THIS REPORT IS NOT A FINAL ORDER OF DISCIPLINE*

DISTRICT OF COLUMBIA COURT OF APPEALS
BOARD ON PROFESSIONAL RESPONSIBILITY

Issued
July 30, 2026

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

REPORT AND RECOMMENDATION OF THE
BOARD ON PROFESSIONAL RESPONSIBILITY

This matter is before the Board pursuant to the default procedure of D.C. Bar Rule XI, § 8(f) and Board Rule 7.8, arising from Respondent Scott D. Mills's failure to answer a Specification of Charges, in which Disciplinary Counsel alleges that Respondent engaged in misconduct in his representation of two clients in immigration proceedings. On May 2, 2025, Disciplinary Counsel filed a Motion for Default pursuant to Board Rule 7.8, which an Ad Hoc Hearing Committee granted after receiving no opposition from Respondent. A hearing was conducted on September 25, 2025, in which Disciplinary Counsel introduced Exhibits ("DCX") 1-52. Hearing Transcript ("Tr.") 7. Disciplinary Counsel filed a post-hearing brief, but Respondent did not.

In a Report and Recommendation dated March 12, 2026, the Hearing Committee found that the sworn proof and documentary evidence Disciplinary

* 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.

Counsel attached to its Motion for Default and filed with the Hearing Committee constitute clear and convincing evidence that Respondent violated D.C. Rules of Professional Conduct ("Rules") 1.1(a) and (b) (competence, skill, and care), 1.3(a) (diligence and zeal), 1.4(a) and (b) (failure to communicate and explain matter to client), 1.5(a) (unreasonable fee), 1.15(a) (record-keeping and reckless misappropriation), 1.16(d) (failure to surrender papers, property, and unearned fees on termination of representation), 8.1(b) (knowing failure to respond to Disciplinary Counsel), and 8.4(d) (serious interference with the administration of justice), as well as D.C. Bar Rule XI, § 2(b)(3) (failure to comply with Court order).[1] Because it found that Respondent had engaged in misappropriation that was reckless, and the record contained no evidence in mitigation of sanction, the Hearing Committee recommended that Respondent be disbarred pursuant to *In re Addams*, 579 A.2d 190, 191 (D.C. 1990) (en banc) (providing that disbarment is the presumptive sanction for reckless or intentional misappropriation).

Neither Respondent nor Disciplinary Counsel took exception to the Report and Recommendation of the Hearing Committee,[2] and the Board therefore has decided the matter based on the record. *See* Board Rule 13.5. Having reviewed the record, the Board concurs with the Hearing Committee's factual findings as

[1] Even in default cases, Disciplinary Counsel bears the burden of proving the violation of a Rule of Professional Conduct by clear and convincing evidence. *See* D.C. Bar R. XI, § 8(f); Board Rule 7.8(b).

[2] Respondent did not participate in proceedings before either the Hearing Committee or the Board. Respondent was personally served with the Hearing Committee's Order of Default on June 3, 2025.

supported by substantial evidence in the record and with its conclusions of law as supported by clear and convincing evidence, with the exception of its finding of misappropriation under Rule 1.15(a). *See* Board Rule 13.7 ("When reviewing the findings of a Hearing Committee, the Board shall employ 'substantial evidence on the record as a whole' test. When making its own findings of fact, the Board shall employ a 'clear and convincing evidence' standard."). Based on the violations of the remaining Rules, we recommend a nine-month suspension. Because Respondent's failure to comply with Disciplinary Counsel's requests for financial records frustrated its ability to determine whether he engaged in misappropriation, we recommend that the Court impose a fitness requirement, with requirements that Respondent account for his handling of entrusted funds and pay restitution as conditions of reinstatement.

I. FINDINGS OF FACT

As set forth in detail in the Hearing Committee Report, the first matter (Disciplinary Docket No. 2022-D075) involves Respondent's representation of April De Lira, who hired Respondent in 2014 to adjust her husband's immigration status by filing an I-130 petition ("Petition for Alien Relative") and an I-601 application ("Application for Waiver of Grounds of Inadmissibility") with the United States Citizenship and Immigration Services ("USCIS"), and filing additional documents with the U.S. Department of State National Visa Center ("NVC"). Hearing Committee Finding of Fact ("FF") 1. Ms. De Lira paid $3,000 of Respondent's $6,000 fee before Respondent filed the I-130 petition in September

2014. FF 2-5. She made six more payments, totaling $1,800, with the final payment made on May 5, 2015. FF 4. USCIS denied the petition on September 2, 2015, due to insufficient documentation. FF 5. Six months after the denial, Respondent filed a second I-130 petition, which USCIS approved in January 2017. FF 6-7. Respondent advised Ms. De Lira's husband, Mr. De Lira, that he should carry a copy of his approval notice, but Respondent never received the written notice and never followed up with USCIS to obtain a copy. FF 7. Though Ms. De Lira provided the information required to file an I-601 application, Respondent never filed it and never paid the filing fees with the NVC, even after it sent him invoices. FF 8-13. In February 2020, the NVC terminated its review of Mr. De Lira's matter due to lack of communication and failure to pay fees. FF 14; DCX 48 at 2. After receiving the termination notice, Respondent told Ms. De Lira that he would get the matter straightened out. FF 15. After February 2021, Respondent stopped responding to Ms. De Lira's emails, leading her to request a refund and her husband's client file in July 2021. FF 16-19. Respondent never provided either. FF 19.

The second matter (Disciplinary Docket No. 2022-D076) involves Respondent's representation of Letha Lagana, who hired Respondent in 2018 to adjust her immigration status and obtain a work permit by filing an I-130 petition, an I-485 application (Application to Register Permanent Residence or Adjust Status), and an I-765 application (Application for Employment Authorization). FF 21. At their initial meeting in April 2018, Ms. Lagana and her husband paid $3,000 of Respondent's $4,000 fee in cash so he would begin working on their matter. FF 23. On January 22, 2019, the Laganas met with Respondent again and paid an additional $2,000 in cash—$1,760 in filing fees and an additional $240 toward the remaining balance of their legal fees. FF 21-25; DCX 29 at 8. Respondent did not file the I-130 petition until December 2019 and did not file the I-485 application until March 2020. *See* FF 26-27. Respondent paid the filing fees with a cashier's check drawn on a bank account he shared with his wife. FF 27. The I-485 application was immediately rejected due to Respondent's use of an outdated form, and the filing fees were refunded. FF 28, 30. It is unclear whether USCIS sent a refund check or returned the original cashier's check. FF 30 n.3. *Compare* DCX 32 at 55 (showing a copy of the cashier's check made out to the U.S. Department of Homeland Security, purchased on January 23, 2019, attached to a page of terms and conditions including the words "Customer Copy"), *with* Tr. 30 (Disciplinary Counsel: "[W]e can assume that this is a check that was sent back, because he had it in his possession and submitted it."). Respondent did not notify Ms. Lagana of the rejection, re-file the application, or refund the filing fees she had paid. FF 29-30; *see* DCX 49 (declaration of Ms. Lagana stating that Respondent did not refund the $1,760 filing fee to her); DCX 51 (declaration of USCIS's Disciplinary Counsel stating that the I-485 package was never re-filed).[3]

[3] The declaration does not unambiguously state that the I-485 application was not re-filed. Rather, it states that the I-485 application was rejected; two additional forms filed on the same day were also rejected due to the absence of a pending I-485 application, and "[t]he forms were never refiled." DCX 51 at 2. While it may be possible to interpret "the forms" as applying only to the two additional forms, not the I-485, the declaration constitutes substantial evidence for the Hearing

Respondent did not respond to many of Ms. Lagana's emails and calls and stopped communicating with her after an email exchange in September 2020. FF 32.

In response to the disciplinary complaints, Respondent conceded that he had neglected both cases and failed to communicate with his clients, but he did not provide complete copies of his client files or financial records. FF 34-39. In his response to the Lagana complaint, Respondent specifically acknowledged that he received a refund for the filing fee and claimed to have re-filed the I-485 application:

> They gathered the significant filing fee by January of 2019 and we filed shortly after. We never received a receipt for the I-485, but our filing fee eventually was refunded. We then mutually made the decision that we would file I-130 Petition for Alien Relative online and secure that approval before filing the Adjustment of Status (I-485). Planning for approval, I had Mrs. Lagana complete the I-485 and supporting applications in June 2020. The I-130 was approved at the end of July 2020 and it took until the end of September to collect all of the signatures, forms and documents to send the I-485 package. I believe that package was delivered October 5, 2020.
>
> I discussed with Shawn Lagana that we were still waiting for the receipts later that month. But I then failed to follow up on the application and did not communicate with my client.

DCX 32 at 75. The Hearing Committee did not credit that assertion.

After Respondent failed to respond substantively[4] to Disciplinary Counsel's further inquiries, Disciplinary Counsel filed a motion to enforce its subpoena, which

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Committee's finding. *See also* DCX 32 at 75 (Respondent claiming that he re-filed the I-485 "package," which included additional forms and documents).

[4] Respondent responded to several of Disciplinary Counsel's calls and emails directing him to provide requested documents but failed to comply. *See* DCX 52 at 2-3.

the Court of Appeals granted on March 29, 2024. FF 38. Though the Court's Order was sent by certified mail, Respondent still failed to comply with the subpoena. FF 39.

II. CONCLUSIONS OF LAW

In the De Lira matter, the Hearing Committee found that Respondent violated Rules 1.1(a) and (b), 1.3(a), 1.4(a) and (b), 1.5(a), 1.15(a) (record-keeping), 1.16(d), 8.1(b), and 8.4(d), as well as D.C. Bar Rule XI, § 2(b)(3). It found that Respondent violated the same Rules in the Lagana matter, in addition to reckless misappropriation under Rule 1.15(a).

With the exception of the misappropriation finding, we agree with the Hearing Committee's conclusions of law and adopt them for the reasons set forth in its Report and Recommendation. We address the misappropriation charge below, followed by brief summaries of the recommendations we have adopted.

A. Reckless Misappropriation

The Court has defined misappropriation as "any unauthorized use of [a] client's funds entrusted to [the lawyer], including not only stealing but also unauthorized temporary use for the lawyer's own purpose, whether or not [the lawyer] derives any personal gain or benefit therefrom." *In re Nave*, 197 A.3d 511, 514 (D.C. 2018) (per curiam) (alterations in original) (quoting *In re Anderson*, 778 A.2d 330, 335 (D.C. 2001)). A charge of misappropriation under Rule 1.15(a) requires Disciplinary Counsel to produce clear and convincing evidence that (1) client funds were entrusted to the attorney; (2) the attorney used those funds for the attorney's own purposes; and (3) such use was unauthorized. *In re Harris-Lindsey*, 242 A.3d 613, 620 (D.C. 2020) (citing *In re Travers*, 764 A.2d 242, 250 (D.C. 2000)). Funds are "entrusted" when the lawyer is "imbued with authority to prevent their unauthorized use." *Id.* at 624 (applying holding prospectively); *see Anderson*, 778 A.2d at 335. When filing fees paid by the client are refunded to the lawyer, they become entrusted, and spending the refunded fees for personal expenses constitutes misappropriation. *See In re Schuman*, 251 A.3d 1044, 1052 (D.C. 2021).

Here, due to Respondent's failure to produce his financial records in response to Disciplinary Counsel's subpoena, FF 36-39, Disciplinary Counsel did not submit direct evidence of whether and how Respondent "used" the refunded fees. Rather, Disciplinary Counsel contended that misappropriation could be inferred from the circumstances because Respondent was not authorized to do anything with Ms. Lagana's refunded filing fees other than re-file the I-485 or return the funds to Ms. Lagana, and he did neither. HC Rpt. at 23-24. In other words, Disciplinary Counsel is asking us to infer unauthorized use from an absence of evidence of authorized use. For the reasons discussed below, drawing such an inference is not warranted on these facts due to the possibility that the refunded fees were not used at all.

After Ms. Lagana paid $2,000 in cash in January 2019, Respondent made an authorized use of $1,760 by purchasing a cashier's check and sending it to USCIS. FF 25, 27. Thus, this is not a case in which Respondent took a client's funds and offered no explanation as to their whereabouts. Rather, the *only* evidence of how Respondent used the $1,760 payment was that he initially made an authorized use.

When the I-485 was rejected, the filing fees were returned to Respondent. FF 30. During the hearing, the Hearing Committee Chair asked Disciplinary Counsel to clarify how USCIS returned the filing fees. Tr. 29. Referring to the copy of the cashier's check on page 55 of DCX 32, Disciplinary Counsel explained:

> So it's a check remitted from Scott Mills and Haylee Mills, who is his wife, paid to the order of U.S. Department of Homeland Security. And yes, I mean, I don't think that -- *we can assume* that this is a check that was sent back, because he had it in his possession and submitted it. But again, the money -- *I don't know where the money went*.

Tr. 30 (emphasis added).[5]

The Hearing Committee Chair asked Disciplinary Counsel to account for the possibility that Respondent made no use of the refund in its misappropriation analysis:

> [I]f the check came back and it was never cashed or the check went into a different account or the check is just sitting there -- or was cashed and the money is sitting in a drawer someplace, unless it was in some way used, right, the evidence of unauthorized use, it may not reach the

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[5] Disciplinary Counsel's response suggests that DCX 32 at 55 is a copy of the original cashier's check that Respondent sent to USCIS, and which was returned to Respondent when the I-485 was rejected. However, it does not appear that the original cashier's check was offered in evidence, and it is impossible to determine whether DCX 32 at 55 is a copy of the original check that Respondent made before he sent it to USCIS, or a copy made after it was returned by USCIS (if it was returned at all).

> correct standard. So if you could address that issue for us, I would appreciate it very much.

Id. But Disciplinary Counsel did not address the possibility that the funds were not used in its post-hearing brief. The extent of Disciplinary Counsel's argument to the Hearing Committee on misappropriation was as follows:

> Mills has been unable to account for the use of the money designated for filing fees. Disciplinary Counsel's investigation has been stalled by Mills' failure to maintain financial records and provide them to Disciplinary Counsel in response to our subpoenas. These circumstances demonstrate that Mills did not use the refunded fees for any authorized purpose; they support an inference that he did not keep records of his handling of client funds and that *whatever use he made* of the funds was not an authorized use and therefore amounted to misappropriation.

ODC Br. to Hearing Committee at 19 (emphasis added).[6] The Hearing Committee noted that the issue was still unresolved, pointing out that "[i]f the check has not been redeposited or canceled and it is still in Respondent's possession, there would be no misappropriation." HC Rpt. at 24 n.6 (citing *In re Ingram*, 584 A.2d 602, 603 (D.C. 1991) (per curiam)). We agree with the Hearing Committee on this point.

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[6] Disciplinary Counsel also contended that the misappropriation was reckless because:

> In addition, Mills has a pattern of taking fees from clients and not performing the work. We see this in both the De Lira and Laganas matters. His behavior demonstrates a "conscious indifference" to the treatment of legal fees paid for representations. Mills has not returned any of the unearned fees in the two matters.

ODC Br. to Hearing Committee at 19. Unlike in *In re Schwartz*, Board Docket No. 25-BD-064, at 35-38 (HC Rpt. June 15, 2026), which is currently pending before the Board, Disciplinary Counsel does not appear to argue that the failure to refund unearned fees, in itself, constituted misappropriation.

Without direct evidence as to the disposition of the funds initially used to pay the filing fee, we turn to Disciplinary Counsel's argument that we should consider that Disciplinary Counsel does not know what happened to the funds at issue because Respondent has been unable to account for those funds, and that Disciplinary Counsel's investigation was hampered by his failure to provide complete responses to its investigative inquiries and document subpoena.

The Court has not explicitly held that the "unauthorized use" element of misappropriation can be satisfied absent direct evidence of "use," and it has resisted attempts to shift the burden of production on any element of misappropriation. Instead, the Court has held that where Disciplinary Counsel has proven the unauthorized use of entrusted funds, the Board may consider the respondent's explanation, or lack thereof, as *one factor* in determining whether Disciplinary Counsel carried its burden of proving that misappropriation was *intentional*. *See In re Thompson*, 579 A.2d 218, 220-23 (D.C. 1990). However, we are aware of no case in which the Court has considered the lack of explanation as a factor in finding unauthorized use. While the Board appeared to take that step in *In re Thai*, *see Mills* HC Rpt. at 25-26 ("*Thai* provides a basis for us to draw an inference from Respondent's failure to demonstrate what he did with the refunded filing fees, failure to explain his actions to his clients, failure to respond to Disciplinary Counsel's subpoena, and failure to participate in these proceedings."), the Board also cautioned that the appropriateness of drawing an inference was limited to the unique facts of that case:

> It bears repeating that our analysis is narrowly limited to the facts and totality of the circumstantial evidence in this case. The Board does not intend to suggest that misappropriation ordinarily can be established without documentary proof, including bank statements or Disciplinary Counsel's typically meticulous analysis of a respondent's financial records. Nor is a respondent's sloppy record-keeping a basis, in and of itself, to loosen the strict requirement of proof necessary to establish misappropriation. The present case presents egregious circumstantial evidence which, the Board concludes, satisfies Disciplinary Counsel's burden of proving intentional misappropriation by this Respondent in this case.

Board Docket No. 14-BD-026, at 11 n.5 (BPR May 13, 2016), *recommendation adopted after no exceptions filed*, 157 A.3d 760 (D.C. 2017) (per curiam).[7] The Board described the "egregious circumstantial evidence" as follows:

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

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[7] Because neither party filed an exception to the *Thai* Report, the Court's opinion did not address whether misappropriation can be found through an inference, rather than direct evidence of the lawyer's "use" of entrusted funds.

> Respondent must have done something else with the funds. Whatever that was, it was unauthorized."

Id. at 10-11 (footnotes omitted) (quoting Hearing Committee Report at 31).

There is no comparable circumstantial evidence in this case. Respondent's failure to properly re-file the I-485 package or refund the filing fees to Ms. Lagana did not follow a pattern of misappropriation in other cases; rather, the Hearing Committee found that Respondent's failure to re-file the I-485 package was part of a pattern of neglect. *See* HC Rpt. at 16. As discussed below, the evidence of wrongdoing establishes straightforward violations of other Rules. Respondent's failure to account for the check supports a violation of the record-keeping provision of Rule 1.15(a), even if the same absence of evidence is not enough to prove misappropriation.[8] If Respondent prepared the I-485 application using the same cashier's check, but neglected to file it, he would have violated Rule 1.3(a). If after he received the refund he did nothing, he would have violated Rule 1.16(d) for

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[8] That conclusion is consistent with Disciplinary Counsel's explanation of the evidence at the hearing:

> What I'm showing you is a check that was written to Homeland Security on behalf of the Lagana husband and wife. This is the $1760 filing fees that Respondent sent out on a cashier's check and that he admits eventually was refunded back to him but was never refunded to the clients.
>
> This is all we have. As I said earlier, the reason we're charging him with failure to maintain financial records is because we do not have anything else.

Tr. 24.

failure to return the fee to his client; indeed, the Hearing Committee found a violation of Rule 1.16(d) on that basis. *See* HC Rpt. at 28.

In sum, because the record contains no evidence of how the refunded fees were used, because Disciplinary Counsel previously conceded the possibility that the refunded fees were not used, and because Disciplinary Counsel has not since articulated a legal argument that accounts for that possibility, the Board—consistent with its understanding of the Court's position on burden shifting in the misappropriation context—does not find clear and convincing evidence that Respondent "used those funds for [his] own purposes." *Harris-Lindsey*, 242 A.3d at 620; *see also In re Cater*, 887 A.2d 1, 24 (D.C. 2005) ("[C]lear and convincing evidence" is more than a preponderance of the evidence, it is "evidence that will produce in the mind of the trier of fact a firm belief or conviction as to the facts sought to be established." (citation omitted)). *See generally Nave*, 197 A.3d at 518 (explaining that the "clear and convincing evidence" standard "'expresses a preference for the attorney's interests by allocating more of the risk' of an erroneous conclusion to Disciplinary Counsel" (quoting *In re Allen*, 27 A.3d 1178, 1184 (D.C. 2011))). While we understand the Hearing Committee's concern about "allowing a respondent to escape liability for misappropriation, and avoid disbarment, by intentionally failing to provide financial documentation to Disciplinary Counsel or participate in disciplinary proceedings," HC Rpt. at 24-25, we are not recommending that he escape liability. The misconduct that resulted in Disciplinary Counsel's inability to fully investigate the misappropriation issue warrants a significant sanction, and, as discussed below, Respondent should not be able to resume the practice of law until he accounts for his handling of the fee refund.

B. Neglect of Client Matters (Rules 1.1(a) and (b), 1.3(a), 1.4(a) and (b))

The charged Rule violations arising from Respondent's neglect of the De Lira and Lagana matters are as follows:

- Rule 1.1(a) requires a lawyer to "provide competent representation to a client," which requires utilizing the "legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation." *See In re Drew*, 693 A.2d 1127, 1132 (D.C. 1997) (per curiam). A lawyer violates Rule 1.1 if there is a "serious deficiency" in the representation of a client, whereby the attorney commits '"an error that prejudices or could have prejudiced a client and the error was caused by a lack of competence."' *In re Yelverton*, 105 A.3d 413, 421-22 (D.C. 2014) (quoting *In re Evans*, 902 A.2d 56, 69-70 (D.C. 2006) (per curiam) (appended Board Report)).
- Rule 1.1(b) requires a lawyer to "serve a client with skill and care commensurate with that generally afforded to clients by other lawyers in similar matters." The Rule addresses "the situation in which a lawyer capable to handle a representation walks away from it for reasons unrelated to his competence in that area of practice." *In re Lewis*, 689 A.2d 561, 564 (D.C. 1997) (per curiam) (appended Board Report).
- Rule 1.3(a) states that an attorney "shall represent a client zealously and diligently within the bounds of the law." A violation can be shown through

evidence of "indifference and a consistent failure to carry out the obligations that the lawyer has assumed to the client or a conscious disregard of the responsibilities owed to the client." *In re Wright*, 702 A.2d 1251, 1255 (D.C. 1997) (per curiam) (appended Board Report) (citing *In re Reback*, 487 A.2d 235, 238 (D.C. 1985), *adopted in relevant part*, 513 A.2d 226 (D.C. 1986) (en banc)). Rule 1.3(a) "does not require proof of intent, but only that the attorney has not taken action necessary to further the client's interests, whether or not legal prejudice arises from such inaction." *In re Bradley*, Board Docket No. 10-BD-073, at 17 (BPR July 31, 2012) (citing *Drew*, 693 A.2d at 1133), *adopted in relevant part*, 70 A.3d 1189, 1191 (D.C. 2013) (per curiam).

- Rule 1.4(a) provides that "[a] lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information." Under Rule 1.4(a), an attorney must not only respond to client inquiries, but must also initiate contact to provide information when needed. *See In re Robbins*, 192 A.3d 558, 564-65 (D.C. 2018) (per curiam). Attorneys are obligated to respond to client requests for information even when there are no new developments to report. *See In re Lattimer*, 223 A.3d 437, 440, 442-43 (D.C. 2020) (per curiam).
- Rule 1.4(b) states than an attorney "shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation." This Rule provides that the attorney "must be particularly careful to ensure that decisions of the client are made only after

the client has been informed of all relevant considerations." Rule 1.4, cmt. [2]. The Rule places the burden on the attorney to "initiate and maintain the consultative and decision-making process if the client does not do so and [to] ensure that the ongoing process is thorough and complete." *Id.*

As explained by the Hearing Committee, Respondent violated these Rules by failing to file a hardship waiver for Mr. De Lira and to inform him of his inaction; failing to notify Ms. Lagana of the rejection of her I-485 application, re-file it, or consult with her about an alternative; and failing to respond reasonably to his clients' requests for information. HC Rpt. at 14-18.

C. <u>Financial Misconduct (Rules 1.5(a), and 1.15(a), and 1.16(d))</u>

The charged Rule violations arising from Respondent's charging and handling of funds in the De Lira and Lagana matters are as follows:

- Rule 1.5(a) provides that:

> A lawyer's fee shall be reasonable. The factors to be considered in determining the reasonableness of a fee include the following:
>
> > (1) The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
> >
> > (2) The likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
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> > (3) The fee customarily charged in the locality for similar legal services;
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> > (4) The amount involved and the results obtained;
> >
> > (5) The limitations imposed by the client or by the circumstances;

> (6) The nature and length of the professional relationship with the client;
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> (7) The experience, reputation, and ability of the lawyer or lawyers performing the services; and
>
> (8) Whether the fee is fixed or contingent.

Keeping an entire flat fee without completing the representation, even if the matter becomes more complicated than the lawyer initially anticipated at the outset of the case, also violates Rule 1.5(a). *See In re Brown*, 310 A.3d 1036, 1047-48 (D.C. 2024).

- Rule 1.15(a) requires lawyers to keep "[c]omplete records of . . . account funds and other property" and preserve them "for a period of five years after termination of the representation." *See In re Edwards*, 990 A.2d 501, 522 (D.C. 2010) (appended Board Report) ("Financial records are complete only when an attorney's documents are 'sufficient to demonstrate [the attorney's] compliance with his ethical duties.'" (quoting *In re Clower*, 831 A.2d 1030, 1034 (D.C. 2003) (per curiam))). The purpose of the requirement of "complete records is so that 'the documentary record itself tells the full story of how the attorney handled client or third-party funds' and whether, for example, the attorney misappropriated or commingled a client's funds." *Edwards*, 990 A.2d at 522 (quoting *Clower*, 831 A.2d at 1034). A hearing committee may infer that an attorney failed to keep the records required by Rule 1.15(a) from the attorney's failure to produce such records. *See In re Doman*, 314 A.3d 1219, 1229 (D.C. 2024) (per curiam).

- Rule 1.16(d) provides:

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

Failure to refund any unearned portion of a fee violates Rule 1.16(d). *See, e.g.*, *In re Samad*, 51 A.3d 486, 497 (D.C. 2012) (per curiam) (finding a violation of Rule 1.16(d) where the respondent claimed that he did some work on the case, but did not "suggest that he earned the entire flat fee or that he returned any portion of the fee").

As explained by the Hearing Committee, Respondent violated these Rules by charging fees for services he did not complete; failing to return unearned legal fees, refunded filing fees, and documents upon termination of the representation; and failing to produce records of his handling of entrusted funds. HC Rpt. at 18-20, 27-28.

D. <u>Failure to Cooperate with the Disciplinary Investigation (Rules 8.1(b) and 8.4(d) and D.C. Bar Rule XI, § 2(b)(3))</u>

The charged Rule violations arising from Respondent's conduct during Disciplinary Counsel's investigation are as follows:

- Rule 8.1(b) provides, in relevant part:

> [A] lawyer . . . in connection with a disciplinary matter, shall not . . . [f]ail to disclose a fact necessary to correct a misapprehension known by the lawyer . . . to have arisen in the matter, or

> knowingly fail to respond reasonably to a lawful demand for information from . . . [a] disciplinary authority . . . .

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

- Rule 8.4(d) provides that it is professional misconduct for a lawyer to "[e]ngage in conduct that seriously interferes with the administration of justice." Failure to respond to Disciplinary Counsel's inquiries and (multiple) orders of the Board and the Court constitutes a violation of Rule 8.4(d). Rule 8.4, cmt. [2]; *see, e.g.*, *Doman*, 314 A.3d at 1231 (failure to respond to Disciplinary Counsel's inquiries); *In re Daniels*, 299 A.3d 541, 542 (D.C. 2023) (per curiam) (failure to comply with Board order compelling a response); *In re Thompson*, 195 A.3d 64, 64 (D.C. 2018) (per curiam) (failure to comply with Court order compelling a response).
- D.C. Bar Rule XI, § 2(b)(3) provides that failure to comply with "any order of the Court or the Board issued pursuant to this rule" is "grounds for discipline."

As explained by the Hearing Committee, Respondent violated these Rules by failing to respond to Disciplinary Counsel's inquiries and to comply with its subpoena and a Court order enforcing it. HC Rpt. at 28-30.

IV. RECOMMENDED SANCTION

Because we find that Disciplinary Counsel failed to prove reckless misappropriation, for which the presumptive sanction is disbarment, we consider the sanction factors set forth below.

A. Standard of Review

The sanction imposed in an attorney disciplinary matter is one that is necessary to protect the public and the courts, maintain the integrity of the legal profession, and deter the respondent and other attorneys from engaging in similar misconduct. *See, e.g.*, *In re Hutchinson*, 534 A.2d 919, 924 (D.C. 1987) (en banc); *In re Martin*, 67 A.3d 1032, 1053 (D.C. 2013); *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; *In re Berryman*, 764 A.2d 760, 766 (D.C. 2000). In determining the appropriate sanction, the Court of Appeals considers a number of factors, including: (1) the seriousness of the conduct at issue; (2) the prejudice, if any, to the client which resulted from the conduct; (3) whether the conduct involved dishonesty; (4) the presence or absence of violations of other provisions of the disciplinary rules; (5) whether the attorney has a previous disciplinary history; (6) whether the attorney has acknowledged his wrongful conduct; and (7) circumstances in mitigation or aggravation. *See, e.g.*, *Martin*, 67 A.3d at 1053 (citing *In re Elgin*, 918 A.2d 362, 376 (D.C. 2007)). The Court also considers "'the moral fitness of the attorney' and 'the need to protect the public, the courts, and the legal profession.'" *In re Rodriguez-Quesada*, 122 A.3d 913, 921 (D.C. 2015) (per curiam) (quoting *In re Howes*, 52 A.3d 1, 15 (D.C. 2012)).

B. Application of the Sanction Factors

1. The Seriousness of the Misconduct

Respondent's misconduct was serious, as he let his clients' immigration cases languish for years. The seriousness of the misconduct was compounded by Respondent's failure to comply with Disciplinary Counsel's subpoena, which has delayed the resolution of this matter.

2. Prejudice to the Client

Respondent prejudiced his clients in both matters because their cases went unresolved for years, depriving them of the benefits they sought as well as time they could have used to hire new counsel. They have also been prejudiced by Respondent failing to refund fees he did not earn.

3. Dishonesty

Disciplinary Counsel did not present evidence of dishonesty.

4. Violations of Other Disciplinary Rules

Respondent violated eleven Rules in two separate client matters.

5. Previous Disciplinary History

Disciplinary Counsel did not present evidence of prior discipline.

6. Acknowledgement of Wrongful Conduct

Respondent admitted that he neglected both client matters and failed to communicate with his clients, but he has not taken responsibility for his actions by cooperating in these proceedings and has not refunded unearned fees.

7. Other Circumstances in Aggravation and Mitigation

No additional evidence was offered in aggravation or mitigation, but we take into account the fact that Respondent's failure to comply with Disciplinary Counsel's subpoena deprived Disciplinary Counsel of the ability to find clear and convincing evidence as to whether he had engaged in misappropriation.

C. Sanctions Imposed for Comparable Misconduct

Generally, the Court has imposed a suspension of up to two months for similar misconduct, without misappropriation. *See, e.g.*, *Brown*, 310 A.3d at 1048, 1051 (sixty-day suspension with fitness and restitution for violations of Rules 1.1(a), 1.3(a), 1.3(b)(1), 1.3(c), 1.4(a), 1.5(a), 1.15(e), and 1.16(d), where the respondent failed to earn and refused to refund a flat fee); *In re Jackson*, 300 A.3d 747, 747-48 (D.C. 2023) (per curiam) (sixty-day suspension with fitness for violations of Rules 3.4(c), 8.1(b), and 8.4(d), as well as D.C. Bar Rule XI, §2(b)(3), where the respondent failed to respond to Disciplinary Counsel or participate in the disciplinary proceedings); *In re Matisik*, 77 A.3d 1009, 1009 (D.C. 2013) (per curiam) (sixty-day suspension with fitness and restitution for violations of Rules

1.1(a), 1.1(b), 1.3(a), 1.3(c), 1.4(a), 1.5(b), 1.16(a)(2), and 1.16(d)); *In re Fox*, 35 A.3d 441, 441-42 (D.C. 2012) (per curiam) (forty-five-day suspension for violations of Rules 1.1(a) and (b), 1.3(a) and (c), and 1.4(a) and (b)); *In re Thai*, 987 A.2d 428, 429-431 (D.C. 2009) (per curiam) (sixty-day suspension, with thirty days stayed in favor of probation with conditions including restitution, for violations of Rules 1.1(a) and (b), 1.3(a) and (c), 1.4(a), and 1.16(d) in an immigration matter).

Respondent's misconduct was significantly more serious than that in the cases cited above, especially due to the prejudice to clients in two separate matters and Respondent's failure to provide information that would reveal whether he committed misappropriation. However, it was not as serious as *In re Kreiss*, Board Docket No. 23-BD-008, at 1-2, 31-32, 36 (BPR July 29, 2024) (one-year suspension with fitness for violating Rules 1.1(a) and (b), 1.3(a), 1.3(b)(2), 1.4(a) and (b), 1.5(a), 1.15(a) (record-keeping), 1.16(d), and 8.4(c) in an immigration matter), *recommendation adopted after no exceptions filed*, 324 A.3d 294 (D.C. 2024) (per curiam), where the misconduct involved dishonesty and was aggravated by related prior discipline. Accordingly, we recommend that Respondent be suspended for nine months.

D. Fitness

The purpose of conditioning reinstatement on proof of fitness is "conceptually different" from the basis for imposing a suspension. *Cater*, 887 A.2d at 22. The Court has observed that while a suspension represents "a 'commensurate response to the attorney's past ethical misconduct,' the fitness requirement addresses the concern 'that the attorney's resumption of the practice of law will not be detrimental to the integrity and standing of the Bar, or to the administration of justice, or subversive to the public interest.'" *Brown*, 310 A.3d at 1050 (quoting *Lattimer*, 223 A.3d at 452-53).

Thus, in *Cater*, the Court held that "to justify requiring a suspended attorney to prove fitness as a condition of reinstatement, the record in the disciplinary proceeding must contain clear and convincing evidence that casts a serious doubt upon the attorney's continuing fitness to practice law." 887 A.2d at 6. Proof of a "serious doubt" involves "more than 'no confidence that a [r]espondent will not engage in similar conduct in the future.'" *In re Guberman*, 978 A.2d 200, 213 (D.C. 2009). It connotes "real skepticism, not just a lack of certainty." *Id.* (quoting *Cater*, 887 A.2d at 24).

As the Court explained:

> The fixed period of suspension is intended to serve as the commensurate response to the attorney's past ethical misconduct. In contrast, the open-ended fitness requirement is intended to be an appropriate response to serious concerns about whether the attorney will act ethically and competently in the future, after the period of suspension has run. . . . [P]roof of a violation of the Rules that merits even a substantial period of suspension is not necessarily sufficient to justify a fitness requirement . . . .

Cater, 887 A.2d at 22.

In addition, the Court found that the five factors for reinstatement set forth in *In re Roundtree*, 503 A.2d 1215, 1217 (D.C. 1985), should be used in applying the *Cater* fitness standard. They include:

> (a) the nature and circumstances of the misconduct for which the attorney was disciplined;

(b) whether the attorney recognizes the seriousness of the misconduct;

(c) the attorney's conduct since discipline was imposed, including the steps taken to remedy past wrongs and prevent future ones;

(d) the attorney's present character; and

(e) the attorney's present qualifications and competence to practice law.

Cater, 887 A.2d at 21, 25.

Where a respondent has not participated in disciplinary proceedings, the Court has identified the following three factors as relevant to determining whether there is a "serious doubt" about a respondent's fitness: "(1) the respondent's level of cooperation in the pending proceeding(s), (2) the repetitive nature of the respondent's lack of cooperation in disciplinary proceedings, and (3) other evidence that may reflect on fitness." *Id.* at 25-26.

Here, Respondent has not cooperated in the disciplinary proceedings since May 2022, when he submitted a partial response to Disciplinary Counsel's inquiries. FF 34-37; DCX 52 at 2-3. Because he failed to provide Disciplinary Counsel with evidence or an explanation about his handling of entrusted funds, Disciplinary Counsel was unable to fully investigate whether he had engaged in misappropriation. The nature and extent of Respondent's lack of responsiveness to disciplinary inquiries justifies a fitness requirement under *Cater*.

If Respondent seeks reinstatement, we recommend that he be required to account for his handling of the $1,760 fee refund, among other factors necessary to demonstrate his fitness to resume the practice of law, so that the Court may appropriately weigh the seriousness of the underlying misconduct when considering whether Respondent should be reinstated.

E. Restitution

"When imposing discipline, the Court . . . may require an attorney to make restitution either to persons financially injured by the attorney's conduct or to the Clients' Security Trust Fund (see Rule XII), or both, as a condition . . . of reinstatement." D.C. Bar R. XI, § 3(b). The Court has explained that "[r]estitution as a condition of reinstatement is consistent with prior disbarment cases involving dishonesty and attorneys taking money to which they are not entitled." *In re Johnson*, 275 A.3d 268, 282 (D.C. 2022) (per curiam) (collecting cases).

Essentially, restitution is designed to restore to the client any unearned benefit that the client has conferred on the attorney. *See In re Robertson*, 612 A.2d 1236, 1240-41 (D.C. 1992) (defining restitution as "a payment by the respondent attorney reimbursing a former client for the money, interest, or thing of value that the client has paid or entrusted to the lawyer in the course of the representation"); *see also In re Hager*, 812 A.2d 904, 923 (D.C. 2002) (stating that restitution prevents unjust enrichment). In addition to the amount being returned to the affected client(s) through restitution, a respondent must pay interest at the legal rate of six percent. *See Edwards*, 990 A.2d at 508. In *Brown*, the Court required restitution because, after collecting a flat fee, the respondent did not complete the agreed-upon work, and the work he did perform conferred no benefit to the client. 310 A.3d at 1047-48, 1050-51.

Here, Respondent did not refund any legal fees, despite failing to complete either representation, and has not provided Ms. Lagana any portion of the $1,760 filing fee refund. FF 19, 30. Accordingly, as a condition of reinstatement, we recommend that Respondent be required to refund the $4,800 legal fee he collected from Ms. De Lira, plus six percent interest calculated from May 5, 2015. *See Brown*, Board Docket No. 19-BD-032, at 2 (HC Rpt. Mar. 30, 2020) (ordering restitution calculated from the date of the client's final payment), *recommendation adopted*, 310 A.3d at 1049-1051 & n.3; *see also* FF 4. We further recommend that Respondent be required to refund the $3,240 legal fee he collected from Ms. Lagana, with interest calculated from January 22, 2019, and $1,760, with interest calculated from the date of the filing fee refund[9], as a condition of reinstatement. *See* FF 23, 25.

V. CONCLUSION

We find that Respondent violated D.C. Rules of Professional Conduct 1.1(a) and (b), 1.3(a), 1.4(a) and (b), 1.5(a), 1.15(a) (record-keeping), 1.16(d), 8.1(b), and 8.4(d), as well as D.C. Bar Rule XI, § 2(b)(3) and recommend that he receive a sanction of a nine-month suspension, with a requirement to prove fitness and pay restitution before reinstatement. We further recommend that Respondent's attention

[9] The Hearing Committee was unable to determine the exact date and format of the refund, FF 30 n.3, but Respondent should have access to that information.

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

BOARD ON PROFESSIONAL RESPONSIBILITY

By: ____________________________________
Robert L. Walker, Chair

All members of the Board concur in this Report and Recommendation except Ms. Cassidy, who is recused.