THIS REPORT IS NOT A FINAL ORDER OF DISCIPLINE*

DISTRICT OF COLUMBIA COURT OF APPEALS
BOARD ON PROFESSIONAL RESPONSIBILITY

Issued
December 20, 2019

In the matter of:	:	
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OLEKANMA A. EKEKWE-KAUFFMAN,	:	Board Docket No. 16-BD-039
	:	Bar Docket Nos. 2013-D393,
	:	2014-D158, 2014-D187, 2014-
Respondent.	:	D190, and 2015-D165
	:	
A Suspended Member of the Bar of the District of Columbia Court of Appeals (Bar Registration No. 479967)	:	

REPORT AND RECOMMENDATION
OF THE BOARD ON PROFESSIONAL RESPONSIBILITY

An Ad Hoc Hearing Committee found that Disciplinary Counsel proved by clear and convincing evidence that Respondent, Olekanma A. Ekekwe-Kauffman, violated D.C. Rules of Professional Conduct 1.4(a), 1.15(a), 1.16(d), 8.1(b), 8.4(c), and 8.4(d), and should be disbarred pursuant to *In re Addams*, 579 A.2d 190 (D.C. 1990) (en banc), because she engaged in reckless misappropriation. Respondent took exception to the Hearing Committee's findings and recommended sanction. Disciplinary Counsel took no exception. The Board heard oral argument on December 5, 2019.

Background

Disciplinary Counsel filed a two-count Specification of Charges against Respondent. The allegations in the first count arise out of her brief representation of

* 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.

a client seeking advice as to whether to file bankruptcy. The second count arises out of Respondent's handling of other clients' funds.

As to Count I, the Hearing Committee found that Respondent had agreed to advise the client as to whether to file bankruptcy, accepted payment from the client, obtained relevant documents from the client, but failed to provide the requested advice or meaningfully communicate with the client. After the client terminated Respondent and requested a refund, she delayed in refunding the unearned fees and returning the client's documents, until after the client complained to Disciplinary Counsel. The Hearing Committee also found that Respondent made recklessly false statements in response to Disciplinary Counsel's investigative inquiries. Before the Board, Respondent argues that the client was only a potential client, and in any event, that Respondent provided all of the services requested by the client. She also argues that she did not make any false statements to Disciplinary Counsel.

As to Count II's allegations of misconduct regarding Respondent's handling of entrusted funds, the Hearing Committee found that Respondent engaged in reckless misappropriation in her handling of the funds she received in settlement of four different cases, that she indiscriminately commingled funds, and that she failed to maintain the required records. Respondent concedes that she failed to maintain a sufficient balance in her bank account, but argues that any overdrafts in the account were due to delays in the bank crediting settlement checks, and other timing errors relating to check deposits. She also argues that all necessary parties were paid and that the overdrafts did not affect any client or third-party payment. Regarding her

record-keeping, Respondent argues that while the "record-keeping for her one-lawyer office may not be state-of-the-art by big-law firm standards, it always complied with the requirements of Rule 1.15(a)." R. Brief at 9.

In addition to her exceptions to specific Hearing Committee findings and conclusions, Respondent argues generally that the Hearing Committee "adopted [D]isciplinary [C]ounsel[']s position with[out] performing critical analysis of the specific situations as it pertains to the daily grind of sole practice." R. Brief at 7. At oral argument, Respondent complained that the Hearing Committee unfairly credited the testimony of the complainant over her testimony.

Discussion

Respondent's exceptions to the Hearing Committee Report are not well-taken. The Hearing Committee Report includes eighty detailed findings of fact, each supported with extensive record citations. With respect to its credibility findings, the Hearing Committee provided detailed explanations for the instances in which it credited the client's testimony (*see* FF 15-16 n.6-7; HC Rpt. at 44-45, 45 n.14), and where it credited Respondent's testimony (*see* FF 7, n.4; FF 10 n.5). The Hearing Committee was aware of Respondent's legal arguments, and briefly summarized each as part of its analysis of the charged Rule violations. *See, e.g.*, H.C. Rpt. at 37 ("Ms. Ekekwe-Kauffman contends that she did not violate Rule 1.4(a) because . . . ."); *see also id.* at 39, 40, 44, 47, 52, 56, and 57. Finally, the Hearing Committee agreed with Respondent that Disciplinary Counsel did not prove that she violated Rule 8.1(a) (knowing false statement to Disciplinary Counsel), thus undermining

Respondent's argument that the Hearing Committee uncritically accepted Disciplinary Counsel's arguments.

Based on our review of the record, including the parties' briefs and oral argument, the Board concurs with the Hearing Committee's factual findings as supported by substantial evidence in the record and with its conclusions of law, including the finding that Respondent's misappropriation was reckless. For the reasons set forth in the Hearing Committee's Report and Recommendation, which is attached hereto and adopted and incorporated by reference, we recommend that Respondent be disbarred, the sanction mandated by *Addams*.

This is the second of two cases involving Respondent that were pending before different Hearing Committees at the same time. The first case (Board Docket No. 15-BD-027) (*Ekekwe-Kauffman I*), was filed on March 4, 2015, and was pending before another Ad Hoc Hearing Committee when the Specification of Charges was filed in this case on June 7, 2016. The Court resolved *Ekekwe-Kauffman I* on June 27, 2019, while this case was still pending before the Hearing Committee. *See In re Ekekwe-Kauffman*, 210 A.3d 775 (D.C. 2019) (per curiam) (suspending Respondent for three years with the requirement to prove fitness prior to reinstatement), *rehearing denied*, Order, November 25, 2019.

Under *In re Thompson*, 492 A.2d 866, 867 (D.C. 1985), where two separately docketed matters involving the same respondent are "at different steps of the disciplinary process," the Board should recommend the sanction that would be the appropriate discipline if both matters were before the Board simultaneously. Here,

because Respondent should be disbarred under *Addams* for the misconduct in this case, the Board would have recommended that Respondent be disbarred had both cases been pending before the Board at the same time. We further recommend that the period of disbarment run for purposes of reinstatement from the filing of the affidavit required by D.C. Bar R. XI, § 14(g). *See In re Slosberg*, 650 A.2d 1329, 1331-33 (D.C. 1994).[1]

BOARD ON PROFESSIONAL RESPONSIBILITY

By: /SH/
Sundeep Hora

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

[1] On consideration of the Board Report in *Ekekwe-Kauffman I*, the Court suspended Respondent on January 3, 2018. The record on this case is silent as to whether Respondent filed the required affidavit following her January 3, 2018 suspension. However, we take judicial notice of the record in *Ekekwe-Kauffman I*, which shows that, on February 16, 2018, Respondent filed an "Affidavit of Compliance with DC Bar Rule XI, §14 ('the Affidavit')" with the Board and Court. But on March 6, 2018, Disciplinary Counsel issued a Notice of Non-Compliance, asserting that the Affidavit that Respondent emailed to Disciplinary Counsel on February 19, 2018 did not comply with D.C. Bar R. XI, § 14. On July 17, 2019, Disciplinary Counsel issued another Notice of Non-Compliance, asserting that Respondent had not filed a compliant affidavit following the Court's June 27, 2019 suspension order. The *Ekekwe-Kauffman I* record does not indicate the Respondent has filed the affidavit required by D.C. Bar R. XI, § 14(g), or has sought review of any of Disciplinary Counsel's Notices of Non-Compliance pursuant to Board Rule 9.9(c), which allows a respondent to seek Board review of Disciplinary Counsel's Notice of Non-Compliance.

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

In the Matter of:	:	
	:	
OLEKANMA A. EKEKWE-KAUFFMAN	:	
	:	
	:	Board Docket No. 16-BD-039
Respondent.	:	Bar Docket Nos. 2013-D393,
	:	2014-D158, 2014-D187, 2014-
A Suspended Member of the Bar of the District of Columbia Court of Appeals (Bar Registration No. 479967)	:	D190, and 2015-D165

REPORT AND RECOMMENDATION OF THE AD HOC HEARING COMMITTEE

Disciplinary Counsel charged Olekanma A. Ekekwe-Kauffman with violations of the D.C. Rules of Professional Conduct arising out of her representation of Florence Myers and her handling of entrusted funds in connection with other client matters. Disciplinary Counsel argues that Ms. Ekekwe-Kauffman committed misappropriation and other Rule violations, and that she should be disbarred. Ms. Ekekwe-Kauffman argues that the charges should be dismissed.

As set forth below, this Ad Hoc Hearing Committee finds that Disciplinary Counsel has proven violations of Rules 1.4(a), 1.15(a), 1.16(d), 8.1(b), 8.4(c), and 8.4(d), but not 8.1(a), by clear and convincing evidence and recommends that Ms. Ekekwe-Kauffman be disbarred.

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

I. PROCEDURAL HISTORY

The Specification of Charges alleges that Ms. Ekekwe-Kauffman violated the following Rules:

- Rule 1.4(a), in that Ms. Ekekwe-Kauffman failed to keep her client reasonably informed about the status of her matter and promptly comply with reasonable requests for information;

- Rule 1.15(a), in that Ms. Ekekwe-Kauffman failed to keep and preserve complete records of entrusted funds;

- Rule 1.15(a), in that Ms. Ekekwe-Kauffman failed to keep safe and hold property of clients or third parties that was in her possession in connection with a representation separate from her own funds and recklessly or intentionally misappropriated the funds of clients or third parties;

- Rule 1.16(d), in that, in connection with the termination of representation, Ms. Ekekwe-Kauffman failed to take timely steps to the extent reasonably practicable to protect her client's interests, including surrendering paper and property to which the client was entitled;

- Rule 8.1(a), in that, in connection with a disciplinary matter, Ms. Ekekwe-Kauffman knowingly made false statements of fact;

- Rule 8.1(b), in that, in connection with a disciplinary matter, Ms. Ekekwe-Kauffman knowingly failed to respond reasonably to a lawful demand for information;

- Rule 8.4(c), in that Ms. Ekekwe-Kauffman engaged in conduct involving dishonesty or misrepresentation; and

- Rule 8.4(d), in that Ms. Ekekwe-Kauffman engaged in conduct that seriously interfered with the administration of justice.

(Spec. ¶¶ 13(a)–(d), 25(a)–(d).)

At a telephonic prehearing conference held on August 4, 2016, Ms. Ekekwe-Kauffman requested additional time to file her answer, and the Chair gave her until August 31, 2016, to do so. On August 30, 2016, Ms. Ekekwe-Kauffman emailed her answer to the Board, together with other documents.

A hearing was held on November 16, 2016, before this Ad Hoc Hearing Committee (the "Committee") comprised of Joshua D. Rogaczewski, Esquire (Chair), Kaprice Gettemy-Chambers (public member), and Rebecca C. Smith, Esquire (attorney member).[1] Disciplinary Counsel was represented at the hearing by Julia Porter, Esquire, assisted by Caroll Donayre, Esquire. Ms. Ekekwe-Kauffman represented herself.

Disciplinary Counsel submitted DX 1 through 42, all of which were received into evidence without objection. (Tr. 30, 117–20.)[2] During the cross-examination of Ms. Ekekwe-Kauffman, Disciplinary Counsel used two additional documents to impeach her. (Tr. 210, 236; *see* DX 43–44.) The Committee stated it would consider these documents for credibility purposes only and did not admit them. (Tr. 285.) During the hearing, Disciplinary Counsel called as witnesses Florence Myers (Ms.

[1] Due to unforeseen circumstances, Ms. Gettemy-Chambers was unable to participate in the Hearing Committee's decision. The Hearing Committee proceeded with a quorum of two pursuant to Board Rule 7.12.

[2] "DX" refers to Disciplinary Counsel's exhibits. "RX" refers to Respondent's (i.e., Ms. Ekekwe-Kauffman's) exhibits. "Tr." refers to the transcript of the hearing held on November 16, 2016. "FF" refers to the Findings of Fact herein. "R. Br." refers to Respondent's Findings of Fact, Conclusions of Law, and Recommendation. "ODC Br." refers to Disciplinary Counsel's Proposed Findings of Fact, Conclusions of Law, and Sanction Recommendation. "ODC Reply Br." refers to Disciplinary Counsel's Reply Brief.

Ekekwe-Kauffman's former client) and Kevin O'Connell (its senior forensic investigator). (Tr. 9, 50.) Ms. Ekekwe-Kauffman did not call any witnesses.

Upon conclusion of the violations portion of the hearing, the Committee made a preliminary, nonbinding determination that Disciplinary Counsel had proven at least one of the Rule violations set forth in the Specification of Charges. (Tr. 307); *see* Bd. R. 11.11.

Ms. Ekekwe-Kauffman submitted supplemental exhibits RX 5 (CLE Certificates) and RX 6 (Award), which were admitted into evidence in mitigation of sanction without objection. (Tr. 307.) At the very end of the hearing, Ms. Ekekwe-Kauffman offered into evidence RX 7 (printout from the bankruptcy proceedings she filed) and RX 8 (her motion to withdraw from those proceedings), but the Committee decided that admitting these exhibits into evidence was unnecessary. Instead, the Committee took notice of the bankruptcy proceeding and all related filings and stated, "Make no mistake, we will look at those bankruptcy filings, especially how they go to the issue you were being examined about in cross-examination." (Tr. 308.)

Disciplinary Counsel submitted its Proposed Findings of Fact, Conclusions of Law, and Sanction Recommendation on December 22, 2016, and Ms. Ekekwe-Kauffman submitted her Proposed Findings of Fact, Conclusions of Law, and Recommendation on January 18, 2017. Disciplinary Counsel filed its Reply on January 23, 2017. Ms. Ekekwe-Kauffman filed a Sur-Reply on February 23, 2017,

as well as a Motion for Leave to File a Sur-Reply or Supplemental Argument, along with a proposed Sur-Reply, on March 2, 2017.[3]

II. FINDINGS OF FACT

The following findings of fact are based on the testimony and documentary evidence admitted at the hearing on November 16, 2016, and these findings of fact are established by clear and convincing evidence. *See* Bd. R. 11.6.

1. Ms. Ekekwe-Kauffman graduated from law school in 1998 but did not become a member of the District of Columbia Bar until December 2, 2002, when she was assigned Bar number 479967. (DX 1; Tr. 208 (Ekekwe-Kauffman).) Ms. Ekekwe-Kauffman became a member of the Maryland Bar in December 2010. (Tr. 208 (Ekekwe-Kauffman).)

2. Since 2009, Ms. Ekekwe-Kauffman has maintained her law office at 2426 L'Enfant Square, Southeast, Washington, D.C. (Tr. 208–09 (Ekekwe-Kauffman).) She purchased the property at L'Enfant Square—a row house—in 2006. (Tr. 66–67, 152 (O'Connell); Tr. 209 (Ekekwe-Kauffman).) Ms. Ekekwe-Kauffman used the lower level of the row house as her law office. (Tr. 66 (O'Connell).)

3. In March 2012, Ms. Ekekwe-Kauffman formed a company, Serah's Outdoor Adventures & Recreation (SOAR), LLC. (Tr. 66 (O'Connell).) She was the president and only officer of SOAR and the sole signatory on its bank account until early December 2014. (Tr. 66 (O'Connell); Tr. 211 (Ekekwe-Kauffman).) In

[3] The Committee grants Ms. Ekekwe-Kauffman's motion for leave to file her additional Sur-Reply.

December 2014, an additional signatory was added to SOAR's bank account. (Tr. 66 (O'Connell); Tr. 211 (Ekekwe-Kauffman).)

4. SOAR was located at Ms. Ekekwe-Kauffman's property at 2426 L'Enfant Square, although she used a different suite number for its address at her row house. (DX 35 at 33 (SOAR check); Tr. 66 (O'Connell).)

A. Count One: BDN 2013-D393 (Myers Matter)

5. In 1988, Florence Myers retired from her position as an administrative assistant to D.C. Superior Court Judge Nan Shuker. (Tr. 10 (Myers).) Following her retirement, Ms. Myers received monthly annuity payments from the government. (*See* DX 10 at 41–42.)

6. By July 2013, Ms. Myers had substantial debts and sought legal advice on and representation in filing for bankruptcy. Ms. Myers went to AARP, which referred her to three lawyers, including Ms. Ekekwe-Kauffman, with self-indicated bankruptcy experience. (DX 5 at 1; DX 10 at 19; Tr. 11–12, 34 (Myers).)

7. Ms. Myers selected Ms. Ekekwe-Kauffman, because of the proximity of her office to Ms. Myers's home in Southeast Washington, D.C. (Tr. 11 (Myers).) Ms. Myers called Ms. Ekekwe-Kauffman in mid-July 2013 and had a brief conversation with her. (Tr. 12–13, 41 (Myers) (fifteen-minute conversation); Tr. 202 (Ekekwe-Kauffman) (one-hour conversation); DX 10 at 20 (Ms. Ekekwe-

Kauffman's half-page of handwritten notes from conversation); Tr. 215–16 (Ms. Ekekwe-Kauffman identifying notes from call).[4]

8. During the July 2013 call, Ms. Myers told Ms. Ekekwe-Kauffman about her financial situation and her desire to file for bankruptcy. Ms. Ekekwe-Kauffman agreed to meet with Ms. Myers on August 1, 2013, for a $200 fee, and she told Ms. Myers to bring her bills and other financial records to the meeting. The meeting was scheduled to coincide with Ms. Myers's receipt of her next annuity checks, which would fund her payment of Ms. Ekekwe-Kauffman's fee. (DX 5 at 2; DX 7 at 3; Tr. 12–13, 34–35, 39–41 (Myers); *see also* DX 10 at 20 (Ms. Ekekwe-Kauffman's notes); Tr. 198, 203, 216 (Ekekwe-Kauffman).) Ms. Myers was Ms. Ekekwe-Kauffman's client, at least for the limited purpose of the initial consultation. (*See* Tr. 33 (Myers).)

9. Ms. Ekekwe-Kauffman charged Ms. Myers the $200 fee for the consultation and advice she would provide after reviewing the documentation she asked Ms. Myers to bring to their meeting; none of the $200 fee was for their telephone call in July 2013. (Tr. 38, 46 (Myers); Tr. 175, 203, 230 (Ekekwe-Kauffman).)

10. On the morning of August 1, 2013, Ms. Ekekwe-Kauffman's staff tried to inform Ms. Myers that the meeting would need to be postponed because Ms.

[4] Both Ms. Myers and Ms. Ekekwe-Kauffman testified credibly as to their recollections of the length of their initial conversation. In the end, the difference between those recollections—forty-five minutes—is not material.

Ekekwe-Kauffman had to attend an emergency hearing. Ms. Myers agreed to bring the requested papers and drop them off for Ms. Ekekwe-Kauffman. (Tr. 198–200 (Ekekwe-Kauffman).)[5]

11. On August 1, 2013, Ms. Myers went to Ms. Ekekwe-Kauffman's office. (Tr. 13–14 (Myers); DX 5 at 2.) Ms. Myers brought with her information and supporting documents about her income and outstanding bills. (Tr. 13, 26–28, 42 (Myers); *see also* DX 10 at 23–38, 43, 48–62.)

12. Ms. Ekekwe-Kauffman's assistant, Virginia Bowman, received Ms. Myers's documents, made copies of them, and returned them to Ms. Myers. (DX 5 at 2; Tr. 13, 42–43 (Myers).) Ms. Bowman also completed some intake forms based on the information Ms. Myers provided (DX 10 at 19, 21), and provided Ms. Myers two additional forms (DX 10 at 44–45) that Ms. Myers partially completed. (Tr. 24, 28–30 (Myers).)

13. Ms. Myers gave Ms. Bowman a check for $200 payable to Ms. Ekekwe-Kauffman for the consultation. (DX 5 at 2; Tr. 13 (Myers).) Ms. Bowman gave Ms. Myers a receipt for the $200 fee and told her that Ms. Ekekwe-Kauffman would contact her. (DX 5 at 2, 4; Tr. 13, 31, 43–44 (Myers).)

14. A day or two after August 1, 2013, Ms. Bowman called Ms. Myers and asked for proof of her income. (DX 5 at 2; DX 8 at 1; Tr. 14–15, 44, 49 (Myers).)

[5] Ms. Myers testified that no such communication occurred. (Tr. 14 (Myers).) She did testify that Ms. Ekekwe-Kauffman's staff told her that Ms. Ekekwe-Kauffman was in court when she arrived on August 1, 2013. (Tr. 13 (Myers).) Both witnesses testified credibly, and the difference in testimony is not of significance, but the Committee credits Ms. Ekekwe-Kauffman's version of events.

Ms. Myers delivered the requested documents (including DX 10 at 41–42) to Ms. Ekekwe-Kauffman's office a day or two after Ms. Bowman's call. (Tr. 14, 49 (Myers); DX 5 at 2.)

15. Ms. Ekekwe-Kauffman was not at her office when Ms. Myers delivered the additional documents to Ms. Ekekwe-Kauffman's assistant. (DX 5 at 2–3; Tr. 19–20 (Myers).) In fact, Ms. Myers never met in person with Ms. Ekekwe-Kauffman. (Tr. 14–15 (Myers).)[6]

16. After the second visit to Ms. Ekekwe-Kauffman's office, Ms. Myers called Ms. Ekekwe-Kauffman several times, leaving messages with Ms. Ekekwe-Kauffman's assistant for Ms. Ekekwe-Kauffman to contact her. (DX 5 at 3; Tr. 16, 18 (Myers).) Neither Ms. Ekekwe-Kauffman nor her assistant responded to Ms. Myers's calls. (DX 5 at 3; Tr. 16–17 (Myers).)[7]

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[6] Ms. Ekekwe-Kauffman's testimony on this point is confusing at best. When directly asked if she ever had an in-person consultation with Ms. Myers, she answered, "No." (Tr. 302 (Ekekwe-Kauffman).) Pressed further, however, she asserted that she saw Ms. Myers when she dropped off the second set of documents and told Ms. Myers that she would review the documents and get back to her. (Tr. 303 (Ekekwe-Kauffman).) The Committee credits Ms. Myers's recollection: both witnesses agree Ms. Ekekwe-Kauffman was not present on August 1, 2013; and Ms. Myers did not actually make it to Ms. Ekekwe-Kauffman's office the second time (she waited in the car while her niece delivered the materials. (Tr. 15–16 (Myers).) While the Committee does not credit Ms. Ekekwe-Kauffman's testimony, it does not find that her testimony was intentionally false, only that her recollection is not accurate.

[7] Ms. Ekekwe-Kauffman recalled leaving a telephone message for Ms. Myers with some thoughts on her eligibility for bankruptcy. (Tr. 204–05, 303–06 (Ekekwe-Kauffman).) Her testimony was vague as to details of that call. In the absence of documentary evidence supporting this testimony, the Committee concludes that Ms. Ekekwe-Kauffman did not leave a substantive message for Ms. Myers. Without corroborating evidence, the Committee credits Ms. Myers's version over Ms. Ekekwe-Kauffman's version. The Committee does not find that Ms. Ekekwe-Kauffman gave intentionally false testimony.

17. On August 21, 2013, Ms. Myers discharged Ms. Ekekwe-Kauffman by letter and asked for a refund. (DX 5 at 3, 5; Tr. 17–18 (Myers).) Ms. Ekekwe-Kauffman received the letter and filed it. (*See* DX 10 at 17.)[8]

18. When she did not receive a response or refund, Ms. Myers prepared a complaint against Ms. Ekekwe-Kauffman and sent it to Disciplinary Counsel in the first half of October. (Tr. 18–19 (Myers); DX 5 at 3, 6 (envelope including complaint and enclosures post-marked Oct. 10, 2013).)

19. On October 28, 2013, Disciplinary Counsel hand-delivered to Ms. Ekekwe-Kauffman a letter of inquiry together with a copy of Ms. Myers's complaint. (DX 6.)

20. Three days later, Ms. Ekekwe-Kauffman sent Ms. Myers a letter and a refund check for $200. (DX 8 at 2–3.)

21. On November 20, 2013, Ms. Ekekwe-Kauffman submitted a response to Ms. Myers's complaint to Disciplinary Counsel. (DX 7.) She claimed that she had consulted with Ms. Myers on July 17, 2013, and August 2, 2013. (DX 7 at 2.)

22. In her response to Disciplinary Counsel, Ms. Ekekwe-Kauffman outlined the advice she claimed to have provided to Ms. Myers. (DX 7 at 2–3.)

23. When answering the complaint in this matter, Ms. Ekekwe-Kauffman provided an affidavit of an employee testifying that Ms. Myers met with Ms.

[8] Ms. Ekekwe-Kauffman testified that she did not receive Ms. Myers's letter until she received it from Disciplinary Counsel. The evidence is to the contrary. (*See* Tr. 225–28 (Ekekwe-Kauffman). *Compare* DX 6 at 7, *and* DX 10 at 11 (copies of the letter provided by Ms. Myers), *with* DX 10 at 17 (copy of the letter in Ms. Ekekwe-Kauffman's files).)

Ekekwe-Kauffman on August 1, 2013. (Answer Ex. A (Obey Aff.).) Ms. Ekekwe-Kauffman was not in the office when Ms. Myers was there. (Tr. 198–200 (Ekekwe-Kauffman).)

B. Count Two: BDN 2014-D158 et al. (Entrusted Fund Violations)

24. In 2014, Ms. Ekekwe-Kauffman maintained trust accounts at SunTrust (account no. ending in 8414) and Bank of America (account no. ending in 4691). (DX 35–36.) Ms. Ekekwe-Kauffman was the sole signatory on the SunTrust and Bank of America trust accounts. (DX 35 at 1–2; DX 36 at 1–2; Tr. 60, 70 (O'Connell).) She was responsible for all the funds that were deposited into and withdrawn from the trust accounts. (Tr. 212–14 (Ekekwe-Kauffman).)

25. Ms. Ekekwe-Kauffman also maintained an operating account (account no. ending in 2886) at Bank of America. (DX 37.) Ms. Ekekwe-Kauffman was the sole signatory on the operating account. (DX 37 at 1; Tr. 70–71 (O'Connell).)

26. Ms. Ekekwe-Kauffman also maintained an account at Signal Financial Federal Credit Union on behalf of her company SOAR. Ms. Ekekwe-Kauffman was the sole signatory on the SOAR account until December 2014, and one of two signatories thereafter. (Tr. 211 (Ekekwe-Kauffman); *see* DX 43.)

27. Ms. Ekekwe-Kauffman overdrew her trust accounts on a number of occasions. (DX 15 at 2–3; Tr. 53, 57, 71, 73 (O'Connell).) On July 18, 2014, SunTrust closed Ms. Ekekwe-Kauffman's trust account after it had been overdrawn for two consecutive months; the account was overdrawn by $1,790.11 at closure. (DX 35 at 45; Tr. 69–70, 155 (O'Connell).) Ms. Ekekwe-Kauffman also overdrew

her Bank of America trust account, but that account remained active and became her only trust account after July 2014. (DX 36 at 23–179.)

1. Disciplinary Counsel's Request for Information and Documents from Ms. Ekekwe-Kauffman Regarding Overdrafts

28. In May and June 2014, SunTrust sent Disciplinary Counsel notices that Ms. Ekekwe-Kauffman's SunTrust trust account was overdrawn. (DX 12; DX 13; DX 15 at 1, 3; DX 29.) In June 2014 and May 2015, Bank of America sent Disciplinary Counsel similar notices regarding Ms. Ekekwe-Kauffman's trust account there. (DX 15 at 1–2; DX 32 at 4.) Disciplinary Counsel opened investigations based on these and subsequent overdraft notices from the banks. (Tr. 53, 57, 71–72 (O'Connell).)

29. On June 9, 2014, Disciplinary Counsel sent Ms. Ekekwe-Kauffman the first of many inquiry letters about the trust-account overdrafts. (DX 13.) Disciplinary Counsel attached to its June 9, 2014 letter the May 2014 SunTrust overdraft notice, reflecting that the payment of a $4,000 check when the trust account had a balance of only $709.89 caused an overdraft of $3,290.11. (DX 13 at 3; *see also* Tr. 53 (O'Connell).) Disciplinary Counsel also enclosed a subpoena for Ms. Ekekwe-Kauffman's complete financial records for the SunTrust trust account for the period March 1, 2014, through June 9, 2014, and attached a copy of then-D.C. Bar Rule XI, § 19(f), which obligated lawyers to maintain complete records of entrusted funds and preserve those records for a period of five years after their final distribution, as current D.C. Rule of Professional Conduct 1.15(a) requires. (DX 13 at 4–5, 8.)

30. Ms. Ekekwe-Kauffman took more than a month to respond to Disciplinary Counsel's inquiry and provided no satisfactory explanation for the overdraft caused by the payment of the $4,000 check. (Tr. 54–56 (O'Connell).)

31. Despite subsequent requests for information about the SunTrust overdraft resulting from the $4,000 check, Ms. Ekekwe-Kauffman failed to provide any additional information. (*See* DX 15 at 3; DX 17; DX 22; Tr. 54–56, 59, 69 (O'Connell).) She also provided no financial records relating to the overdraft, other than the monthly bank statements, which were the bank's records and not Ms. Ekekwe-Kauffman's internal records. (DX 16; Tr. 54–56 (O'Connell).)

32. The bank records revealed that Ms. Ekekwe-Kauffman wrote the $4,000 check to herself; the check contained no notation indicating a client matter. (DX 35 at 42; Tr. 55–56 (O'Connell).) She deposited the $4,000 trust-account check along with another $500 trust-account check and a $1,000 SOAR check in her operating account, which had been overdrawn by more than $1,000. (DX 37 at 9, 12, 18–20.) After the deposits, the balance in the operating account increased to $2,325.93 (DX 37 at 12), and the trust-account balance fell to -$3,290.11 (DX 35 at 31).

33. On July 1, 2014, Disciplinary Counsel sent Ms. Ekekwe-Kauffman an inquiry letter based on the two overdraft notices from Bank of America: one reflecting a balance of -$97.67 on June 9, 2014, when a check for $135.32 was paid with insufficient funds in the account, and one reflecting a balance of -$714.88, on June 18, 2014, when a check for $917.21 was paid with insufficient funds in the

account. (DX 27 at 1–4; Tr. 71 (O'Connell).) Disciplinary Counsel also sent Ms. Ekekwe-Kauffman a subpoena for her complete financial records for a four-month period, referring her again to the complete records requirements of D.C. Bar Rule XI, § 19(f). (DX 27 at 5–6; Tr. 71 (O'Connell).)

34. Except for the assertion that two unspecified checks were deposited to remedy the matter (DX 28 at 1), Ms. Ekekwe-Kauffman provided no information about the overdrafts. (Tr. 72 (O'Connell).) And she attached four monthly bank statements, in random order. (DX 28 at 2–9.) These were the only records that Ms. Ekekwe-Kauffman produced in response to Disciplinary Counsel's subpoena for her complete records relating to the June 2014 Bank of America trust account overdrafts. (Tr. 72 (O'Connell).)

35. On July 1, 2014, Disciplinary Counsel sent Ms. Ekekwe-Kauffman a third inquiry letter based on another overdraft notice from SunTrust. (DX 29; Tr. 57 (O'Connell).) This notice reflected a balance of -$2,190.11, when a check for $400 was presented for payment but later returned. (DX 29 at 1–3.) Disciplinary Counsel sent Ms. Ekekwe-Kauffman another subpoena for her complete financial records for another four-month period, again referring her to the complete-records requirements set forth in D.C. Bar Rule XI, § 19(f). (DX 29 at 4–5; Tr. 57 (O'Connell).)

36. Disciplinary Counsel's inquiry letter concerning the additional SunTrust overdraft directed Ms. Ekekwe-Kauffman to submit her response and documents responsive to the subpoena by July 21, 2014. (DX 29 at 1–2, 4.) Ms.

Ekekwe-Kauffman did not respond to the letter of inquiry or the subpoena, and she did not seek additional time to do so. (Tr. 57–58 (O'Connell).)

37. On December 9, 2015, more than a year after her response was due, Disciplinary Counsel sent Ms. Ekekwe-Kauffman another letter concerning the June 2014 SunTrust overdraft, enclosing its earlier correspondence and subpoena and reminding Ms. Ekekwe-Kauffman of her obligation to respond to the disciplinary inquiry by providing a response and documents. (DX 30; Tr. 57–58 (O'Connell).)

38. Ms. Ekekwe-Kauffman finally responded on December 31, 2015, stating she "believe[d] this request was previously addressed in July, 2014" and attaching a copy of the letter she wrote in response to the May 2014 SunTrust overdraft notice, with the same bank statements attached, not appreciating the fact that she had received two distinct overdraft notices. (DX 31.) Despite additional requests for information and documents from Disciplinary Counsel, Ms. Ekekwe-Kauffman provided no satisfactory explanation for the June 2014 overdraft or documents in response to the subpoena. (DX 15 at 3, 24–25; DX 16; DX 22; Tr. 58–59 (O'Connell).)

39. The bank records revealed that Ms. Ekekwe-Kauffman wrote the $400 check to herself and attempted to deposit it in her operating account on June 12 or 13, 2014, but SunTrust did not pay it. (DX 35 at 43–45; *see* DX 29 at 3.) The check dated May 2, 2014, included the notation "Battle case." (DX 35 at 44.)[9] When she

[9] Ms. Ekekwe-Kauffman deposited a $10,000 settlement check payable to Tina Battle and herself in the SunTrust trust account on April 7, 2014. (DX 35 at 23.) On April 14, 2014, Ms. Ekekwe-

attempted to negotiate the check, the SunTrust trust account was already overdrawn by $1,790. (DX 35 at 43–44.)

40. In June 2015, a year after Disciplinary Counsel had opened its first three investigations of her overdrafts of her trust accounts, Bank of America sent Disciplinary Counsel notices of additional overdrafts of Ms. Ekekwe-Kauffman's trust account in May 2015 and June 2015. (DX 32 at 4–5, 13; Tr. 72–73 (O'Connell).)

41. Based on the Bank of America overdraft notice for May 2015 and the first overdraft notice for June 2015, Disciplinary Counsel opened another investigation of Ms. Ekekwe-Kauffman. On July 2, 2015, Disciplinary Counsel sent Ms. Ekekwe-Kauffman an inquiry letter enclosing the overdraft notice reflecting a balance of -$750.95 on May 27, 2015, when a check for $2,500 was paid with insufficient funds, and a second overdraft notice reflecting a balance of -$950.95 on June 8, 2015, when a check for $1,100 was presented and paid with insufficient funds. (DX 32 at 1–5.) Disciplinary Counsel also sent Ms. Ekekwe-Kauffman a subpoena for her complete financial records for her SunTrust account for 2014, with a list of the documents she should produce. (DX 32 at 6–7.)[10]

Kauffman cashed a $3,300 check she wrote to herself for "Tina Battle," presumably as her fee. (DX 35 at 29.)

[10] Disciplinary Counsel subsequently sent Ms. Ekekwe-Kauffman another subpoena for her complete records for her Bank of America trust account, as well as her SunTrust account, for the one-year period covering the overdraft notices, i.e., May 2014 through June 2015. (DX 15 at 24–25.)

42. Disciplinary Counsel's inquiry letter concerning the additional Bank of America overdraft notices of May and June 2015 directed Ms. Ekekwe-Kauffman to submit her response and produce documents responsive to the subpoena by August 4, 2015. (DX 32 at 1–2, 6.) Ms. Ekekwe-Kauffman did not respond to the letter or the subpoena, and she did not seek additional time to do so. (Tr. 73–74 (O'Connell).)

43. On December 9, 2015, Disciplinary Counsel sent Ms. Ekekwe-Kauffman another letter concerning the Bank of America overdrafts, enclosing its earlier correspondence, and reminding Ms. Ekekwe-Kauffman of her obligation to cooperate with the investigation by providing a response and documents. (DX 33; Tr. 73–74 (O'Connell).)

44. Ms. Ekekwe-Kauffman delivered a letter to Disciplinary Counsel on December 31, 2015, but the only information she provided in response to the inquiries about the May and June 2015 overdrafts was as follows: "The account was overdrawn because, I paid out funds before checking to make sure that all funds were properly and timely deposited." (DX 34.) Ms. Ekekwe-Kauffman did not provide any further information and did not provide any documents in response to the subpoena for her financial records. (Tr. 74–75 (O'Connell).)

45. By the end of January 2016, Ms. Ekekwe-Kauffman still had not provided any substantive information about the numerous overdrafts on her SunTrust and Bank of America accounts, and she had provided only a small number

of monthly bank statements in response to the subpoenas for her complete financial records. (Tr. 54–56, 59, 72, 74 (O'Connell).)

46. On January 29, 2016, Disciplinary Counsel sent Ms. Ekekwe-Kauffman a letter listing eight overdrafts reflected in the statements and records that Disciplinary Counsel subpoenaed from the banks. For each of the eight overdrafts listed, Disciplinary Counsel asked Ms. Ekekwe-Kauffman to state the purpose of the check causing the overdraft, the payee, and the source of the funds that were supposed to fund the check. (DX 15 at 1–4.) Disciplinary Counsel provided copies of the relevant bank records reflecting the overdrafts. (DX 15 at 13–23.) Disciplinary Counsel also requested Ms. Ekekwe-Kauffman's complete financial records for May 1, 2014, through June 30, 2015, and sent her a subpoena for them. (DX 15 at 24–25.) The January 29, 2016 subpoena directed production of some of the same records that Disciplinary Counsel had been requesting since June 2014. (*See* DX 13 at 4–5; DX 27 at 5–6; DX 29 at 4–5; DX 32 at 6–7 (earlier subpoenas); *see also* DX 22.)

47. On February 16, 2016, in response to Disciplinary Counsel's letter and latest subpoena, Ms. Ekekwe-Kauffman provided no information about the overdrafts but repeated her earlier statement: "My IO[L]TA accounts were overdrawn because I wrote checks without checking to make sure all funds were properly and timely deposited." (DX 16 at 1.) Ms. Ekekwe-Kauffman attached to her letter 234 pages of documents, more than half of which (pages 2–134) were copies of her previous responses, which she reproduced three times each. (DX 17;

Tr. 59, 77–78 (O'Connell).) The remaining hundred pages (pages 135–235) were additional bank records and some of Ms. Ekekwe-Kauffman's internal records produced in random order. (Tr. 78 (O'Connell).) Her production consisted of incomplete monthly statements for her Bank of America and SunTrust trust accounts, checks drawn on the Bank of America trust account for some client matters, checks drawn on the SunTrust account and presented for payment during a four-month period, copies of settlement checks in only six client matters, settlement or closing statements for thirteen client matters, incomplete documents relating to a few credit-card payments deposited into the Bank of America trust account, correspondence with medical providers in three client matters, and a few miscellaneous documents. (DX 16.)

48. On March 31, 2016, Disciplinary Counsel sent Ms. Ekekwe-Kauffman the Specification of Charges it submitted to the Board. (DX 25.) In May 2016, almost two months later, Ms. Ekekwe-Kauffman sent Disciplinary Counsel the first 134 pages of her February 2016 production and thirty-eight pages of other documents, some of which were the same documents she had produced in February 2016. (*See, e.g.*, DX 26 at 22 (same as DX 16 at 188); Tr. 92–93 (O'Connell).) The documents Ms. Ekekwe-Kauffman produced on May 23, 2016, included only one additional closing statement (for a settlement that occurred in or around February 2005). (DX 26 at 16.) The other documents that she produced provided no additional information about the deposits in and withdrawals from her trust accounts, including for the 2014–2015 period. (*See* DX 26.)

49. Ms. Ekekwe-Kauffman produced no documents reflecting that she kept a running balance of her trust accounts. She produced no receipt or disbursement records for her trust accounts or client-specific ledgers for the settlement checks or entrusted funds that she deposited in the trust accounts. (Tr. 81 (O'Connell); *see* DX 16; DX 26.) She also failed to produce fee agreements for the clients whose funds she deposited in her trust accounts, invoices to the clients whose funds she deposited in her account, bills from third parties she paid with entrusted funds, or correspondence and documents reflecting that the third parties had agreed to accept a reduced amount from the client. (Tr. 82–83 (O'Connell); *see* DX 16: DX 26.)

2. Forensic Analysis of Financial Records

50. Ms. Ekekwe-Kauffman produced closing statements for some of the settlement checks that she deposited in her trust accounts. (*See* DX 18; Tr. 79 (O'Connell).) The amounts represented in her closing statements did not always coincide with the amounts that Ms. Ekekwe-Kauffman actually paid, as reflected in the bank records that SunTrust and Bank of America produced to Disciplinary Counsel. For example, in the closing statement for Cindy Mitchell dated October 15, 2014, Ms. Ekekwe-Kauffman listed her fee as $3,795. (DX 16 at 182; Tr. 80 (O'Connell).) The bank records reflected that Ms. Ekekwe-Kauffman actually paid herself $4,000 in fees for the Mitchell case: one check (no. 1049) for $3,000 with the notation "attorney fee Cindy Mitchell" that she cashed on October 28, 2014 (DX 36 at 55), and

another check (no. 1050) for $1,000 with the notation "Cindy Mitchell" that she cashed on November 25, 2014. (DX 36 at 64; Tr. 80–81 (O'Connell).)

51. In her closing statement for James Calvin Short dated March 17, 2015, Ms. Ekekwe-Kauffman listed her fee as $2,250. (DX 16 at 188; Tr. 100 (O'Connell).)[11] The bank records, however, reflected that Ms. Ekekwe-Kauffman paid herself $3,000 in fees: one check (no. 1084) for $2,000 and another (no. 1090) for $1,000 with notations "James Short" and "Short's case" that were cashed on March 30, 2015, and April 30, 2015, respectively. (DX 36 at 128, 134.) Ms. Ekekwe-Kauffman's fees totaling $3,000 were in addition to a $500 payment (no. 1083) she made to herself on March 16, 2015, from Mr. Short's settlement funds, presumably for "expenses" for which Ms. Ekekwe-Kauffman produced no bills or records. (DX 36 at 127; Tr. 82, 100–02 (O'Connell); *see* DX 16; DX 26.)

52. Ms. Ekekwe-Kauffman deposited a number of other settlement checks in her trust accounts for which she did not produce any closing statements or other records reflecting her handling of the settlement funds. (DX 18; Tr. 79 (O'Connell).) Disciplinary Counsel identified six settlement checks that were included in the bank records by amount, client name, and date of deposit; asked Ms. Ekekwe-Kauffman to provide her disbursement or closing statement for each of them; and sent her a

[11] The closing statement noted a "one-quarter" fee, which would have been $2,125, $125 less than the listed $2,250. Ms. Ekekwe-Kauffman testified that the percentage fee was not controlling: "We would not charge 25 percent for cases that go to Court. . . . But in light of . . . the client's need, because the clients say, 'I have to this that I have to take—pay, I have to get a certain amount of money.' So we discuss with the client we can't go below a certain amount, and that's the amount we put down upon talking with the client." (Tr. 289 (Ekekwe-Kauffman).) This does not explain why she chose to include the percentage amount in the closing statement.

subpoena for her records. (DX 18.) Ms. Ekekwe-Kauffman did not respond to the letter or the subpoena. (Tr. 79, 88–89 (O'Connell).) At the hearing, Ms. Ekekwe-Kauffman testified that she had created closing statements for all the settlements she received (Tr. 245 (Ekekwe-Kauffman)) but contended she no longer had many of them because she had given the originals and all copies to the clients (Tr. 252–55, 259–60 (Ekekwe-Kauffman)). Whether she created the closing statements or not, Ms. Ekekwe-Kauffman's failure to produce them in this matter prejudices her defense. Given the importance of the statements to addressing Disciplinary Counsel's allegations in this matter, a reasonable attorney would have produced the statements if she had them or attempted to procure them from her clients if she provided them with her only copies. (*See* DX 22; DX 24; FF 30, 34, 36.)

53. One of the settlement checks for which Ms. Ekekwe-Kauffman did not have or produce a closing statement was a check for $16,023.25 payable to Ms. Ekekwe-Kauffman and Lorraine Scott that was deposited in her SunTrust trust account on February 4, 2014. (DX 35 at 5–7; *see* DX 18 at 1 (number 2).) The bank records reflected that Ms. Ekekwe-Kauffman paid herself and another lawyer more than 58% of the settlement: Ms. Ekekwe-Kauffman wrote herself two checks, no. 1119 for $4,043.88 and no. 1120 for $1,250, and wrote a check (no. 1116) to another lawyer, Carl Snead, for $4,043 for attorney's fees. (DX 35 at 10, 12–13.) Ms. Ekekwe-Kauffman then paid herself an additional $450 (check no. 1121), allegedly for expenses. (DX 35 at 14.) She wrote another check to a third party for $2,750, noting on the check it was on behalf of Lorraine Scott. (DX 35 at 11.) Then,

on May 6, SunTrust paid a check Ms. Ekekwe-Kauffman had written to Lorraine Scott for $10,079.88 (check no. 1117), which was dated February 11, 2014. (DX 35 at 31, 39.) The amount of the trust account checks Ms. Ekekwe-Kauffman wrote relating to the Lorraine Scott settlement far exceeded the amount of the settlement check she deposited in her trust account.

54. The bank records reflected that Ms. Ekekwe-Kauffman used funds in her trust account to make payments on behalf of SOAR. (DX 35 at 33, 40–41; Tr. 64–69 (O'Connell).) She also deposited SOAR checks in her trust and operating accounts when they were overdrawn. (*See, e.g.*, DX 36 at 136, 141, 161–63 (deposits in trust account); DX 37 at 17, 20 (deposits in operating account).)

55. Ms. Ekekwe-Kauffman wrote a SOAR check dated May 4, 2014, made payable to Law Office of Olekanma Ekekwe PC in the amount of $1,415, with a notation, "For David Winston & Kevin Robertson." She deposited this check in her SunTrust trust account on May 5, 2014, and on the same day wrote two checks totaling $1,515 (not $1,415) to Messrs. Winston and Robertson, presumably on behalf of SOAR. (DX 35 at 33, 40–41 (check to Robertson for $325 with a notation, "For roof at 2852," and check to Winston for $1,190); Tr. 64, 67–68 (O'Connell).) Ms. Ekekwe-Kauffman offered no explanation for using her lawyer trust account for these payments.

56. As to other SOAR activity, Disciplinary Counsel asked Ms. Ekekwe-Kauffman to explain why she deposited two SOAR checks (which she signed), one

for $900, and another for $1,200, in her Bank of America trust account in May and June 2015. (DX 19.) She provided no response. (Tr. 65 (O'Connell).)

57. The bank records reflected that Ms. Ekekwe-Kauffman deposited the two SOAR checks totaling $2,100 in her trust account shortly after she transferred $10,000 from her trust account to her operating account on May 22, 2015, and then used the funds to make an $18,480.41 payment to a third party on behalf of SOAR that same day. (DX 36 at 136; DX 37 at 67; Tr. 114–16 (O'Connell).) The $10,000 transfer of funds from the trust account resulted in subsequent overdrafts of her trust account. (DX 36 at 137.) After she made the $18,480.14 payment from her operating account, it too became overdrawn. (DX 37 at 69; Tr. 116 (O'Connell).)

58. Ms. Ekekwe-Kauffman provided no records supporting the $10,000 trust-account transfer. (Tr. 114 (O'Connell); *see* DX 16; DX 26.) The only explanation offered at the hearing was that she was assisting SOAR in buying a new facility. (Tr. 296 (Ekekwe-Kauffman).) She did not, however, explain why she used funds in her trust account to provide the assistance. (Tr. 296–302 (Ekekwe-Kauffman).) Ms. Ekekwe-Kauffman's subsequent deposit of $2,100 in checks from SOAR following the overdrafts on her trust account did not cover the $10,000 transfer and was insufficient to prevent further overdrafts, including those caused when third parties cashed checks for funds owed to them from client settlements. (DX 36 at 140–41, 161–63 (trust account again overdrawn on June 8, 2015); Tr. 109 (O'Connell).)

59. The records the banks produced reflected that Ms. Ekekwe-Kauffman received credit-card payments through Square that she caused to be deposited in her trust account. (*See, e.g.*, DX 36 at 4, 31, 46, 69, 130, 136, 161, 167, 167, 175, 178; Tr. 83–84, 87 (O'Connell).) Ms. Ekekwe-Kauffman produced only a few documents relating to the thirteen credit-card payments reflected in the Bank of America trust account records from April 2014 through September 2015. (DX 16 at 166, 168–69, 192, 214–15, 227–29.) Ms. Ekekwe-Kauffman produced records related to only three of the credit card payments, and these were incomplete—none of them reflected what she had done with the payments after depositing them in her trust account. (Tr. 87 (O'Connell).)

60. For example, Ms. Ekekwe-Kauffman produced three documents concerning a $6,500 credit-card payment from Verona Williams, which according to the notation on Ms. Ekekwe-Kauffman's documents, was to file a bankruptcy case. (DX 16 at 166, 168–69.) Disciplinary Counsel sent Ms. Ekekwe-Kauffman a letter and subpoena directing her to provide her financial records relating to the $6,500 payment, including her fee agreement, any bills she sent the client, and the other financial records reflecting what she did with the funds. (DX 18 at 1, 3–4.) Ms. Ekekwe-Kauffman did not respond to the letter and did not comply with the subpoena. (Tr. 85–86 (O'Connell).)

61. The bank records reflected that on May 21, 2015, one day after the deposit of the $6,500 fee (only $6,272.35 of which was credited to the Bank of America trust account after Square assessed its processing fee), Ms. Ekekwe-

Kauffman had withdrawn at least $4,500 of the funds. (DX 36 at 136–37.) She wrote checks to herself and Clarissa T. Edwards for $2,000 and $2,500, respectively, which were paid by the bank that same day. (DX 36 at 136–37, 151–52.) On May 22, 2015, Ms. Ekekwe-Kauffman transferred $10,000 from the Bank of America trust account to her operating account. (DX 36 at 136.) By May 27, 2015, the balance in the trust account was -$750.95. (DX 36 at 136–37.) Ms. Ekekwe-Kauffman had taken the remainder of the $6,500 payment, even though she had not yet filed the bankruptcy petition and would not do so until May 27. (Tr. 248–49 (Ekekwe-Kauffman); *see infra* FF 63.)

62. Ms. Ekekwe-Kauffman claims she was entitled to take the $2,000 on May 21, 2015, because she had filed a petition for bankruptcy on behalf of Ms. Williams by that date. (Tr. 235 (Ekekwe-Kauffman).) Ms. Ekekwe-Kauffman further testified that the funds she paid to Ms. Edwards with Ms. Williams's funds were also for legal fees. (Tr. 240–41 (Ekekwe-Kauffman).)

63. Ms. Ekekwe-Kauffman, however, did not file the bankruptcy petition on behalf of Ms. Williams until May 27, 2015, by which date Ms. Ekekwe-Kauffman already had taken the entire $6,500 fee. Voluntary Pet. at 1, *In re William* [sic], Case 15-17536 (Bankr. D. Md. May 27, 2015) (ECF No. 1). Further, Ms. Ekekwe-Kauffman falsely told the bankruptcy court that she had agreed to accept a fee of $6,000 (not $6,500), that she was not sharing the fee with another, and that she had not yet received any of the fee. *Compare* Disclosure of Compensation of

Attorney for Debtor at 1, *In re William*, Case 15-17536 (Bankr. D. Md. May 27, 2015), *with* (DX 16 at 166, 168–69) *and* (DX 36 at 136–37, 151).

64. Other documents that Ms. Ekekwe-Kauffman produced raised further questions about her handling of entrusted funds. The Bank of America trust account records reflected that Ms. Ekekwe-Kauffman deposited a check for $500 from Melvin Roy in her trust account on April 11, 2013, and on May 21, 2013, wrote Mr. Roy a check drawn on the same account for $4,500, noting on the check that it was a "return of retainer." (DX 20 at 2–3.) At the time of the deposit of the $500 check and for a month thereafter, the balance in the trust account was less than $4,500. (DX 20 at 4–5.) Disciplinary Counsel asked Ms. Ekekwe-Kauffman to explain what funds she received from or on behalf of Mr. Roy and how she handled them and to provide supporting documents. (DX 20 at 1.) She failed to respond to the request for information and documents. (Tr. 89–90 (O'Connell).)

65. The records that Disciplinary Counsel subpoenaed from the banks showed that Ms. Ekekwe-Kauffman also made cash deposits in her Bank of America trust account. (*See, e.g.*, DX 35 at 8, 19, 36; DX 36 at 9, 35.) Ms. Ekekwe-Kauffman did not have any records to reflect whether these were payments from clients or the purpose of the deposits. (*See* DX 16; DX 26.) Ms. Ekekwe-Kauffman also withdrew cash from her trust account. (*See, e.g.*, DX 36 at 178.)

66. Ms. Ekekwe-Kauffman deposited funds from her personal or business accounts in her trust account. (*See, e.g.*, DX 36 at 18, 167.) She also used funds in

her trust account to pay personal or business expenses. (*See, e.g.*, DX 36 at 25 ($185 for dues and parking to the Prince George's County Bar Association).)

67. The bank records showed that Ms. Ekekwe-Kauffman electronically transferred funds from her trust account, on the one hand, to her operating account or other accounts, on the other, in round figures and without maintaining or preserving any records relating to the transfers. (Tr. 114 (O'Connell).) For example, on December 15, 2014, she transferred $6,000 from her trust account to another account. (DX 36 at 69.) Ms. Ekekwe-Kauffman had no documents indicating the purpose of the transfer, including whether it related to a client matter. (*See* DX 16; DX 26.) Ms. Ekekwe-Kauffman made other electronic transfers from her trust account, including: (1) $1,000 to account 2886 (the operating account) on April 2, 2014 (DX 36 at 4); (2) $500 to account 4235 on April 4, 2014 (DX 36 at 4); (3) $500 to account 4235 on February 11, 2015 (DX 36 at 113); and (4) $10,000 to account 2886 (the operating account) on May 22, 2015 (DX 36 at 136).) These transfers were in addition to those Ms. Ekekwe-Kauffman made by check without any notation identifying a client matter. (*See, e.g.*, DX 36 at 20 ($900 in funds transferred by check in June 2014).)

68. In a number of instances, Ms. Ekekwe-Kauffman transferred funds from her trust account to her operating account when the balance in the operating account was low or overdrawn. (DX 37 at 12, 24, 28, 32, 35, 50, 65, 69, 72 (monthly statements for operating account reflecting overdrafts).) For example, in May 2014, she deposited two $500 checks from her trust account in her operating account—the

first on May 6, 2014, before the first overdraft of that month, and the second on May 14, 2014, after the account was overdrawn for a second time. (DX 37 at 12, 14, 18–19 (trust account checks for $500 each that were deposited in operating account); Tr. 98–99 (O'Connell).) The payment and crediting of these two trust account checks totaling $1,000 increased the balance in Ms. Ekekwe-Kauffman's operating account but resulted in an overdraft of her trust account. (DX 36 at 6 (trust account balance on May 14, 2014, was -$12.35).) Her operating account was overdrawn six more times in May 2014, after the trust-account deposits. (DX 37 at 12.) Ms. Ekekwe-Kauffman also sought to cover some of the operating account overdrafts in May 2014 by depositing SOAR checks in that account. (DX 37 at 17, 20 (depositing two SOAR checks totaling $1,400 in her operating account on May 6, and 14, 2014).)

69. The limited records Ms. Ekekwe-Kauffman provided (*See* DX 16; DX 26), and the records Disciplinary Counsel subpoenaed from SunTrust (DX 35) and Bank of America (DX 36) revealed mishandling of client or third-party funds in at least four client matters, as described below.

3. LaToya King Settlement Funds

70. On May 20, 2014, Ms. Ekekwe-Kauffman deposited in the Bank of America trust account a $2,000 settlement check payable to LaToya King and Ms. Ekekwe-Kauffman. (DX 38 at 4–6; DX 36 at 6–8).) When she made the deposit, the trust account was overdrawn by $12.35. (DX 38 at 4; Tr. 95 (O'Connell).) This deposit brought the trust-account balance to $1,987.65. (DX 38 at 4.) Ms. Ekekwe-

Kauffman provided Ms. King with a closing statement stating that her medical provider had submitted a bill of $2,545 but would be paid a "Reduced Fee" from the settlement funds. (DX 38 at 1.) Ms. Ekekwe-Kauffman did not have or produce any medical bills or other documents reflecting the amount the medical provider had charged, any discount she had requested, or any reduction the provider approved. (DX 38; Tr. 96–97 (O'Connell).)

71. On May 23, 2014, Ms. Ekekwe-Kauffman wrote the medical provider a check for $150 drawn on the trust account. (DX 38 at 2.) Prior to May 27, 2014, when the medical provider presented the check for payment, the balance in the trust account fell below $150. (DX 38 at 4; Tr. 97–98 (O'Connell).) On May 22, 2014, the balance was $137.65, it increased to $187.65 on May 27, 2014, after Ms. Ekekwe-Kauffman made a $50 cash deposit (counter credit), but then fell to $37.54 after the $150 check was paid. (*Id.*) Neither the client nor the medical provider authorized Ms. Ekekwe-Kauffman to take the settlement funds that were owed to the medical provider. (Tr. 273–74 (Ekekwe-Kauffman).)

4. James Short Settlement Funds

72. On March 12, 2015, Ms. Ekekwe-Kauffman deposited in the Bank of America trust account an $8,500 settlement check payable to James Short and Ms. Ekekwe-Kauffman. (DX 39 at 22–24.) She provided Mr. Short with a closing statement stating she would take only $2,250 in legal fees. (DX 39 at 1; Tr. 100 (O'Connell).) The bank records, however, showed that Ms. Ekekwe-Kauffman actually took $3,000 for her fees, and an additional $500 for alleged "expenses," for

which she had no invoices or supporting documents. (DX 39 at 26–27, 29; Tr. 101–02 (O'Connell).) Mr. Short never authorized Ms. Ekekwe-Kauffman to take more than $2,750: $2,250 in fees and $500 in expenses. (Tr. 275 (Ekekwe-Kauffman).)

73. In the closing statement signed by Mr. Short, Ms. Ekekwe-Kauffman stated she would pay $460.75 to the D.C. Fire and EMS Department, $1,350 to Pain & Rehab Center, and $752.11 to Medicare from the settlement funds. (DX 39 at 1.) Mr. Short agreed to these payments, and never authorized Ms. Ekekwe-Kauffman to take any of the funds set aside for the third parties. (Tr. 275–76 (Ekekwe-Kauffman).)

74. The bank records and those produced by Ms. Ekekwe-Kauffman reflected that the D.C. Fire Department did not seek to collect anything from Mr. Short and, accordingly, no payment was made. (DX 26 at 30–34.) When asked about the disposition of the $460.75, Ms. Ekekwe-Kauffman insisted that "the client got the money back" but agreed that she could not identify any evidence of payment. (Tr. 291–93 (Ekekwe-Kauffman).) Ms. Ekekwe-Kauffman did not refund the $460.75 to Mr. Short but kept those funds. (DX 39 (compilation of relevant records); *see also* DX 26.)

75. The bank records and those produced by Ms. Ekekwe-Kauffman reflected that she did not make any payment to Pain & Rehab Center and kept the $1,350. (Tr. 103 (O'Connell); *see* DX 36; DX 16; DX 26; DX 39.) Between the deposit of Mr. Short's settlement check on March 12, 2015, and May 27, 2015, when the trust account was overdrawn by more than $750, there was no check payable to

Pain & Rehab Center, and Ms. Ekekwe-Kauffman did not refund the $1,350 to Mr. Short. (Tr. 103, 106 (O'Connell); *see* DX 39 (compilation of relevant documents from Ms. Ekekwe-Kauffman's production and bank records).) Ms. Ekekwe-Kauffman had no authority to take the $1,350. (Tr. 276 (Ekekwe-Kauffman).)

76. While the closing statement listed a payment of $752.11 to Medicare, Ms. Ekekwe-Kauffman wrote a check dated April 30, 2015, to Medicare for $450.12, $301.99 less. (DX 39 at 1–2; DX 36 at 155.) Ms. Ekekwe-Kauffman refunded $100 to Mr. Short by check no. 1091, which was paid on May 4, 2015. (DX 39 at 33; DX 36 at 156).) The bank records reflected that she never refunded the remaining $201.99 to Mr. Short from her trust account. (DX 39 at 30–31; Tr. 104–06 (O'Connell).)[12] By May 27, 2015, when the account was overdrawn, Ms. Ekekwe-Kauffman had taken the remaining funds in her trust account, including the balance of $201.99, for herself. She did not have authority to take these funds. (Tr. 276–79 (Ekekwe-Kauffman); DX 39 at 31.)

5. Dewaine Drew Settlement Funds

77. On May 1, 2015, Ms. Ekekwe-Kauffman deposited in the Bank of America trust account $8,000 received in settlement of the Dewaine Drew insurance claim. (*See* DX 40 at 1, 8.) Ms. Ekekwe-Kauffman provided Mr. Drew a closing statement listing a payment of $480.25 to Anacostia River Emergency Physician PC.

[12] When asked about the remaining $201.99, Ms. Ekekwe-Kauffman testified, "I can't put my hands on it, but I do know any money that was left over was given to the client, but I can't put my hands on any supporting proof right now." (Tr. 294–95 (Ekekwe-Kauffman).) Ms. Ekekwe-Kauffman agreed that there was no evidence in the records that the client received those funds. (*Id.*)

(DX 40 at 1.) She did not have authority from the client or the client's medical provider to take any of these funds for herself. (Tr. 282 (Ekekwe-Kauffman).)

78. The bank records and those produced by Ms. Ekekwe-Kauffman reflected that neither the medical provider nor its collection company was paid the $480.25 from the trust account. Nor did Ms. Ekekwe-Kauffman make a refund of that amount to Mr. Drew by May 27, 2015, when the trust account was overdrawn by $750. (DX 36 at 137, DX 40 (compilation of relevant documents from Ms. Ekekwe-Kauffman's production and bank records); Tr. 107–08, 139 (O'Connell).) At some point, Ms. Ekekwe-Kauffman wrote a check (no. 1094) for $480.25 payable to Credence Resource Management, a collection agency. (DX 40 at 4; Tr. 107 (O'Connell).) There is no evidence, however, that she ever mailed or delivered the check, and the bank records indicate that the check was never presented or paid in May 2015, or anytime thereafter through September 30, 2015—four months after the settlement, and several months after the trust account was overdrawn. (DX 40 at 8–9, 15; DX 36 at 160–79; Tr. 108 (O'Connell).)

6. DePaul Eppright Settlement Funds

79. On May 11, 2015, Ms. Ekekwe-Kauffman deposited in the Bank of America trust account a $12,500 settlement check payable to DePaul Eppright and her. (DX 41 at 12–15.)[13] Ms. Ekekwe-Kauffman provided Mr. Eppright a closing

[13] Ms. Ekekwe-Kauffman had represented Mr. Eppright in an earlier case arising out of an accident on November 4, 2012, which was settled in January 2015 for $9,000. (DX 42 at 7–10.) She deposited the $9,000 check in her trust account (*Id.*) but never produced a closing statement reflecting how she intended to disburse the funds, despite having received a subpoena for the

statement stating that she would pay $1,100 from the settlement to his medical provider, Doctors Grover, Christie & Merritt. (DX 41 at 1.) On May 19, 2015, she wrote a $1,100 check to the medical provider. (DX 41 at 10.) Ms. Ekekwe-Kauffman did not have the authority of her client or the medical provider to take or use any portion of the $1,100. (Tr. 282–83 (Ekekwe-Kauffman).)

80. The $1,100 check payable to Mr. Eppright's medical provider was not paid by the bank until June 8, 2015. (DX 41 at 20–21; Tr. 109 (O'Connell).) Prior to that, the balance in the trust account was below the $1,100 owed to the provider on numerous days: on May 27, 2015, the account was overdrawn by $750.95; from May 29 through June 7, 2015, the balance was $149.05; and when the check was presented and paid on June 8, 2015, the balance fell to -$950.95. (Tr. 109 (O'Connell); DX 41 at 13, 20 (bank records).) After the $1,100 check was paid, which resulted in another overdraft of the trust account, Ms. Ekekwe-Kauffman deposited a $1,200 check from SOAR in the trust account to bring the balance to a positive number. (DX 40 at 20; *see also* DX 36 at 161–63 (after deposit of $1,200 SOAR check balance in trust account increased to $249.05); Tr. 109–12 (O'Connell).)

statement. (DX 18 at 1, 3–4; Tr. 112–13 (O'Connell).) The documents that Ms. Ekekwe-Kauffman produced relating to the $9,000 settlement and the bank records reflected that she disbursed $7,700 by check. (DX 42 at 11–16, 19.) It is unclear how she disbursed the remaining $1,300, but by no later than May 27, 2015, she had withdrawn all the remaining funds. (DX 42 at 17–18.)

III. CONCLUSIONS OF LAW

Disciplinary Counsel argues that Ms. Ekekwe-Kauffman committed "at a minimum" reckless misappropriation of money held in trust for four clients, failed to maintain sufficient records of her handling of entrusted funds, failed to communicate with or provide a timely refund to Ms. Myers, and, when Disciplinary Counsel investigated her alleged misconduct, failed to respond reasonably to Disciplinary Counsel's demands for information and made knowing misrepresentations to Disciplinary Counsel. (ODC Br. at 30–33, 37, 43–45.)

Ms. Ekekwe-Kauffman argues that she did not misappropriate entrusted funds, she never took money owed to clients or third parties, that any temporary shortfall in her accounts was due to delays in crediting deposits, and that her recordkeeping complied with Rule 1.15(a). (R. Br. at 8–9.) She also argues that Ms. Myers was never a client, but only a potential client, and that she nonetheless reasonably informed Ms. Myers about the status of her representation and responded to requests for information. (R. Br. at 2–5.) She denies that she owed Ms. Myers a refund of her $200 "consulting fee." (R. Br. at 3, 5.) With respect to Disciplinary Counsel's investigation, Ms. Ekekwe-Kauffman argues that she fully and truthfully responded to Disciplinary Counsel's investigative inquiries. (R. Br. at 9–10.)

A. Count I: Bar Docket No. 2013-D393

1. Ms. Ekekwe-Kauffman Violated Rule 1.4(a) in That She Failed To Keep Her Client Reasonably Informed About the Status of Her Matter and Did Not Promptly Comply with Reasonable Requests for Information.

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. *In re Hallmark*, 831 A.2d 366, 374 (D.C. 2003); *In re Bernstein*, 707 A.2d 371, 376 (D.C. 1998). The purpose of this rule is to enable clients to "participate intelligently in decisions concerning the objectives of the representation and the means by which they are to be pursued." D.C. R. Prof'l Conduct 1.4, cmt. [1]. In determining whether Disciplinary Counsel has established a violation of Rule 1.4(a), the question is whether Ms. Ekekwe-Kauffman fulfilled her client's reasonable expectations for information. *See In re Schoeneman*, 777 A.2d 259, 264 (D.C. 2001).

Disciplinary Counsel alleges that, during a July 17, 2013 telephone call with Ms. Myers, Ms. Ekekwe-Kauffman agreed to provide legal advice to Ms. Myers about her financial situation and her desire to file for bankruptcy. (ODC Br. at 30.) Disciplinary Counsel argues that Ms. Myers paid Ms. Ekekwe-Kauffman the $200 fee requested and delivered to Ms. Ekekwe-Kauffman's office the documents and information that she stated she needed to provide Ms. Myers the requested legal advice; but that Ms. Ekekwe-Kauffman never again communicated with her

regarding the representation, until she refunded the $200 fee after Ms. Myers had complained to Disciplinary Counsel. (ODC Br. at 31–32.)

Ms. Ekekwe-Kauffman contends that she did not violate Rule 1.4(a) because Ms. Myers was not her client, only a "potential client," and, accordingly, Rule 1.4(a) does not apply. (R. Br. at 4.) She further contends that she informed Ms. Myers about the status of the consultation and reasonably responded to requests for information. (R. Br. at 4.)

In light of this argument, the Committee must determine whether Ms. Myers was Ms. Ekekwe-Kauffman's client. In *In re Robbins*, 192 A.3d 558, 563 (D.C. 2018), the Court offered the following guidance:

> Whether an attorney-client relationship existed depends on the circumstances of each case. *See, e.g.*, *In re Bernstein*, 707 A.2d at 375; *In re Lieber*, 442 A.2d 153, 156 (D.C. 1982). "[N]either a written agreement nor the payment of fees is necessary to create an attorney-client relationship. *In re Lieber*, 442 A.2d at 156. All that is needed "is that the parties[,] explicitly or by their conduct, manifest an intention to create" the relationship. *In re Dickens*, 174 A.3d 283, 296 (D.C. 2017) (quoting *In re Ryan*, 670 A.2d 375, 379 (D.C. 1996) (internal quotation marks omitted)). Although the client's perception of the relationship is relevant, it is not dispositive. *See In re Dickens*, 174 A.3d at 297; *In re Fay*, 111 A.3d at 1030.

Applying *Robbins* to the facts of this case, the Committee concludes that Ms. Myers was a client of Ms. Ekekwe-Kauffman, at least for the limited purpose of assessing whether filing for bankruptcy was a reasonable option for her. Ms. Myers agreed to pay a flat fee of $200 for that limited legal advice, and she expected Ms. Ekekwe-Kauffman to provide it. It was apparent to the Committee that Ms. Myers reasonably

considered herself a client of Ms. Ekekwe-Kauffman, who did not do or say anything that would suggest otherwise. (FF 8, 11–17.)

In the end, whether Ms. Ekekwe-Kauffman violated Rule 1.4(a) turns on whether Disciplinary Counsel disproved Ms. Ekekwe-Kauffman's assertion that she provided the assessment by telephone message several days after receiving Ms. Myers's documents. After weighing the evidence heard in this matter, the Committee concludes that the telephone message was not left. (FF 16.) Ms. Ekekwe-Kauffman provided no evidence to corroborate her recollection, and Ms. Myers's subsequent action—discharging Ms. Ekekwe-Kauffman and asking for a refund—is consistent with her recollection that she never received the legal advice she sought. (FF 17.) Accordingly, the Committee concludes that Ms. Ekekwe-Kauffman did not respond to her client's reasonable requests for the legal advice for which she paid and, therefore, finds by clear and convincing evidence that Ms. Ekekwe-Kauffman violated Rule 1.4(a).

2. Ms. Ekekwe-Kauffman Violated Rule 1.16(d) in That, in Connection with the Termination of Representation, She Failed To Promptly Return Ms. Myers's Funds.

Rule 1.16(d) provides (emphasis added):

> 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*.

See, e.g., *In re Samad*, 51 A.3d 486, 497 (D.C. 2012) (per curiam) (finding a violation where respondent claimed that he did some work on the case, but did not "suggest that he earned the entire flat fee or that he returned any portion of the fee"); *In re Kanu*, 5 A.3d 1, 10 (D.C. 2010) (finding a violation of Rule 1.16(d) where the attorney failed to abide by a clause in her retainer agreement promising a refund if she failed to meet her clients' objectives).

Disciplinary Counsel contends that Ms. Myers paid Ms. Ekekwe-Kauffman a $200 fee for a consultation that never occurred, and that Ms. Ekekwe-Kauffman did not return the fee (despite Ms. Myers's written refund request) until she filed a disciplinary complaint. (FF 13, 17, 19–20; ODC Br. at 31–32.)

Ms. Ekekwe-Kauffman argues that she did not fail to return the $200 fee because that fee was fully earned as a consulting fee. (R. Br. at 3.) As discussed above, the Committee concludes that Ms. Ekekwe-Kauffman did not complete the work for which the flat $200 fee paid. (FF 15–16.) Accordingly, the Committee cannot agree with Ms. Ekekwe-Kauffman that the fee was fully earned. To the contrary, the Committee concludes that Ms. Myers's refund request should have been discharged in full, and Ms. Ekekwe-Kauffman did the correct thing by issuing Ms. Myers a full refund. (FF 20.)

Whether Ms. Ekekwe-Kauffman responded timely to Ms. Myers's request is dispositive of Disciplinary Counsel's claim. The Committee does not conclude that a refund issued approximately two months after it was requested is per se untimely. In this case, however, given the timing, the refund appears to have been triggered by

Disciplinary Counsel's decision to investigate Ms. Ekekwe-Kauffman. (FF 19–20.) The Committee concludes from this that Ms. Ekekwe-Kauffman would not have responded to Ms. Myers's refund request but for Disciplinary Counsel's investigation. In the Committee's judgment, that makes Ms. Ekekwe-Kauffman's response in this matter untimely and it finds by clear and convincing evidence that Ms. Ekekwe-Kauffman violated Rule 1.16(d).

3. Ms. Ekekwe-Kauffman Did Not Violate Rule 8.1(a) in That, in Connection with a Disciplinary Matter, She Did Not Knowingly Make False Statements of Fact.

Rule 8.1(a) provides that "a lawyer . . . in connection with a disciplinary matter, shall not . . . knowingly make a false statement of fact." The rule requires Disciplinary Counsel to prove by clear and convincing evidence that Ms. Ekekwe-Kauffman "knowingly" made a false statement. The terminology section of the rules defines "knowingly" as "actual knowledge of the fact in question" which "may be inferred from circumstances." D.C. R. Prof'l Conduct 1.0(f).

Disciplinary Counsel argues that in her response, Ms. Ekekwe-Kauffman falsely stated that she consulted with Ms. Myers on *both* July 17, 2013, *and* August 2, 2013, and falsely outlined the advice she contends she gave at the August 2 meeting, when Ms. Ekekwe-Kauffman knew that she only spoke with Ms. Myers on July 17. (ODC Br. at 32.)

Ms. Ekekwe-Kauffman contends that she did not violate Rule 8.1(a) because she had a phone call with Ms. Myers on August 2, during which she gave the advice she described to Disciplinary Counsel. (*See* R. Br. at 2–3, 6.)

In this case, Ms. Myers and Ms. Ekekwe-Kauffman presented testimony that cannot be squared. In other words, the Committee had to decide whether there was clear and convincing evidence that Ms. Ekekwe-Kauffman knowingly made false statements of fact. Did Ms. Ekekwe-Kauffman meet with Ms. Myers on August 2, 2013, or not? Did Ms. Ekekwe-Kauffman deliver the analysis that would have concluded the consultation assignment or not? As explained above, the Committee found Ms. Myers's testimony on both issues more credible than Ms. Ekekwe-Kauffman's. (FF 15–16.) That does not, however, mean Ms. Ekekwe-Kauffman knowingly made a false statement of fact. On this issue, the Committee believes there is not clear and convincing evidence of a violation of Rule 8.1(a).

4. Ms. Ekekwe-Kauffman Violated Rule 8.4(c) in That She Engaged in Conduct Involving Dishonesty and Misrepresentation.

Rule 8.4(c) provides that "it is professional misconduct for a lawyer to . . . [e]ngage in conduct involving dishonesty, fraud, deceit, or misrepresentation." The Court has held that each of these terms encompassed within Rule 8.4(c) "should be understood as separate categories, denoting differences in meaning or degree." *In re Shorter*, 570 A.2d 760, 767 (D.C. 1990) (per curiam). Each category requires proof of different elements. *See In re Romansky*, 825 A.2d 311, 315 (D.C. 2003).

Disciplinary Counsel has charged Ms. Ekekwe-Kauffman with only dishonesty and misrepresentation under Rule 8.4(c). (Spec. ¶ 13(d).)

a. Dishonesty

Dishonesty is the most general category in Rule 8.4(c), and is defined as:

> [F]raudulent, deceitful or misrepresentative behavior [and] conduct evincing a lack of honesty, probity or integrity in principle; [a] lack of fairness and straightforwardness . . . . Thus, what may not legally be characterized as an act of fraud, deceit or misrepresentation may still evince dishonesty.

Shorter, 570 A.2d at 767–68 (internal quotation marks and citation omitted); *see also In re Scanio*, 919 A.2d 1137, 1142–43 (D.C. 2007). Dishonesty does not require proof of deception or fraudulent intent. *Romansky*, 825 A.2d at 315. Thus, when the dishonest conduct is "obviously wrongful and intentionally done, the performing of the act itself is sufficient to show the requisite intent for a violation." *Id.* Conversely, "when the act itself is not of a kind that is clearly wrongful, or not intentional, [Disciplinary] Counsel has the additional burden of showing the requisite dishonest intent." *Id.* A violation of Rule 8.4(c) may also be established by sufficient proof of recklessness. *See id.* at 317. To prove recklessness, Disciplinary Counsel must prove by clear and convincing evidence that the respondent "consciously disregarded the risk" created by her actions. *Id.*

b. Misrepresentation

Under Rule 8.4(c) misrepresentation is a "statement . . . that a thing is in fact a particular way, when it is not so." *Shorter*, 570 A.2d at 767 n.12 (citation omitted); *see also In re Schneider*, 553 A.2d 206, 209 n.8 (D.C. 1989) (misrepresentation is element of deceit). Misrepresentation requires active deception or a positive falsehood. *See Shorter*, 570 A.2d at 767–68. The failure to disclose a material fact

also constitutes a misrepresentation. *See In re Outlaw*, 917 A.2d 684, 688 (D.C. 2007) (per curiam) ("Concealment or suppression of a material fact is as fraudulent as a positive direct misrepresentation." (citations omitted)); *Scanio*, 919 A.2d at 1139–44 (respondent failed to disclose that he was salaried employee when he made a claim for lost income to insurance company measured by lost hours multiplied by billing rate); *In re Reback*, 513 A.2d 226, 228–29 (D.C. 1986) (en banc) (Court found deceit and misrepresentation where respondents neglected claim, failed to inform client of dismissal of case, forged client's signature onto second complaint, and had complaint falsely notarized).

The Court has held that Disciplinary Counsel does not need to establish that a respondent acted with "deliberateness" in making a misrepresentation in order to prove a violation of Rule 8.4(c). *In re Rosen*, 570 A.2d 728, 728–30 (D.C. 1989) (per curiam). Rather, establishing a violation of Rule 8.4(c) based on a misrepresentation only requires proof that the respondent "acted in reckless disregard of the truth." *Id.* (finding material misrepresentation in bar application where the respondent acted in reckless disregard of the truth).

Disciplinary Counsel argues that Ms. Ekekwe-Kauffman made knowingly false representations to Disciplinary Counsel in responding to Ms. Myers's complaint and that her doing so violated not only Rule 8.1(a) but also Rule 8.4(c). (ODC Br. at 32–33.) Disciplinary Counsel argues that Ms. Ekekwe-Kauffman's subsequent contentions about her alleged meeting with and advice to Ms. Myers changed with each telling and that she testified falsely at the hearing about her

alleged interactions with Ms. Myers and the consultation that she now alleges occurred sometime after August 4 or 5, 2013, aggravating her dishonesty. (ODC Br. at 33.)

Ms. Ekekwe-Kauffman argues that she did not violate Rule 8.4(c) for the same reasons she did not violate Rule 8.1(a): Her statements to Disciplinary Counsel regarding her meetings with Ms. Myers were true. (R. Br. at 5–6.)

Both sides in this case fail to see the light that exists between Rule 8.1(a), which requires a knowing presentation of a falsehood, and Rule 8.4(c), which requires only a finding that Ms. Ekekwe-Kauffman was reckless in making the statements that she made. Those are very different standards, and they allow for the Committee to find a violation of one rule and not the other.

In this matter, the Committee does just that, concluding that Ms. Ekekwe-Kauffman acted dishonestly and made misrepresentations. As with its Rule 8.1(a) analysis, the Committee does not find that Ms. Ekekwe-Kauffman intentionally or deliberately did these things. Instead, the Committee finds clear and convincing evidence that she was reckless. Her account of events with regard to Ms. Myers should have been straightforward. It related to a two- to three-week period, a handful of possible contacts, and only a few potential witnesses: herself and her two employees. Ms. Ekekwe-Kauffman's account, however, was confusing, inconsistent, and, at times, so vague as to be meaningless. (*See* Tr. 217–20 (Ekekwe-Kauffman).) It was clear to the Committee that Ms. Ekekwe-Kauffman did not conduct sufficient diligence of her recollection, and the Committee concludes that

her decision to not do so was reckless. For example, Ms. Ekekwe-Kauffman could have attempted to consult corroborative records, such as examining her telephone records to corroborate her recollection of leaving advice to Ms. Myers by telephone. It is apparent, however, that Ms. Ekekwe-Kauffman did not do these things and instead provided a recollection of events with little regard to the specifics. The result was a narrative that—as Disciplinary Counsel observes—was sometimes inconsistent and, as the Committee has concluded, not as credible as Ms. Myers's recollection. Her reckless disregard for the accuracy of the information provided to Disciplinary Counsel in advance of the hearing provides sufficient evidence for the Committee to find clear and convincing evidence of a violation of Rule 8.4(c).[14]

B. Count II: Bar Docket Nos. 2014-D158, 2014-D187, 2014-D190, and 2015-D165

1. Ms. Ekekwe-Kauffman Violated Rule 1.15(a) in That She Failed To Keep and Preserve Complete Records of Trust-Account Funds.

Rule 1.15(a) provides, in pertinent part: "Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of five years after termination of the representation."

Rule 1.15(a) requires lawyers to keep "complete records of . . . account funds and other property" and to 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).

[14] In her hearing testimony, Ms. Ekekwe-Kauffman continued to exhibit a cavalier attitude toward accuracy, resulting in the Committee's conclusion that Ms. Myers was a more credible witness.

The *Edwards* decision explained that "[f]inancial records are complete only when an attorney's documents are 'sufficient to demonstrate [the attorney's] compliance with his ethical duties.' " 990 A.2d at 522 (quoting *In re Clower,* 831 A.2d 1030, 1034 (D.C. 2003) (finding Rule 1.15(a) and D.C. Bar Rule XI, § 19(f) violations)). 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." *Id.* (quoting *Clower*, 831 A.2d at 1034); *see also In re Pels*, 653 A.2d 388, 396 (D.C. 1995) (finding Rule 1.15(a) violation when attorney showed a "pervasive failure" to maintain contemporaneous records accounting for the flow of client funds within various bank accounts). Thus, "[t]he records themselves should allow for a complete audit even if the attorney or client is not available." *Edwards*, 990 A.2d at 522.

Disciplinary Counsel contends that Ms. Ekekwe-Kauffman did not have a check register or journal of the funds deposited in and withdrawn from her trust accounts; did not have client ledgers showing, by client, the funds she received and disbursed on their behalf; and did not have accountings or closing statements in a number of client matters. (ODC Br. at 43.)

Disciplinary Counsel further contends that for some of the accountings or closing statements that Ms. Ekekwe-Kauffman produced, the amounts that she represented she would pay to herself, her clients, or third parties did not accurately reflect the disbursements she actually made from the clients' settlements. (ODC Br.

at 43.) In addition, Ms. Ekekwe-Kauffman did not produce any bills that she sent to clients in connection with advance fees deposited in the trust account. (ODC Br. at 43; *see* DX 16; DX 26.) And, with one or two exceptions, Ms. Ekekwe-Kauffman also did not produce bills from the third parties whom she paid from the clients' settlements or other funds deposited in her trust account. (*Id.*)

In response, Ms. Ekekwe-Kauffman contends that she properly received settlement checks and placed the checks and or funds in a trust account for safekeeping. (R. Br. at 8; *see* Tr. 151 (O'Connell).) She further contends that the checks to the providers were paid. (R. Br. at 8; *see* Tr. 144, 146 (O'Connell); *see also* DX 35–42.) She also contends that while her "record-keeping for her one-lawyer office may not be state-of-the-art by big-law-firm standards," Ms. Ekekwe-Kauffman always complied with the requirements of Rule 1.15(a), which "properly permitted her to represent the under-served and under privileged community that calls upon her daily." (R. Br. at 9.)

The Committee concludes that Ms. Ekekwe-Kauffman violated Rule 1.15(a). Indeed, her inability in this matter to readily explain the transactions in her trust and operating accounts illustrates the shortcomings of her internal financial records. (FF 50–52, 58–62, 72–78.) Moreover, Disciplinary Counsel rightly points out that the records she does have are unreliable given that they do not reflect what occurred in reality. The most notable examples of this are the discrepancies between the amounts listed in the closing statements and the disbursement of funds as reflected in bank records, including instances in which Ms. Ekekwe Kauffman's fees

exceeded the fee amount listed in her closing statement. (FF 50–51, 72, 75, 77–78.) To be clear, Ms. Ekekwe-Kauffman does not need "state-of-the-art" accounting systems to comply with Rule 1.15(a). But she needs reliable and accurate records, and she did not have them. Accordingly, the Committee finds clear and convincing evidence of a Rule 1.15(a) violation.

2. Ms. Ekekwe-Kauffman Violated Rule 1.15(a) in That She Recklessly Misappropriated Entrusted Funds

Rule 1.15(a) prohibits misappropriation of entrusted funds. Misappropriation is "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).

Misappropriation requires proof of two distinct elements. *First*, Disciplinary Counsel must establish the unauthorized use of client funds. *See In re Anderson*, 778 A.2d 330, 335 (D.C. 2001); *In re Harrison*, 461 A.2d 1034, 1036 (D.C. 1983) (citation and quotation marks omitted) (misappropriation is defined as "any unauthorized use of client[] [or third-party] funds entrusted to [the lawyer], including not only stealing but also unauthorized temporary use for the lawyer's own purpose, whether or not he derives any personal gain or benefit therefrom"). Misappropriation is essentially a per se offense and does not require proof of improper intent. *See Anderson*, 778 A.2d at 335 (citation omitted). It occurs where "the balance in the attorney's . . . account falls below the amount due to the client [or third party], regardless of whether the attorney acted with an improper intent." *Edwards*, 990

A.2d at 518 (appended Board report). Thus, "when the balance in [a] [r]espondent's . . . account dip[s] below the amount owed to" the respondent's client or clients, misappropriation has occurred. *In re Chang*, 694 A.2d 877, 880 (D.C. 1997) (per curiam) (appended Board report) (citing *Pels*, 653 A.2d at 394).

Second, Disciplinary Counsel must establish whether the misappropriation was intentional, reckless, or negligent. *See Anderson*, 778 A.2d at 336. Intentional misappropriation most obviously occurs where an attorney takes a client's funds for the attorney's personal use. *See id.* at 339 (citations omitted) (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"). In determining whether a respondent's unauthorized use of funds was reckless, one must ascertain whether the act "reveal[s] an unacceptable disregard for the safety and welfare of entrusted funds . . . ." *Id.* at 338; *see also id.* at 339 (internal citations and quotation marks omitted) ("[R]ecklessness is a state of mind in which a person does not care about the consequences of his or her action.").

The hallmarks of reckless misappropriation include:

> [T]he indiscriminate commingling of entrusted and personal funds; a complete failure to track settlement proceeds; the total disregard of the status of accounts into which entrusted funds were placed, resulting in a repeated overdraft condition; the indiscriminate movement of monies between accounts; and finally the disregard of inquiries concerning the status of funds.

In re Ahaghotu, 75 A.3d 251, 256 (D.C. 2013) (internal quotation marks and citation omitted). Further, " '[r]eckless misconduct requires a conscious choice of a course

of action, either with knowledge of the serious danger to others involved in it or with knowledge of facts that would disclose this danger to any reasonable person.' " *Anderson* 778 A.2d at 339 (quoting 57 Am. Jur. 2d *Negligence* § 302 (1989)). Thus, an objective standard should be applied in assessing whether a respondent's misappropriation was reckless.

Finally, where Disciplinary Counsel establishes the first element of misappropriation (unauthorized use) but fails to establish that the misappropriation was intentional or reckless, " 'then [Disciplinary] Counsel proved no more than simple negligence.' " *Id.* at 338 (quoting *In re Ray*, 675 A.2d 1381, 1388 (D.C. 1996)).

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

Disciplinary Counsel argues that in four different client matters (LaToya King, James Short, Dewaine Drew, and DePaul Eppright) Ms. Ekekwe-Kauffman engaged in misappropriation when she took without authority settlement funds that were owed to her clients or third parties. (ODC Br. at 35–37.)

LaToya King. Disciplinary Counsel alleges that Ms. Ekekwe-Kauffman misappropriated Ms. King's settlement funds when she deposited Ms. King's $2,000 settlement check into her trust account at a time that the account was overdrawn by

$12.35. Disciplinary Counsel further alleges that she committed misappropriation when the balance in her trust account fell to $137.65 on May 22, 2014 (below the $150 she had agreed to pay to Ms. King's medical provider). (ODC Br. at 35.)

James Short. Disciplinary Counsel alleges that Ms. Ekekwe-Kauffman committed misappropriation when the balance in her trust account fell below the amount she was required to maintain in order to pay third parties on behalf of Mr. Short. Specifically, Disciplinary Counsel alleges that on May 12, 2015, Ms. Ekekwe-Kauffman deposited Mr. Short's $8,500 settlement check into her trust account and was supposed to keep $2,562.86 to pay three creditors ($460.75 to D.C. Fire and EMS; $752.11 to Medicare; and, $1,350 to Pain and Rehab Center). Disciplinary Counsel argues that by May 27, 2015, when the trust account was overdrawn by $750.95, she had not paid D.C. Fire and EMS, or Pain and Rehab Center, and had paid Medicaid only $450.12, and thus, still should have been holding funds in her trust account sufficient to make these payments. (ODC Br. at 36.)

Dewaine Drew. Disciplinary Counsel alleges that Ms. Ekekwe-Kauffman committed misappropriation when the balance in her trust account fell below the amount she was required to maintain in order to pay Mr. Drew's medical provider. Specifically, Disciplinary Counsel alleges that Ms. Ekekwe-Kauffman deposited Mr. Drew's $8,000 settlement check into her trust account on May 1, 2015, and was required to maintain $480.25 to pay Anacostia River Emergency Physician PC. Disciplinary Counsel alleges that she had not paid Anacostia River Emergency

Physician PC by May 27, 2015, when the balance in her trust account fell to negative $750.95. (ODC Br. at 36–37.)

DePaul Eppright. Disciplinary Counsel alleges that Ms. Ekekwe-Kauffman committed misappropriation when the balance in her trust account fell below the amount she was required to maintain in order to pay Mr. Drew's medical provider. Specifically, Disciplinary Counsel alleges that she deposited Mr. Eppright's $12,500 settlement check into her trust account and was required to maintain $1,100 to pay Doctors Grover, Christie & Merritt. Disciplinary Counsel alleges that she had not paid Doctors Grover, Christie & Merritt by May 27, 2015, when the balance in her trust account fell to -$750.95. (ODC Br. at 37.)

Disciplinary Counsel argues that Ms. Ekekwe-Kauffman's misappropriation of the King settlement funds in 2014 was, at a minimum, reckless; and that her misappropriation of the Short, Drew, and Eppright settlement funds in May 2015, that occurred within days after she took $10,000 from her trust account to help finance an $18,000 payment on behalf of SOAR, was intentional. (ODC Br. 37–40.)

Ms. Ekekwe-Kauffman does not squarely address the undisputed fact that her trust account balance did fall sufficiently low that it lacked funds necessary to satisfy her obligations to third parties who were owed disbursements out of settlement funds. She contends that overdraft situations were the result of poor recordkeeping, that she promptly corrected the overdrafts, and that clients and third parties were paid in spite of the overdrafts. (Tr. 181–83, 206–07 (Ekekwe-Kauffman); R. Br. at 8–9.) She argues that she deposited settlement funds in her trust account and that she

paid the clients' medical providers. (R. Br. at 8–9; Tr. 144, 146, 151 (O'Connell); *see also* DX 35–42.)

With regard to 2014 overdrafts, she argues that: (1) the $12.35 overdraft on May 14, 2014, was paid on the same day and did not affect any client or provider payments; (2) the $97.67 overdraft on June 9, 2014, was also paid the same day and did not affect any client or provider payments; and (3) the $3,290.11 overdraft on May 5, 2014 occurred because Ms. Ekekwe-Kauffman accidentally paid herself twice but then refunded the money (*See* Tr. 141 (O'Connell)), and did not affect any client or provider payments. (R. Br. at 8–9.)

With regard to the 2015 overdrafts, Ms. Ekekwe-Kauffman argues: (1) the $750.95 overdraft on May 27, 2015, occurred because a check presented for payment before deposits were credited, but funds were credited the next business day, correcting the overdraft—the check was paid when presented, and did not affect any client or provider payments; and (2) the $133.70 overdraft on June 26, 2015, occurred because a check was also presented for payment before deposits were credited, but a deposit was credited the next business day—the check was paid when presented, and did not affect any client or provider payments. (R. Br. at 9.)

The Committee concludes that Ms. Ekekwe-Kauffman misappropriated funds. As documented, her trust account lacked funds to satisfy outstanding client obligations, thus establishing misappropriation. (FF 69–77.)

The more difficult question is whether her misappropriation was intentional or reckless, and the Committee concludes that it was reckless. Indeed, her conduct

reflects the hallmarks of reckless misappropriation: Ms. Ekekwe-Kauffman indiscriminately commingled funds between her law office's trust and operating accounts and between those accounts and her nonlegal business's account. (FF 54–59, 64–67.) She failed to track the proceeds of settlement amounts. (FF 72–77.) There was a disregard to the status of the trust accounts, resulting in repeated overdraft situations. (FF 27, 67.) The record is clear that she moved funds from one place to another if she perceived a need to do so. (FF 57–58, 61, 66–67.)

The Committee believes, however, that Ms. Ekekwe-Kauffman intended to satisfy what she perceived to be her obligations to clients and third parties. (R. Br. at 8–9.) Ms. Ekekwe-Kauffman insisted that she always remedied the overdrafts and, despite the overdrafts, clients and third parties received payment. (Tr. 181–83 (Ekekwe-Kauffman).) While the Committee does not agree that her clients and third parties received all the payments due them, her "defense" belies the fundamental problem: Ms. Ekekwe-Kauffman routinely commingled funds—covering shortfalls with counter credits, deposits from SOAR, or deposits from her operating account—and, similarly, using entrusted funds to cover shortfalls in those other accounts. She treated entrusted funds as if they were fungible with nonentrusted funds, and, as a consequence, she simply was unable to protect the funds entrusted to her. Moreover, the systemic problems in Ms. Ekekwe-Kauffman's management of her practice,

including a lack of documentation, resulted in the reckless conduct observed in the four matters on which Disciplinary Counsel focuses.[15]

Accordingly, the Committee finds clear and convincing evidence of reckless misappropriation and a violation of Rule 1.15(a).

3. Ms. Ekekwe-Kauffman Violated Rule 8.1(b) in That, in Connection with a Disciplinary Matter, She Knowingly Failed To Respond Reasonably to a Lawful Demand for Information.

Rule 8.1(b) provides: "[A] lawyer in connection . . . with a disciplinary matter, shall not . . . fail to disclose a fact necessary to correct a misapprehension known by the lawyer . . . to have arisen in the matter, or knowingly fail to respond reasonably to a lawful demand for information from . . . [a] disciplinary authority . . . ." Thus, a knowing failure to respond to a request from Disciplinary Counsel regarding an ethical complaint constitutes a violation of Rule 8.1(b). *See, e.g.*, *In re Beller*, 802 A.2d 340 (D.C. 2002) (per curiam). Note that "Rule 8.1(b) specifically addresses the requirement of responding to [Disciplinary] Counsel as opposed to the more general requirements of Rule 8.4(d)." *In re Rivlin*, Bar Docket Nos. 436-96 et al., at 40 n.20 (BPR Oct. 28, 2002), *recommendation adopted*, *In re Rivlin*, 856 A.2d 1086 (D.C. 2004).

Disciplinary Counsel argues that Ms. Ekekwe-Kauffman violated Rule 8.1(b) because she did not respond to Disciplinary Counsel's inquiries regarding her

[15] The Committee is troubled by the circumstances of the Williams bankruptcy matter, in which Ms. Ekekwe-Kauffman, by reason of mismanagement of client funds or otherwise, made at least one misstatement of fact in a court paper. (FF 63 (Williams bankruptcy).) But Disciplinary Counsel has not charged her with making a misrepresentation there, and the Committee will not assess whether that misstatement violates the Rules of Professional Conduct.

overdrafts for months in some cases, and over a year in one case; that, when she did respond, she failed to provide an explanation for the overdrafts or provide any substantive information; and that she ignored Disciplinary Counsel's requests for documents and did not comply with numerous subpoenas. Disciplinary Counsel argues that the few documents Ms. Ekekwe-Kauffman provided were incomplete. Finally, Disciplinary Counsel argues that Ms. Ekekwe-Kauffman engaged in similar misconduct at the hearing by "evading and failing to answer questions including about her handling of entrusted funds." (ODC Br. at 44–45.)

Ms. Ekekwe-Kauffman states that she responded to requests from Disciplinary Counsel. (R. Br. at 9.)

The record is clear that Ms. Ekekwe-Kauffman did not respond to Disciplinary Counsel's valid requests to her for information. She ignored deadlines. (FF 31, 36, 38, 42, 45, 48.) She provided inadequate responses to subpoenas. (FF 30, 34, 38, 44.) When given the chance to explain herself on the misappropriation issue, she elected to provide little (if any) explanation for what Disciplinary Counsel was observing in the financial records it was obtaining from Ms. Ekekwe-Kauffman's banks. (FF 44–48.) Accordingly, the Committee finds clear and convincing evidence of a violation of Rule 8.1(b).[16]

[16] The Committee does not find a violation of Rule 8.1(b) based on Ms. Ekekwe-Kauffman's conduct at the hearing. She was at times a difficult witness and interrogator, and she clashed at times with the Committee. But the Committee does not think her conduct impeded the purpose of the hearing, which was to adduce evidence on Disciplinary Counsel's charges, which the hearing accomplished.

4. Ms. Ekekwe-Kauffman Violated Rule 8.4(d) in That She Engaged in Conduct that Seriously Interfered with the Administration of Justice

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." To establish a violation of Rule 8.4(d), Disciplinary Counsel must demonstrate by clear and convincing evidence that: (i) Ms. Ekekwe-Kauffman's conduct was improper, i.e., that she either acted or failed to act when she should have; (ii) Ms. Ekekwe-Kauffman's conduct bore directly upon the judicial process with respect to an identifiable case or tribunal; and (iii) Ms. Ekekwe-Kauffman's conduct tainted the judicial process in more than a de minimis way, i.e., it must have potentially had an impact upon the process to a serious and adverse degree. *See In re Hopkins*, 677 A.2d 55, 60–61 (D.C. 1996). Failure to respond to Disciplinary Counsel's inquiries violates Rule 8.4(d). D.C. R. Prof'l Conduct 8.4, cmt. [2].

Disciplinary Counsel argues that Ms. Ekekwe-Kauffman violated Rule 8.4(d) when she failed to provide substantive responses to Disciplinary Counsel's written inquiries and failed to fully respond to document subpoenas. Disciplinary Counsel also argues that her failure to maintain records of her handling of entrusted funds also violated Rule 8.4(d) because it prevented "the discipline system from obtaining accurate and complete information." (ODC Br. at 46.)

Relying on language from Comment 3 to Rule 8.4(d), Ms. Ekekwe-Kauffman argues that she did not violate Rule 8.4(d) because her conduct was not offensive, abusive, or harassing, and that her conduct did not manifest bias or prejudice based

upon race, sex, religion, national origin, disability, age, sexual orientation, or socioeconomic status. Finally, she argues that Disciplinary Counsel targeted her for disciplinary sanction. (R. Br. at 10.)

The law seems clear that the same conduct the Committee found to violate Rule 8.1(b) also constitutes a Rule 8.4(d) violation. Accordingly, the Committee finds clear and convincing evidence of a Rule 8.4(d) violation in the form of Ms. Ekekwe-Kauffman's failure to respond during the investigation phase of this case.

The Committee does not take up Disciplinary Counsel's invitation to convert all Rule 1.15(a) recordkeeping violations into Rule 8.4(d) violations as well. Where there already is a specific rule (and serious sanction) under Rule 1.15 for failure to keep trust-account records, it seems unduly punitive to add on a Rule 8.4 violation. More important, the Committee is not convinced that a Rule 1.15(a) violation impedes the process in the way that a Rule 8.4(d) violation does. Indeed, a Rule 1.15(a) violation arguably does not impede the process at all. In fact, it prejudices the respondent because she lacks the documentation necessary to refute a misappropriation allegation. This case provides an effective illustration of the degree to which poor records hamper a respondent's defense in a misappropriation case. *See In re Gray*, Board Docket No. 16-BD-045, at 1–2 (BPR July 31, 2018) (noting no exceptions filed to the Hearing Committee's conclusion that the "failure to maintain records required by Rule 1.15(a) does not alone constitute interference with the administration of justice within the meaning of Rule 8.4(d)"), *review pending*, D.C. App. No. 18-BG-818.

C. Ms. Ekekwe-Kauffman's Evidentiary Motions

Ms. Ekekwe-Kauffman contends that the names of her clients should be stricken from Disciplinary Counsel's brief (and presumably this report) because it is an "unjust prosecution" as none of her clients (except Ms. Myers) filed a complaint with Disciplinary Counsel, and that it is a violation of the ethical rules to expose the confidential business of her clients. (R. Br. at 10–11.)

Disciplinary Counsel argues that Ms. Ekekwe-Kauffman failed to seek a protective order from the Board to limit the disclosure of client names and information. *See* D.C. Bar R. XI, § 17(d) (permitting the Board Chair to issue an order prohibiting the disclosure of confidential or privileged information). (ODC Reply Br. at 6.)

Second, Ms. Ekekwe-Kauffman requests that information concerning the members of SOAR LLC be stricken because the information is neither relevant nor necessary. (R. Br. at 11.) Disciplinary Counsel argues that evidence concerning Ms. Ekekwe-Kauffman's ownership interest in SOAR and control over SOAR funds is relevant because Disciplinary Counsel used entrusted funds to pay SOAR's bills. (ODC Reply Br. at 5.)

Finally, Ms. Ekekwe-Kauffman requests that her ownership interest in the property where her office is located be stricken because it is irrelevant to the proceeding. (R. Br. at 11.) Disciplinary Counsel does not address this argument.

Although she should have raised the matter earlier, even at the hearing, the Committee is mindful of Rule 1.6 and the importance of maintaining client confidentiality. Moreover, at bottom, the Committee agrees with Ms. Ekekwe-Kauffman that her clients' confidences and secrets should not be disclosed in this matter. That said, the Committee does not believe the record currently discloses information at the core of Rule 1.6's protections. The names of Ms. Ekekwe-Kauffman's clients are neither confidences nor secrets, and the Committee does not believe they need to be stricken from the record. In addition, the minimal information the record has about these individuals' matters does not appear to meet the definition of a confidence or a secret. *See* D.C. R. Prof'l Conduct 1.6(b). Accordingly, the Committee finds no need to scrub information from the record related to Ms. Ekekwe-Kauffman's clients.

The privacy of SOAR-related individuals (who are not Ms. Ekekwe-Kauffman) should be respected. Accordingly, the Committee has avoided using the names of anyone else affiliated with SOAR, as their identities and roles are not relevant to this matter. Ms. Ekekwe-Kauffman's relationship with SOAR, however, is relevant for the reason that Disciplinary Counsel asserts. Consequently, her relationship to SOAR will not be omitted, nor will her interest in the property that serves as her law office.

IV. RECOMMENDED SANCTION

A. Standard of Review

In this case, Disciplinary Counsel has asked the Committee to recommend the sanction of disbarment. (ODC Br. at 48.) Ms. Ekekwe-Kauffman has requested that the Committee recommend no sanction. (R. Br. at 13.) For the reasons described below, the Committee recommends the sanction of disbarment.

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; *Martin*, 67 A.3d at 1053 (citing *In re Elgin*, 918 A.2d 362, 376 (D.C. 2007)); *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 her wrongful conduct; and (7) circumstances in mitigation or aggravation. *See, e.g.*, *Martin*, 67 A.3d at 1053 (citing *Elgin*, 918 A.2d at 376). 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)) (internal quotation marks omitted).

B. Because Ms. Ekekwe-Kauffman Committed Reckless Misappropriation, Disbarment Is the Presumed Sanction.

The law regarding misappropriation is clear and consistent: Absent "extraordinary circumstances," disbarment is the presumptive sanction for intentional or reckless misappropriation. *In re Addams*, 579 A.2d 190, 191 (D.C. 1990); *In re Hewett*, 11 A.3d 279, 286 (D.C. 2011); *see also In re Mayers*, 114 A.3d 1274, 1279 (D.C. 2015) (" 'In virtually all cases of misappropriation, disbarment will be the only appropriate sanction unless it appears that the misconduct resulted from nothing more than simple negligence.' " (quoting *Addams*, 579 A.2d at 191)). The Court further held that "it is appropriate . . . to consider the surrounding circumstances regarding the misconduct and to evaluate whether the mitigating factors are highly significant and [whether] they substantially outweigh any aggravating factors such that the presumption of disbarment is rebutted." *Addams*, 579 A.2d at 195. The Court recognized that extraordinary circumstances are present

when a respondent is entitled to mitigation under *In re Kersey*, 520 A.2d 321 (D.C. 1987), but the Court warned that "mitigating factors of the usual sort" are not sufficient to rebut the presumptive sanction of disbarment, and "[o]nly the most stringent of extenuating circumstances would justify a lesser disciplinary action." *Addams*, 579 A.2d at 191, 193.

Accordingly, once misappropriation involving more than simple negligence has been established, the inquiry turns to whether sufficient mitigating factors rebut the presumption of disbarment. *Anderson*, 778 A.2d at 337-38 (citing *Addams*, 579 A.2d at 191). As mitigation, Ms. Ekekwe-Kauffman testified about changes made in her office-management and recordkeeping practices and lessons learned from Disciplinary Counsel's investigation. (Tr. 256–58, 309–15 (Ekekwe-Kauffman).) She also stated that she took a law-office-management continuing-legal-education course and another CLE course on maintaining trust accounts because she does not want to have any more trust-account issues. (R. Br. at 9; RX 5; Tr. 263 (Ekekwe-Kauffman).) These efforts for improvement do not constitute the sort of extraordinary circumstances necessary to rebut the presumption of disbarment. The Committee, therefore, recommends that Ms. Ekekwe-Kauffman be disbarred.

V. CONCLUSION

For the foregoing reasons, the Committee finds that Ms. Ekekwe-Kauffman violated Rules 1.4(a), 1.15(a), 1.16(d), 8.1(b), 8.4(c), and 8.4(d) and recommends that Ms. Ekekwe-Kauffman should receive the sanction of disbarment. The Committee further recommends that Ms. Ekekwe-Kauffman'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, § 16(c).

AD HOC HEARING COMMITTEE

Joshua D. Rogaczewski
Chair

Rebecca C. Smith
Attorney Member