary record, and her forthrightness with the Board and the hearing committee should be sufficient to mitigate the penalty [of disbarment]." *Id.* at 949-50. We also declared that these factors did not amount to "extraordinary circumstances" under *Addams* . . . .
>
> The respondent in [*In re Utley*, 698 A.2d 446 (D.C. 1997)] took unauthorized fees and commissions from an estate account . . . . We determined that Ms. Utley's misappropriation was intentional, first, because "her prolonged failure to repay the duplicate fee [was] tantamount to recklessness." *Id.* at 450. She refused to repay the duplicate sum despite repeated requests from the Probate Division. Second, Ms. Utley's misappropriation was deemed intentional because "each of [her] three preapproval payments to herself was a deliberate act," and the third payment was made to herself despite the Probate Division's requests to return the prior payments. *Id.*

764 A.2d 760, 769-770 (D.C. 2000).

In *In re Berryman*, the Court found that the respondent had committed intentional misappropriation by taking estate funds without authorization despite her experience as an estate attorney, where she dishonestly backdated a deposit slip to make it seem like she had received money orders and checks prior to the decedent's death, which would have excluded them from the estate, thus demonstrating her awareness that her conduct was improper. 764 A.2d at 768, 772-74. The Court focused primarily on two points: first, absence of prior discipline, even when coupled with other mitigating factors, is not sufficient to overcome the presumption of disbarment. *Id.* at 773. Second, the Court agreed with the Board's finding that the respondent's dishonesty and interference with the administration of justice separated her case from that of *In re Travers*, 764 A.2d 242 (D.C. 2000), and its progeny where respondents sought the consent of personal representatives and heirs prior to acting. 764 A.2d at 773. In addition, although the respondent had a sincere belief that she was owed fees for services rendered, she placed herself ahead of all other creditors, without the approval of the court. *Id.* In its opinion, the court further opined that "disbarment may appear quite harsh in this case where [the respondent] previously enjoyed a twenty-four year career as an attorney without a single blemish . . . [but] harshness does not overcome the presumption of disbarment." *Id.* at 774 (citing *In re Pierson*, 690 A.2d 941, 949 (D.C. 1997)).

Respondent asserts that if misappropriation did occur, it was negligent because "he had [a subjective] erroneous but sincere belief that his own legal work and expenses were necessary . . . ." R. Br. at 34. However, Respondent overlooks

that an attorney's *subjective* belief is not the standard. Rather, the Court has held that to reach a determination of negligent misappropriation, an attorney's good faith but erroneous belief is judged *objectively*.

In *In re Gray*, 224 A.3d 1222, the Court reiterated that it "sustained a finding of negligent misappropriation where [it] found that the attorney's good faith belief in his or her entitlement to the misappropriated funds was *objectively reasonable*." *Id*. at 1232 (emphasis added).

In *In re Chang,* 694 A.2d 877 (D.C. 1997) (per curiam) (appended Board Report), Court intimated two factors to determine whether a respondent's good faith but erroneous belief is objective. First, unlike the present case, having assessed the respondent's demeanor, the Hearing Committee expressly credited respondent Chang's testimony. *Id.* at 880. Second, the Court noted that Disciplinary Counsel did not challenge the Hearing Committee's credibility findings of his good faith belief. *See id.* Neither of these two factors are presented here. Rather, having assessed Respondent's demeanor, as we have said, we do not credit his testimony.

In *In re Gray*, 224 A.3d 1222, the Court "declined to hold that an attorney's good faith belief was sufficient to reduce reckless misappropriation to mere negligence, *where the facts demonstrated that such a belief, even if honestly held, was not reasonable*." *Id*. at 1232 (emphasis added) (internal citations omitted).

Even if Respondent maintained a subjective[20] good faith erroneous belief that his legal work and expenses were necessary, this Hearing Committee does not. Respondent has presented us with one central justification for his good faith erroneous belief that is squarely fixed on the proposition that his role as a fiduciary was confined to the rigid boundaries set exclusively by Mr. Denman. Because we find this proposition is antithetical to a lawyer's obligations to preserve and protect entrusted property, we also find the facts before us clearly and convincingly demonstrate Respondent's beliefs, even if honestly held, are objectively unreasonable.

Pennsylvania Intentional Misappropriation Cases

Although D.C. law determines the sanction, it is notable that the results from our analysis would likely yield the same result in Pennsylvania. In *ODC v. Knepp*, 441 A.2d 1197 (Pa. 1982), the respondent, at the relevant time, intentionally misappropriated funds entrusted to him. He attributed his misconduct to financial

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[20] The Hearing Committee questioned Respondent regarding his understanding of objective and subjective standards, Tr. 1050-51 (Rosenbaum). The Respondent's understanding of objective and subjective standards may inform the basis for his actions, but the Hearing Committee recognizes his understanding as wholly separate from the Court's analysis.

> MR. PEASE: . . . . [I]s reasonableness a subjective or objective standard?
> THE WITNESS: It's subjective.
> MR. PEASE: So, the reasonably prudent person is a subjective construct. Is that correct[?]
> THE WITNESS: Yes.
> MR. PEASE: [Are fiduciary] duties . . . subjective or objective . . . ?
> THE WITNESS: I think it's subjective.

Tr. 1050-51 (Rosenbaum).

difficulties arising from his extensive involvement in politics and his interest in maintaining an image of solvency. *Id.* at 1201. Despite claiming an unblemished record, the court found the respondent had demonstrated a pattern of misconduct over the four years prior to referral to disciplinary counsel. *Id.*

In *In re Leopold*, 366 A.2d 227 (Pa. 1976), the court noted that "an attorney who has gone beyond temptation and has converted funds obviously poses a threat to any future client and the public." *Id.* at 233 (internal quotations and citations omitted). "[Respondent] had a continuing [fiduciary] obligation to advance and not jeopardize the interest of his client." *Id*. In his brief, the respondent argued that his client never expected funds returned and that he was in no worse position after respondent converted funds. *Id.* The court took exception with this rationale stating, "[s]uch an irresponsible conception of duty is incompatible with the high standards demanded of the profession by the Code of Professional Responsibility." *Id.* at 234.

In ODC v. Lewis, 426 A.2d 1138 (Pa. 1981), the respondent improperly converted proceeds from a client resulting from a personal injury case. In its opinion, the court opined that the public must know that an attorney "will pursue the client's interests vigorously and effectively; and rest assured that any financial transactions . . . will be scrupulously honest, . . . fully accounted for, . . . and will involve full and immediate payment of funds that are due and owning the client." *Id.* at 1143.

In *ODC v. Passyn*, 644 A.2d 699 (Pa. 1994), the respondent established a joint account after her elderly client requested she assist him in paying bills and living expenses for which she was to receive a monthly fee. The respondent drew checks

payable to herself, which she annotated, often erroneously. *Id.* at 701-02. The respondent failed to maintain complete records for her handling of her client's funds. *Id.* The respondent also convinced certain clients to make investments in real estate and mortgage bonds; respondent interweaved roles as attorney, real estate manager, and investor making it unclear which role she was engaging in at various times. *Id.* at 704. The court disagreed with the findings of the Pennsylvania Disciplinary Board finding instead that "[i]t is an attorney's responsibility to differentiate between actions performed as an attorney and actions performed in another capacity; services undertaken as an attorney are subject to [Pa. Rules] regardless of other roles the attorney may assume." *Id*. at 705. Further, the court noted, "[a]n attorney is subject to discipline for violation of the [Pa. Rules], 'whether or not the act or omission occurred in the course of an attorney-client relationship.'" *Id*. (internal citations omitted). Finally, the court quoting precedent from 1981, noted "the seriousness of respondent's misconduct is not lessened by the fact that the victims of his fraud were not his client." *Id*. (internal citations omitted).

In ODC v. Quigley, 161 A.3d 800 (Pa. 2017), the respondent was charged with mishandling funds of five clients over several years. During the hearing, the respondent put on an expert witness to testify to his "depression and post-traumatic stress disorder" as justification for a lesser sanction for his misappropriation and other misconduct. *Id.* at 806. The hearing committee concluded these arguments in no way mitigated the respondent's offenses on several bases. *Id.* The respondent then argued that he did not possess the criminal intent to defraud his clients, had no

history of discipline, and made remedial actions to avoid future misconduct. The court was unpersuaded and ordered the respondent disbarred. *Id.* at 807-09.

* * *

Like the various intentional misappropriation cases discussed above, Mr. Rosenbaum misappropriated entrusted funds on multiple occasions and engaged in protracted mishandling of Estate funds. Further, by holding himself out in multiple instances as a "fiduciary," combined with his attestation and adoptions that he was experienced in fiduciary matters, we find that Respondent was aware of at least the fundamental duties borne by a fiduciary and in mishandling Estate funds, consistent with Pa. Rule 1.15(a)(2), Respondent revealed a "conscious indifference" at least as egregious as the reckless misappropriation finding in *Pleshaw*.

Further, we see ample evidence that Respondent indiscriminately comingled his personal and client funds and consistently failed to account for funds entrusted to him when called upon to do so by the rightful owners of the estate assets or their representatives. *See In re Ahaghotu*, 75 A.3d at 256. And as in *In re Pierson* and *In re Berryman*, Respondent cannot point to mitigating factors that rise to "extraordinary circumstances" sufficient to avoid a finding of intentional misappropriation. *See In re Addams*, 579 A.2d at 191. In *In re Utley*, the Court found misappropriation was reckless because Utley did not return funds in a timely fashion. 698 A.2d at 449. Respondent has never returned any misappropriated funds to date.

But the evidence here establishes more than reckless misappropriation. Like in *In re Berryman*, where respondent committed intentional misappropriation

despite the respondent's belief that she was owed fees for services rendered, and where respondent engaged in self-dealing by paying herself ahead of anyone else, Respondent here repeatedly acted in his own interests at the expense of the heirs. He demonstrated an "intent to treat the funds as the attorney's own," *see In re Anderson*, 778 A.2d at 339, by spending large amounts of estate funds on excessive fees or needless expenses. *See, e.g.*, FF 47-48 (paying himself $7,766.85 in fees and travel expenses to spend less than one day meeting with Mr. Denman in New York), FF 73 (paying a $255.58 cell phone bill), FF 81 (billing two heirs and paying himself for three hours of "availability" time in Bordeaux despite departing on an early morning flight), FF 85 (spending €742 on a dinner with Mr. Denman and an attorney with no apparent connection to the heirs), FF 87 (billing and paying himself for availability in Nice despite having returned to California a day earlier). Finally, Respondent was aware no later than May 2013 that the Pennsylvania court had ordered all non-reserved funds to be distributed to the heirs, FF 102, yet he intentionally continued to take the money for himself.

Likewise, although Respondent has pointed us to his unblemished record, the absence of discipline is not sufficient to overcome the holding in *Addams*.

In his Brief, Respondent directs the Hearing Committee to *In re Hewett*, 11 A.3d 279, ostensibly for the proposition that intentional misappropriation "requires an intent to treat the property as the attorney's own." *Id*. at 286. As we have discussed, Respondent maintained exclusive control of Estate funds from which he paid himself excessive fees, paid medical bills, cell phone bills, took lavish trips both

within the United States and abroad, and treated himself to expensive meals and transportation all of which objectively constitutes his intentional use of entrusted funds as his own. FF 47-48; 73; 85; 87. Lastly, unlike in *In re Hewett*, where Mr. Hewett used misappropriated funds for the benefit of his ward, Respondent cannot point to evidence that his uses of entrusted funds were in fact used to protect the property interests of the Estate beneficiaries similar to those chronicled in *Hewett*.

Negligent Misappropriation

This case is distinguishable from those in which the Court has found negligent misappropriation.

> Negligent misappropriation is an attorney's non-intentional, non-deliberate, non-reckless misuse of entrusted funds or an attorney's non-intentional, non-deliberate, 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 In re 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)).

The respondent in *In re Choroszej*, "genuinely believed" he had paid a physician's bill on his client's behalf when in fact the bill had not been paid. 624 A.2d 434, 435 (D.C. 1992). Despite calling the doctor to follow up, he did not hear back from his office and respondent continued to have an "honest, but erroneous belief" that the bill had been paid. Thus, the respondent believed remaining fees held

in trust, after disbursement to his client, represented legal fees. Later, he learned the bill was not in fact paid, and subsequently paid the $840 bill. The Court held that the respondent's conduct was inadvertent and negligent. *Id.* at 435-36.

In *In re Ray*, the respondent who had never before probated an estate, received a check payable to the estate of a decedent. The respondent deposited the check in escrow and after paying applicable taxes he remitted the remaining amount to his client, save approximately $2,500 as his legal fee, without an order from the court. 675 A.2d 1381, 1383-84 (D.C. 1996). Because the respondent's inexperience led him to believe that court approval was not necessary, the Board determined that the respondent's conduct did not reach a level of recklessness and that his misappropriation stemmed from simple negligence. *Id.* at 1387. The respondent in *In re Reed* erroneously believed she had paid an outstanding physician's bill on behalf of her client. Upon discovery that the bill had not been paid, she promptly paid it. The Board found her failure to pay the doctor bill was inadvertent and disciplinary counsel filed no exception to the Board's finding. 679 A.2d 506, 507-08 (D.C. 1996) (per curiam).

In *In re Chang*, the respondent's accounting error resulted in dishonoring of two checks written to a taxing authority while he was away on vacation. Upon his return, the respondent cured the deficiency. Based on the hearing committee's finding that the respondent's explanation was "entirely credible," the Board recommended, and the Court agreed, that the respondent be disciplined for negligent

rather than intentional misappropriation. 694 A.2d at 877, 879-880 (appended Board Report).

In *In re Haar*, the client requested that the respondent return $4,000 in disputed fees, but the respondent refused. The respondent eventually obtained a default judgment for the full amount of his fee in the amount of $12,921.75. 698 A.2d at 414-15. The Court determined that the respondent mistakenly perceived no dispute over his right to the funds based upon his mistaken understanding of the law to accord him that much, as it had been offered in settlement. The Court found a "special form of misappropriation" based on a lawyer's good-faith, negligent mistake of established law and on his good-faith of failure to address a controlling question of fact. *Id.* at 422; *see also In re Haar*, Board Docket No. 17-BD-066, at 21 (BPR June 24, 2019) (recommending that the Court find negligent misappropriation where the respondent placed unearned flat fees in his operating account, contrary to the holding of *In re Mance*, 980 A.2d 1196 (D.C. 2009), where he proved that he was ignorant of *In re Mance*, and subsequently followed the advice of counsel to bring his practices into compliance), *pending review*, D.C. App. No. 19-BG-0554.

In relevant part, the respondent in *In re Travers* accepted fees with the consent of the heirs of an estate, but without approval of the court. The respondent was ordered to remit all fees but failed to do so. 764 A.2d at 245-46. At the hearing, the respondent proved that he believed the requirement to obtain court approval for accepting legal fees was not applicable to him under the circumstances. Further, the respondent proved he had received and filed consent from the heirs with the court.

Id. at 249. The Court, assuming without deciding that Disciplinary Counsel had proven that the funds were entrusted to the respondent sufficient to prove misappropriation, determined that such misappropriation would have been negligent. *Id.* at 250.

* * *

Unlike in the negligent misappropriation cases discussed, here, there is no misappropriation traceable to a credible "honest, but erroneous belief," similar to that found in *In re Choroszej*, *supra*, showing that entrusted funds had been properly used. Unlike in *In re Ray*, Respondent possessed the requisite experience, having held himself out as a fiduciary and having worked in that capacity in the past. Finally, unlike in *Travers*, *supra*, Respondent cannot assert that he took entrusted funds with the consent of anyone save Mr. Denman, *e.g.*, the court, the heirs, or counsel with valid power of attorney.

Thus, we find Respondent's conduct reaches intentional misappropriation without extraordinary circumstances that would preclude disbarment as a sanction.

D. Rule 1.15(e) (Failure to Promptly Deliver Funds and Render Accounting)

Respondent is charged with failing to promptly deliver Estate funds that the beneficiaries were entitled to and failing to promptly render a full accounting upon request, in violation of Pa. Rule 1.15(e).[21] There is no dispute that over the course

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[21] Pa. Rule 1.15(e) provides:

> Except as stated in this Rule or otherwise permitted by law or by agreement with the client or third person, a lawyer shall promptly deliver to the client or third person

of 15 months, Respondent delivered only $149,000, or approximately 17% of the funds he held as fiduciary, to the five heirs. Likewise, it is undisputed that Respondent never provided an accounting of the funds he held as a fiduciary.

Respondent argues that he had no responsibility to promptly deliver Estate funds to the heirs because he was not aware of the Northampton County Court's distribution order. We have already addressed Respondent's duty to make himself aware of the Northampton County Court's order. Even if Respondent's willful blindness was a valid defense, his receipt of the Northampton County Court's distribution order on May 20, 2013 should have caused him to send Ms. Veran's remaining funds ($88,789.01) to her as soon as her account was unfrozen. Instead, Respondent continued to follow Mr. Denman's directions by sending her only $7,500 and spending the rest of the entrusted funds on himself and Mr. Denman. FF 108-111.

Similarly, Respondent's unquestioned adherence to Mr. Denman's directions with respect to providing any accountings is also insufficient. Respondent did not only fail to provide any accounting to any of the heirs, but took efforts (and spent Estate funds) to prevent the heirs from receiving any accounting.

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any property, including but not limited to Rule 1.15 Funds, that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding the property; Provided, however, that the delivery, accounting, and disclosure of Fiduciary Funds or property shall continue to be governed by the law, procedure and rules governing the requirements of Fiduciary administration, confidentiality, notice and accounting applicable to the Fiduciary entrustment.

E. Rule 8.4(b) (Criminal Act; Wire Fraud)

Respondent is charged with committing "a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects," in violation of Pa. Rule 8.4(b). Here, Disciplinary Counsel alleges that Respondent committed the criminal act of wire fraud, in violation of 18 U.S.C. § 1343, which provides:

> Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, transmits or causes to be transmitted by means of wire, radio, or television communication in interstate or foreign commerce, any writings, signs, signals, pictures, or sounds for the purpose of executing such scheme or artifice, shall be fined under this title or imprisoned not more than 20 years, or both. If the violation occurs in relation to, or involving any benefit authorized, transported, transmitted, transferred, disbursed, or paid in connection with, a presidentially declared major disaster or emergency . . . , or affects a financial institution, such person shall be fined not more than $1,000,000 or imprisoned not more than 30 years, or both.

"The fact that [a] Respondent has not been criminally charged by any law enforcement agency does not preclude the conclusion that he violated 8.4(b)." *ODC v. Pedersen*, No. 218 DB 2010, at 9 (Pa. Disc. Bd. Dec. 23, 2011), *recommendation adopted*, No. 1806 Disc. Docket No. 3 (Pa. May 30, 2012). Nor is there any weight to be given to the fact that Respondent was criminally investigated, but not indicted. The lack of an indictment is not a finding of innocence. Moreover, the standard of proof is greater in the criminal context. Neither party points out that Mr. Denman was not convicted of wire fraud. Instead, he pleaded guilty to one charge of misdemeanor bank larceny in that between January 2012 and May 2013 he took

money from client trust account knowingly with the intent to steal the money.[22] DCX 35† at 323-24, 341 (Plea May 12, 2016); *see also* DCX 5 at 61 (showing that the Bank of America account in question was Mr. Denman's client trust account).

Disciplinary Counsel bears the burden of proving by clear and convincing evidence that Respondent's conduct satisfies the elements of the wire fraud statute: (1) the existence of a scheme to defraud; (2) the use of wire, radio, or television to further the scheme; and (3) a specific intent to defraud. *See United States v. Jinian*, 725 F.3d 954, 960 (9th Cir. 2013); *see also Kelly v. United States*, 140 S. Ct. 1565, 1571 (2020) (clarifying that notwithstanding the disjunctive language of the wire fraud statute, it "prohibits only deceptive 'schemes to deprive [the victim of] money or property.'" (quoting *McNally v. United States*, 483 U.S. 350, 356 (1987))). There is ample evidence in the record of a scheme to defraud. And the parties appear to acknowledge that emails and telephone calls were used to further this scheme.

Disciplinary Counsel asserts that Respondent was a knowing and willing participant in a blatant fraud to steal money from the Estate, while Respondent insists that he was hoodwinked by an old friend and was merely an unwitting participant in an elaborate scheme devised by Denman. Respondent argues that there is not clear and convincing evidence that he had the specific intent to defraud. This specific

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[22] At his sentencing, Mr. Denman expressed no remorse for his actions. Instead, he complained about being shackled to his bed at Bellevue Hospital by an FBI agent, stated that he had "done many good things in my life" and crowed about being a Yale University graduate and having "mathematical skills [that] are second to none." DCX 38† at 0423 (Sentencing Hearing of June 23, 2016). Nonetheless, due to "his very serious health issues," the Court sentenced Mr. Denman to six months' probation with home confinement. *Id.* at 425-26.

intent is "most often . . . inferred from the totality of the circumstances, including indirect and circumstantial evidence." *United States v. Philip Morris USA, Inc.*, 566 F.3d 1095, 1118 (D.C. Cir. 2009) (per curiam) (citations omitted).

Here, we find the circumstantial evidence of an intent to defraud to be overwhelming. Respondent consistently refused to provide accounting and affirmatively cut off the distribution of bank statements to the heirs. To the extent his "unwitting participant" ruse could be believed, it was shattered by placing all of Ms. Veran's money in his personal checking account and spending 91% of it. FF 108-110. To continue to profess ignorance in light of the blatant looting of entrusted funds is, itself, criminal. Thus, we conclude that Disciplinary Counsel has established that Respondent committed wire fraud and, in turn, a violation of Rule 8.4(b).

F. Rule 8.4(a) (Assisting Another to Violate Rules)

Respondent is charged with knowingly assisting Mr. Denman to violate the Rules of Professional Conduct, in violation of Pa. Rule 8.4(a).[23] For the reasons set out with respect to the charge of violating Rule 8.4(b), above, we find that Respondent also violated Rule 8.4(a).

[23] Pa. Rule 8.4(a) provides that it is professional misconduct to "violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another."

G. Rule 8.4(c) (Dishonesty, Fraud, Deceit, and Misrepresentation)

Respondent is charged with conduct involving dishonesty, fraud, deceit, and misrepresentation, in violation of Pa. Rule 8.4(c).[24] Disciplinary Counsel finds evidence of dishonesty in virtually every statement made by Respondent with respect to the Estate of Petit. In his defense, Respondent argues that Disciplinary Counsel has not established that he acted with the requisite intent.

To establish a violation of Rule 8.4(c), there must be clear and convincing evidence that a false statement was made knowingly or with "reckless ignorance of the truth or falsity thereof," defined as "deliberate closing of one's eyes to the facts that one had a duty to see or stating as fact things of which one was ignorant." *ODC v. Anonymous Attorney A*, 714 A.2d 402, 407 (Pa. 1998). As discussed above, Respondent took pains to ignore his responsibilities to the Northampton County Court and the heirs, to willfully turn a blind eye to Mr. Denman's systematic looting of the Estate assets, and his repeated lies and half-truths to the heirs, Mr. Farcy, and others regarding his "work" on behalf of the heirs. Therefore, we conclude that Respondent violated Rule 8.4(c).

[24] Pa. Rule 8.4(c) provides that it is professional misconduct to "engage in conduct involving dishonesty, fraud, deceit, or misrepresentation."

H. Rule 8.4(d) (Conduct Prejudicial to the Administration of Justice)

Disciplinary Counsel asserts that Respondent violated Pa. Rule 8.4(d) by failing to comply with the Northampton County Court's distribution order.[25] Respondent acknowledges that knowingly failing to comply with the distribution order would be a violation of Pa. Rule 8.4(d), but argues that he did not know about the court's order. Rule 8.4(d) requires intentional, and not merely negligent or careless conduct. *Matter of Surrick*, No. MISC. 00-086, 2001 WL 120078, at *7 (E.D. Pa. Feb. 7, 2001). No later than May 20, 2013, Respondent knew that he had been in possession of the distribution funds and not the reserve of the Estate, that the funds he held had been subject to immediate distribution, and all acts he carried out after this date in violation of the Northampton County Court's order, such as depleting the unfrozen Veran account, FF 105-111, were, therefore, intentional actions that were prejudicial to the administration of justice.

I. Rule 1.5(a) (Unreasonable Fee)[26]

Disciplinary Counsel argues that Respondent violated Pa. Rule 1.5(a) by charging and disbursing to himself and Mr. Denman $365,000 in legal fees for

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[25] Pa. Rule Rule 8.4(d) provides that it is professional misconduct to "engage in conduct that is prejudicial to the administration of justice."

[26] Pa. Rule 1.5(a) provides:

> A lawyer shall not enter into an agreement for, charge, or collect an illegal or clearly excessive fee. The factors to be considered in determining the propriety of a fee include the following:
> (1) whether the fee is fixed or contingent;
> (2) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;

unnecessary services. As an example of an unreasonable fee, Disciplinary Counsel focuses on the $6,500 charged by Respondent to the Veran account during the time the account was frozen. Respondent argues that his fee was neither illegal nor excessive because he genuinely believed his services were necessary and, because he acted in good faith. In Respondent's view of this matter, his client was Mr. Denman. R. Br. at 9, ¶ 15. Respondent argues that he owed absolute fealty to Mr. Denman and acted only with explicit instruction from him. Respondent claims that he did more work than he billed and all of his bills were approved by Mr. Denman.

Rule 1.5(a) governs the conduct of an attorney when entering into a fee agreement with a client. *Millcreek v. Angela Cres Trust*, 222 A.3d 1199, 1203 n.6 (Pa. Cmmw. Ct. 2019). The eight factors to be considered in determining the propriety of a fee suggest the wide latitude attorneys are given when negotiating a fee. In Pennsylvania, allegations of excessive fees are initially referred to Fee Dispute Committees for resolution before being investigated by the Disciplinary Board. Pa. Rule 1.5, cmt. 6.

As previously stated, we find that Respondent owed a fiduciary duty to the Estate of Petit. Therefore, the reasonableness of his fee cannot be insulated by his

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(3) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
(4) the fee customarily charged in the locality for similar legal services;
(5) the amount involved and the results obtained;
(6) the time limitations imposed by the client or by the circumstances;
(7) the nature and length of the professional relationship with the client; and
(8) the experience, reputation, and ability of the lawyer or lawyers performing the services.

relationship with Mr. Denman. Being compensated at $400/hour to serve as a private fiduciary seems excessive because such services do not require a license to practice law. According to Respondent, most of his work related to obtaining ITINs for the heirs, which could likewise have been performed by a non-lawyer. Nonetheless, Respondent insists that the time he charged is accurate and that all of his charges constitute "legal fees."

Courts have broad discretion to determine what constitutes a reasonable fee. An excessive fee can be found where an attorney does little to earn the fee. *See ODC v. Cutruzzula*, No. 147 DB 2004, at 7 (Pa. Disc. Bd. Mar. 28, 2006) (finding fee of $20,000 to handle appeal excessive where attorney simply paid local counsel $5,000 to handle appeal), *recommendation adopted in pertinent part*, No. 147 Disc. Docket No. 3 (Pa. June 14, 2006). In estate matters, fees are commonly compared against the value of the gross estate. *ODC v. Knepp*, 441 A.2d at 1198-99 (finding that fee comprising 24.7% of gross estate to represent an estate was "clearly excessive fee"). Here, Respondent collected approximately $100,000 in fees from the $858,000 to which he was entrusted, or over 11%. Considering that his only responsibility was to distribute this money to heirs of the Estate, this fee was excessive.

IV. RECOMMENDED SANCTION

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); *In re Cater*, 887 A.2d 1, 17 (D.C. 2005). "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); *see, e.g.*, *Hutchinson*, 534 A.2d at 923-24; *Berryman*, 764 A.2d at 766.

Presumptive Sanction of Disbarment for Intentional 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 at 191; *In re Hewett*, 11 A.3d at 286; *see also In re Mayers*, 114 A.3d 1274, 1279 (D.C. 2015) (per curiam) ("'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 *In re Addams*, 579 A.2d at 191)). Having found Respondent's misappropriation to be intentional, the presumptive sanction is disbarment.

Recommended Sanction of Disbarment

Respondent argues that that this is an "exceptional case," and even if we were to find reckless or intentional misappropriation, a lesser sanction than disbarment should be imposed based on Disciplinary Counsel's delay in bringing this case and

several mitigating circumstances. *See* R. Br. at 46-47. As noted above in discussing Respondent's motion to dismiss, we find no unreasonable delay or prejudice to Respondent and, thus, find no basis for mitigation here. The remainder of Respondent's arguments — character references, past good works, no prior discipline — are all "mitigating factors of the usual sort" that are not sufficient to rebut the presumptive sanction of disbarment. *In re Addams*, 579 A.2d at 191; *In re Anderson*, 778 A.2d at 337-38. Having failed to show extenuating circumstances sufficient to justify a lesser disciplinary sanction, the Hearing Committee recommends disbarment.

Disgorgement of Fees

Disciplinary Counsel also asks that the Hearing Committee recommend that Respondent be ordered to disgorge at least the $100,000 that he took from the Estate, with interest. Respondent argues that any question of disgorgement should be deferred until the time of reinstatement to address the factual dispute as to his entitlement to a reasonable fee, the amount to be disgorged, and any calculation of interest.

Under D.C. Bar R. XI, § 3(b), "the Court or the Board may require an attorney to make restitution . . . to persons financially injured by the attorney's conduct . . . as a condition of probation or of reinstatement . . . ." As the Board has recently noted, restitution "is designed to restore to the client any unearned benefit that the client has conferred on the attorney." *In re Brown*, Board Docket No. 19-BD-032, at 19 (BPR Oct. 7, 2020) (citing cases), *review pending*, D.C. App. No. 20-BG-0589.

Restitution should be ordered when to do otherwise would allow the attorney to profit from his unethical behavior. *In re Hager*, 812 A.2d 904, 922-23 (D.C. 2002). "It is the general rule . . . that where an attorney violates his or her ethical duties to the client, the attorney is not entitled to a fee for his or her services." *Hager*, 812 A.2d at 923 (quoting *Cal Pak Delivery, Inc. v. United Parcel Service, Inc.*, 60 Cal.Rptr.2d 207, 215 (Cal. Ct. App. 1997)). Where restitution is ordered, the respondent is required to pay six percent interest per annum. *See In re Edwards*, 990 A.2d 501, 530 (D.C. 2010).

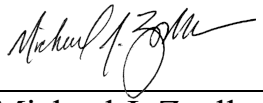
Respondent argues that the issue of restitution should wait until the time of reinstatement because the record does not contain evidence as to how much of his fees he should be entitled to retain. We acknowledge that the record does not afford a precise calculation of the money Respondent stole from the Estate. What the record does reflect is that Respondent paid himself at least $100,000 in legal fees from Estate assets. FF 115. Considering that Respondent's only obligation with respect to these funds was to distribute all of it to the heirs pursuant to the order of the Northampton County Court, and he instead took substantial amounts of those funds for himself and Mr. Denman, he did not earn and is not entitled to retain any of the fees he paid himself. Respondent's willful blindness to this fact should not inure to the heirs' detriment. Thus, we recommend that Respondent be ordered to pay restitution in the amount of $100,000, plus interest, as a condition of reinstatement. Because Disciplinary Counsel represents that the heirs are deceased, it is not immediately clear which individuals or entities are entitled to restitution; however,

the issue of whether Respondent properly paid restitution will be resolved in reinstatement proceedings.

V. CONCLUSION

After careful examination and deliberation, the Committee finds that Respondent violated Pa. Rules 1.5(a), 1.15(b), 1.15(e), 8.4(a), 8.4(b), 8.4(c), and 8.4(d). We are persuaded that his conduct was outrageous, that he showed a callous disregard to the beneficiaries to whom he owed a fiduciary duty and, in fact, intentionally misappropriated funds that were intended for them. His actions, over the course of more than a year, demonstrate that he consistently abused the ethical standards of the legal profession. We respectfully recommend that he be disbarred by the Court of Appeals and that he be ordered to pay restitution in the amount of $100,000, plus interest. Respondent's attention is directed to the requirements of D.C. Bar R. XI, § 14, and their effect on eligibility for reinstatement. *See* D.C. Bar R. XI, § 16(c).

AD HOC HEARING COMMITTEE



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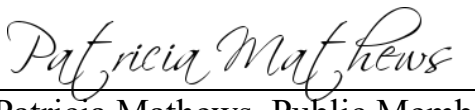

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