THIS REPORT IS NOT A FINAL ORDER OF DISCIPLINE*

DISTRICT OF COLUMBIA COURT OF APPEALS
BOARD ON PROFESSIONAL RESPONSIBILITY

Issued
July 18, 2023

In the Matter of:	:	
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BRUCE A. JOHNSON, JR.,	:	
	:	
Respondent.	:	Board Docket No. 20-BD-020
	:	Disc. Docket Nos. 2017-D158, 2018-D337 & 2018-D357
A Member of the Bar of the District of Columbia Court of Appeals (Bar Registration No. 445925)	:	

REPORT AND RECOMMENDATION OF THE BOARD ON PROFESSIONAL RESPONSIBILITY

I. INTRODUCTION

This matter arises from Respondent Bruce A. Johnson, Jr.'s representation of two clients and his management of his IOLTA trust account. Starting with the most serious charges in Count Three, the parties agree that Respondent misappropriated funds in violation of Rules 1.15(a) and (e), because he failed to reconcile the trust account and failed to replenish (or otherwise account for) the credit card fees and other bank charges, allowing the balance of the account to fall below the amount he was supposed to be holding in trust for four identified clients. But the parties disagree as to whether the misappropriation was negligent or reckless. The Ad Hoc Hearing Committee found it was a close case but concluded his conduct was negligent. We agree that this is a close case but based on the Court's precedents we are compelled to find that Respondent's conduct was reckless. Respondent was

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* 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.

inattentive to his trust account for more than three years—he did not review bank statements, relying instead on an internal system with erroneous information, and he signed stacks of checks without reviewing them. While he hired qualified staff to aid in his bookkeeping, he did not verify that staff were following instructions. Once he learned that staff were failing to reconcile the account, his belief that funds were safeguarded was no longer objectively reasonable. His continued inattention to the account demonstrated a disregard for the safety of entrusted funds.

With regard to the other charges in Count Three, the parties do not dispute the Committee's conclusions that Respondent failed to keep complete records of entrusted funds, knowingly failed to respond reasonably to Disciplinary Counsel's request for information about his trust account and engaged in conduct that seriously interfered with the administration of justice, in violation of Rules 1.15(a) and (e), 8.1(b), and 8.4(d). The Board concurs with those conclusions.

As for the two client complaints, Linda Carlos (Count One) and Barnedia Drayton (Count Two), the Committee found that Respondent failed to provide his clients with written fee agreements, failed to keep complete records of advance fees and entrusted funds, failed to timely surrender papers and property or refund unearned advance fee payments, and engaged in conduct that seriously interfered with the administration of justice, in violation of Rules 1.5(b) (both clients), 1.15(a) and (e) (both clients), 1.16(d) (both clients), and 8.4(d) (Drayton). The Committee rejected two of Disciplinary Counsel's charges in the Carlos representation: Rule 8.1(b) (knowingly failing to respond reasonably to Disciplinary Counsel's lawful

demand for information) and 8.4(d) (serious interference with the administration of justice). Disciplinary Counsel takes exception to both conclusions, but we agree with the Committee that the charges were not proven by clear and convincing evidence.

Respondent also takes exception to some of the Committee's conclusions. He argues that he did not violate Rule 1.5(b) because he adequately provided fee agreements to Ms. Carlos and Ms. Drayton, and he argues that he did not violate Rule 1.16(d) to the extent found by the Committee because he did not need to refund any fees to Ms. Carlos. But Respondent conceded that he failed to return Ms. Drayton's file in violation of Rule 1.16(d).[1] We agree with the Committee that Respondent violated both Rules 1.5(b) and 1.16(d), including by failing to provide a partial refund to Ms. Carlos. Respondent does not take exception to the Committee's finding that he did not keep and preserve complete records of the advance fees received in the Carlos and Drayton matters in violation of Rule 1.15(a) and (e), and we concur with those conclusions.

The Committee recommended a sixteen-month suspension as a sanction. Disciplinary Counsel argues in favor of disbarment for reckless misappropriation, or, in the alternative, if the Board concludes the misappropriation was negligent, a suspension with a requirement to show fitness to be reinstated and a requirement to refund unearned fees in the Carlos matter. Respondent argues that although he

[1] During the Board's oral argument, Respondent conceded the Rule 1.16(d) violation in the Drayton matter because he did not timely return her file. *See* FF 169, 171, 174.

engaged in negligent misappropriation, the Committee's sixteen-month sanction recommendation is too harsh. He suggests that a six-month suspension accords with similar negligent misappropriation cases.

Because we agree with Disciplinary Counsel that Respondent's misappropriation is reckless, we are compelled to recommend disbarment. *See In re Addams*, 579 A.2d 190, 191 (D.C. 1990) (en banc).

II. FINDINGS OF FACT

Having reviewed the record, we adopt the Committee's factual findings (with one minor exception) because they are supported by substantial evidence in the record as a whole. We summarize those findings below and where we have "expand[ed] the findings," we have included citations to the record, and we conclude that those expanded findings are supported by "substantial evidence on the record as a whole." Board Rule 13.7.

Respondent took exception to several of the Committee's factual findings. Most of these exceptions are a request for the Board to reweigh the evidence. We decline that request because it is not appropriate for the Board to alter the Committee's factual findings by reweighing the evidence. *See In re Speights*, 173 A.3d 96, 102 (D.C. 2017) (weight of the relevance of evidence is "within the ambit of the Hearing Committee's discretion"). Instead, "the Board must accept the Hearing Committee's evidentiary findings, including credibility findings, if they are supported by substantial evidence in the record," *In re Johnson*, 275 A.3d 268, 275 (D.C. 2022) (per curiam), "even though there may also be substantial evidence in

the record to support a contrary finding," *In re Godette*, 919 A.2d 1157, 1163 (D.C. 2007). Substantial evidence in turn "means enough evidence for a reasonable mind to find sufficient to support the conclusion reached." *In re Thompson*, 583 A.2d 1006, 1008 (D.C. 1990) (per curiam). With one minor exception discussed in footnote 2, we reject Respondent's factual challenges because the Committee's findings are supported by substantial evidence.

A. Linda Carlos Complaint (Count One)

1. Ms. Carlos retains Respondent to handle several matters and is charged a flat fee.

In March 2012, Linda Carlos and her cousin, Jeffrey Jackson, formed a business called Essential Security Services, LLC ("ESS"), that provided security guards to apartment buildings and small businesses. FF 26. In February 2015, Ms. Carlos retained Respondent to represent ESS. FF 30-31, 33. At their initial meeting, Respondent told Ms. Carlos that he could charge her a flat fee of $4,000 each for two legal matters they had discussed, an employee wage claim and a claim against Mr. Jackson, who had improperly written checks to himself from a BB&T account. FF 33-34; *see* FF 28. Ms. Carlos documented the fee in an email to Respondent. RX 56 at 530 (noting a total of $8,000 in flat fees for the "Overtime/Wages issues" and the "BB&T – Unauthorized Transactions"). Respondent confirmed the agreement by reply email: "That is correct. Joyce will work on the retainer tomorrow." *Id*.; *see also* FF 35. But Ms. Carlos rejected the draft agreements sent to her because they referred to hourly fees. RX 60 at 539; FF 36.

Respondent subsequently agreed to handle other matters on a flat fee basis for Ms. Carlos and ESS. FF 37. Those other flat fees totaled more than $14,000 ($7,000 flat fee for Preston Joyner case, $900 flat fee for Francis Maduwuba lawsuit, $1,600 flat fee for Jonathan Love and Daphne Nelson matters, and $5,000 in flat fees for Jamaar Brooks matter). *See* FF 37, 52, 65, 75, 90-91. In each of these matters, Respondent did not provide Ms. Carlos with a writing that set forth the terms of the representation or rate of the fees and nothing in the record reflects that Ms. Carlos documented the fees for Respondent (as she did with the first two matters). FF 53, 66, 78, 103. Respondent also did not discuss with Ms. Carlos how he would handle the flat fees paid in advance of his work. FF 38.

Respondent claimed that he had written agreements in those matters and produced documents at the hearing, but the Committee credited Ms. Carlos's testimony that she had never received those agreements. FF 36 (her testimony was "entirely credible" on this issue); *see also* FF 38, 66, 78, 103. The Committee also found that the written fee agreements that Respondent produced for the hearing, but which Ms. Carlos did not receive, were all unsigned and undated. *See* HC Rpt. at 12 nn.13 & 14. As a general practice, the firm's staff emailed written fee agreements to clients, but Respondent did not ensure that agreements were returned and signed. FF 23.

Respondent's representation of Ms. Carlos and ESS was short-lived. By July 5, approximately five months after they had first met, Ms. Carlos fired Respondent by email and directed him to transfer the files and "monies that are left over" to her

successor counsel. FF 112-113. For the flat fees received, Respondent had incomplete trust account records. *See, e.g.*, FF 99-100 (incomplete ledger), 109 (incomplete or missing time sheets). And he never provided Ms. Carlos with an accounting for the time and expenses on any of the several matters he handled. FF 113. But from the records that do exist, the Committee made specific and detailed findings to show that Respondent had not earned all the fees paid by Ms. Carlos when the representation ended. *See* FF 47, 55-56, 61, 68, 71, 79, 80, 83, 91-92; *see also* HC Rpt. at 78-80 (noting that Respondent conceded that he did *nothing* to pursue the Nelson contracts but kept the entire flat fee). Despite her request to have the funds returned, Respondent did not refund any portion of the fees he had received from Ms. Carlos. FF 113.

2. Responses to Disciplinary Counsel.

After receiving the complaint from Ms. Carlos, Disciplinary Counsel asked Respondent for a response to her allegations. FF 114-115. Respondent did not immediately respond but after receiving a second request, he provided a written response with about 100 pages of attachments. FF 117. Disciplinary Counsel then followed up with a subpoena for the firm's trust account records and office checking account records going back to January 1, 2015. FF 121. Again, Respondent did not immediately respond to the subpoena. FF 122. But after two reminders from Disciplinary Counsel, FF 123-124, Respondent provided a response that included several documents. FF 125, 129; DCX 17 (*e.g.*, five unsigned fee agreements, ledgers for separate matters in the Carlos representation, copies of several checks

from the trust account payable to the firm's operating account). His response omitted documents, including three email messages to Ms. Carlos (FF 127; RX 60 at 539; RX 143 at 928; RX 157 at 967), the Maduwuba lawsuit ledger (FF 130; *see also* FF 72; Tr. 170-72; DCX 17), the complete employee wage ledger (*Compare* FF 132, *and* RX 251, *with* FF 129(b), *and* DCX 17 at 286, 300), and the complete Jamaar Brooks lawsuit ledger (*Compare* FF 136, *and* RX 254, *with* FF 129(f), *and* DCX 17 at 295), most of which he later provided as exhibits at the disciplinary hearing.

The Committee credited Respondent's testimony that he had come upon the documents he did not initially produce to Disciplinary Counsel when he searched another database "on a whim" when preparing for the hearing, FF 128; Tr. 1524, and he had failed to review the May 24, 2019 submission to make sure it was complete, FF 131. Even after his late searches, Respondent was not able to produce a complete general ledger. He produced a partial general ledger, FF 206, and several individual client ledgers that were incomplete. *See, e.g.*, FF 72 (no ledger produced for Maduwuba lawsuit), 99, 107 (no ledger for BB&T/Jackson matter), 200 (incomplete ledger for, *inter alia*, employee wage matter).

B. Barnedia Drayton (Count Two)

1. Ms. Drayton hires Respondent and pays a flat fee.

Barnedia Drayton retained Respondent in early 2017 to represent her in a wrongful termination appeal. FF 137, 140-141. Respondent offered to handle her appeal for a flat fee of $10,000. FF 141. Ms. Drayton never received a copy of the

retainer agreement, despite alerting staff of that failure. FF 145. The Committee credited Ms. Drayton's testimony that she had never received any written fee agreement from Respondent. FF 145; HC Rpt. at 64. Respondent also did not explain to Ms. Drayton how he would handle her advance flat fee. FF 143. And he did not provide an accounting or invoices to Ms. Drayton but took periodic payments as the case was ongoing. FF 143.

Ms. Drayton was dissatisfied with Respondent's services and terminated him. FF 168. Ms. Drayton asked for her file, but in response, she was told that the file would be available for $200. FF 168-169. After Ms. Drayton complained to the Office of Disciplinary Counsel, Respondent made the file available to her. FF 174. Respondent conceded that he should have handled this request for the file better. FF 170.

2. Respondent's incomplete records.

Respondent admittedly did not keep complete or accurate records of Ms. Drayton's payments and his disbursements. *See* FF 189, 194. His records included an unsigned fee agreement for $2,000 for preparing a demand letter but no fee agreement for her payment of $10,000 for her appeal. FF 184. He presented at the hearing a five-page "Time Listing" for his representation, copies of four of the checks he received from Ms. Drayton totaling $8,000, but at the same time, five receipts from his office for her total payment of $10,000 and deposit slips. FF 184, 187, 189. The Committee noted that his Drayton client ledger he produced to Disciplinary Counsel included a discrepancy that suggested Respondent had

received $13,000 instead of $10,000 in payments from Ms. Drayton. *See* FF 190-191.

3. Respondent's incomplete and late responses to Disciplinary Counsel, following an order to compel.

On November 13, 2018, Disciplinary Counsel received a complaint from Ms. Drayton which it forwarded to Respondent on November 29 requesting a response to her allegations. FF 171-172. On December 18, Respondent provided a copy of the Administrative Judge's decision and copies of pleadings and other documents from Ms. Drayton's appeal. FF 175. On April 9, 2019, Disciplinary Counsel sent a follow-up letter identifying the documents, such as financial records, not included in his response and included a subpoena for any records relating to his representation of Ms. Drayton with a response date of April 22. *See* FF 177-178. On May 8, Disciplinary Counsel sent Respondent another follow-up letter and requested a complete response to Ms. Drayton's allegations as well as compliance with the subpoena. FF 180.

On May 22, Disciplinary Counsel sought an order to enforce the subpoena. FF 183. Two days later, Respondent provided Disciplinary Counsel several documents related to the representation but did not include financial records. FF 184. On June 25, the Court ordered Respondent to comply with the subpoena within 15 days. FF 185. Respondent provided more documents within 15 days (July 9) in response to the outstanding subpoena, FF 184, 187, but several email messages and financial records were still omitted. Some of those missing documents were

later produced as exhibits for the disciplinary hearing. *See* FF 188, 189, 191, 192, 194.

In late January 2021, more than a week after Ms. Drayton had testified before the Committee, Respondent "produced more than 20 additional emails or email chains relating to Drayton's matter which he offered as exhibits," and he filed additional exhibits of receipts and deposit slips. FF 188-189. Respondent also created new records for the hearing that he offered as exhibits. FF 194. Unlike in the Carlos matter, Respondent did not explain why he withheld documents that were clearly responsive to the subpoena after the Court ordered compliance.

C. Respondent's Trust Account (Count Three)

1. The overdraft notices.

Problems with Respondent's trust account came to Disciplinary Counsel's attention when it received multiple overdraft notices in December 2018. FF 236; DCX 44 at 495-500 (overdraft notices received on December 4, 6, and 11). Respondent's trust account lacked sufficient funds to cover six checks because Respondent did not reimburse the account for the credit card fees and bank fees for over three years (2015 to 2018). *See* FF 7, 9-10, 215. The funds that Respondent was supposed to be holding in November 2018 belonged to clients: (1) Alpha Gibbs; (2) Lily's Mexican Market; (3) Alyssa Perez; and (4) Shawn Edwards. FF 226. Respondent admitted that he never had Mr. Gibbs's permission to take or use any of the unearned fees that he held for Mr. Gibbs, but between November 1, 2018 and January 2019, the balance in the trust account fell below the amounts held for Mr.

Gibbs. FF 228-229. Respondent also acknowledged that he never had authority to take $1,359.50 in funds he was holding in the trust account for Lily's Mexican Market, but on November 21, 2018, Respondent drew a trust account check for $640.50 for work completed on behalf of Lily's Mexican Market, which subsequently bounced. FF 232-233. Respondent also lacked authority to take and use Ms. Perez's $247.85, which he had not earned, but on November 21, 2018, the firm's trust account balance fell to less than $5. FF 234. At the same time, the trust account was supposed to be holding $3,000 in trust for Mr. Edwards. FF 235.

On December 28, 2018, Respondent made a wire transfer of $15,000 from his personal account to the trust account to replenish some of the client funds. FF 238. On January 11, 2019, Respondent transferred another $5,000 from his personal account to the trust account. FF 238.

2. Respondent knew his employee failed to reconcile the trust account but remained inattentive to the account.

Respondent is the only principal at his law firm, but he relies on a staff of associate attorneys, paralegals, and clerical personnel. *See* FF 4, 24. He is, however, the only signatory to his law firm's accounts, including the trust account. FF 4. Between January 2015 and February 2019, Respondent "had a high-volume practice," and "[d]uring each of those years, he took on hundreds of new clients." FF 195. Clients were mostly charged flat fees, but Respondent sometimes charged hourly fees which were received as advance fees. FF 196. The deposits made to the firm's trust account ranged from tens of thousands to more than a hundred thousand dollars each month. FF 197. Given the size of his practice, trust account checks

were issued on most business days each month. *See* FF 198 (describing 32 checks in February 2016, 38 checks in August 2016, 39 checks in September 2017, and 36 checks in May 2018). Trust account checks that transferred funds to the firm's operating account were often made to include earned fees from multiple clients at a time. FF 199. Only after the disciplinary hearing started, did Respondent come to realize that he mistakenly paid himself fees of $13,000 when Drayton had only paid him a total of $10,000 in fees. FF 225; *see* FF 191.

Joyce Ross was Respondent's office manager from July 2013 to February 2015. FF 18. Ms. Ross was experienced in accounting and bookkeeping, and she helped Respondent handle the accounting functions of the office. FF 18, 203. Ms. Ross was responsible for making the trust account reconciliations to calculate the amounts needed to reimburse the firm's trust account because of the credit card and bank fees that would be deducted from the account. FF 203.

When Ms. Ross left the office in February 2015, Respondent hired Everett Broussard to carry out the accounting functions. FF 18-19. Mr. Broussard had significant training in accounting.[2] FF 19. Ms. Ross also taught Mr. Broussard the

[2] The Board agrees with Respondent's exception to FF 3 because it incorrectly states that Respondent holds an advanced degree in accounting or financial management. His objection has merit because FF 3 relies on a misreading of Respondent's Brief to the Committee at 37 in support of that fact. The brief describes Mr. Broussard's accounting and financial management education, not his own. The Board finds that this minor error by the Committee does not have an effect on the remaining facts or the legal conclusions.

procedures for reconciling the trust account. FF 19. Mr. Broussard worked part-time for Respondent until the end of 2018. FF 20.

During the relevant period, Respondent did not review his monthly trust account bank statements as they were received but would provide them to staff. FF 15. Once or twice a month, Mr. Broussard would prepare a stack of checks for Respondent to sign. FF 21. Respondent was inattentive to the checks he was signing, but he would review the firm's account balances shown on the firm's software system—PCLaw. FF 22; *see* FF 17, 210.

From January 2015 to at least May 2019, the firm used PCLaw, an accounting software system that records billable time. FF 17. PCLaw was also used to record client payments to the firm's trust account and the transfers to the law firm's operating account. FF 17. PCLaw depended on accurate entry of each deposit and withdrawal—if a deposit or withdrawal was not entered into PCLaw then the system would show an incorrect balance. *See* Tr. 1141, 1492-93; *see also* Tr. 83-93.

Respondent knew that some of his clients paid him by credit card and that those payments were reduced by the percentage fees charged by Total System Services ("TSYS") (for non-American Express credit cards) or American Express. FF 12; *see* FF 7-11 (describing the TSYS and American Express fee charges). Respondent, however, "was completely out of touch with the extent to which credit card payments were being accepted into his client trust account." FF 13. All credit-card processing fees (as well as bank fees) were withdrawn automatically from the firm's trust account. *See* FF 11.

The Committee credited Respondent's testimony that he would regularly sign a stack of checks prepared by staff without reviewing each individual check. FF 22 ("When given a stack of checks to sign, Respondent did not pay attention to what checks he was signing." (citing Tr. 98:1-11, 1608:1-7) (Respondent)). The Committee also credited Respondent's testimony that he did not personally review the monthly bank statements. FF 15.

Respondent explained to Disciplinary Counsel, in February 2019, that he first learned "in the midpoint of 2016" that his trust account balance was not matching the funds shown in PCLaw. DCX 45 at 502; *see* DCX 45 at 535.

> I noticed in the midpoint of 2016 that the trust [account] was not matching the funds showing in PCLaw (our inhouse accounting system). Accordingly, I enlisted the assistance of a bookkeeper [Mr. Broussard]. Unfortunately, the bookkeeper I hired took far longer than I would have liked to reconcile the trust account.

DCX 45 at 502. Respondent's emails to Mr. Broussard reflect that he was aware in 2016 that the credit card fees needed to be returned to the trust account: "I need to cut a check to replenish the trust account for . . . credit card costs. Please let me know the amount. Thanks." DCX 45 at 535; FF 212; *see* also DCX 48 at 598 (Respondent's response to Disciplinary Counsel: "Much to my chagrin, in 2016 when I checked in with Mr. Broussard on reconciliation he said he had not been doing it. . . . I verbally told him that reconciliation was required."). Mr. Broussard replied orally, "I got it, it's taken care of, don't worry about it." FF 214 (quoting Tr. 92:8-15 (Respondent)). Respondent described Mr. Broussard's response as "[h]e kind of blew it off and said[, 'W]ell it's going to be minimal or nominal but I'll take

care of it.[']" Tr. 90-91; *see also* FF 213. Respondent believed his concern about reimbursing the trust account for the credit card fees had been fully addressed by Mr. Broussard. FF 214; Tr. 91 (Respondent: "I believed that he would, that's what I was paying him to do and that's certainly how Joyce trained him to do it, is to make sure that not only the transaction fees from credit cards were paid but that any terminal fees . . . ."). Respondent admitted that in retrospect his supervision of Mr. Broussard was deficient. FF 216; Tr. 1611 ("I made a mistake and I acknowledge that.").

Respondent did not follow up to verify that Mr. Broussard completed the reconciliation, nor did he confirm that the credit card fees were returned to the trust account. Tr. 1610; *see* FF 215, 236, 238-240. During the time Mr. Broussard was responsible for reconciliations (about March 2015 to December 2018), no checks were deposited to the trust account to refund the credit card fees and bank charges that had been automatically withdrawn. FF 215. Respondent's records were incomplete, but there was sufficient information to show that at least from August 31, 2014 to January 31, 2015 (before Mr. Broussard's employment), the trust account was reimbursed monthly for bank charges. FF 204; *see* FF 246, 248 (noting that Respondent failed to produce complete records showing all deposits and disbursements for the firm's trust account and trust account general ledgers); *see also* FF 202; RX 43 at 450 (noting a check from the firm's operating account signed by Respondent and deposited into the trust account in November 2012 for $3,415.84 with the notation: "Credit Card Expense Reimb").

The total amount of TSYS credit card fees deducted from Respondent's trust account from January 2015 through February 2019 was $31,725.66; and the total deductions for the American Express credit card fees from January 2015 through July 2016 (when he was still accepting American Express payments) was $3,267.83. FF 217.

3. Late and incomplete responses to Disciplinary Counsel.

In December 2018, Disciplinary Counsel sought information on the trust account following the overdraft notice with a reply due by January 2, 2019. FF 236. In mid-February, more than a month after the response deadline, Respondent provided incomplete responses. FF 237. Disciplinary Counsel tried again in May 2019 to seek responsive information to the overdraft investigation. FF 242. An additional follow-up request was sent in July 2019. FF 243. Finally, in August, Respondent provided additional information. FF 244. But the information remained incomplete.[3] FF 245-247.

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[3] Disciplinary Counsel submitted evidence that in February 2018, Respondent entered into a one-year diversion agreement with the Maryland Bar based on a client complaint that Respondent did not supervise an associate's work. FF 218. Disciplinary Counsel points to the Maryland investigation and agreement to demonstrate that Respondent was aware of his obligation to reconcile the trust account. *See, e.g.*, ODC Br. 30, 45, 47-48. The Maryland agreement required Respondent to complete a CLE program and work with a practice monitor to assist Respondent in developing effective practices that included trust account record-keeping. FF 219. As noted, Respondent's trust account did not have sufficient funds to cover six checks drawn on the account in November 2018, during the period of Respondent's one-year diversion agreement with the Maryland Bar—but the overdrafts occurred before he took the required CLE. *See* FF 222, RX 365 at 2083 (CLE in December 2018). And the record does not have the full account of the work

III. CONCLUSIONS OF LAW

The Board reviews de novo whether Disciplinary Counsel has proven a rule violation by clear and convincing evidence. *See In re Micheel*, 610 A.2d 231, 234-35 (D.C. 1992); *In re Evans*, 902 A.2d 56, 60-61 (D.C. 2006) (per curiam) (appended Board Report). Similarly, the determination of state of mind is an ultimate fact—which is really a conclusion of law—that is reviewed de novo. *See In re Gray*, 224 A.3d 1222, 1228 (D.C. 2020) (per curiam). A Hearing Committee's credibility findings are determinations of subsidiary fact, to which the Board gives deference "so long as substantial evidence in the record supports them and they are not infected by any mistake of law." *In re Krame*, 284 A.3d 745, 755 (D.C. 2022); *see also In re Anderson*, 778 A.2d 330, 341-42 (D.C. 2001). We address each Rule violation and the parties' arguments, starting with the more serious trust account violations.

A. Respondent's Misappropriation Was Reckless in Violation of Rules 1.15(a) and (e).

Rule 1.15(a) prohibits misappropriation of entrusted funds. "Misappropriation occurs when the balance of an attorney's trust account falls below the amount of the client's funds held in trust." *Gray*, 224 A.3d at 1229 (citing *In re Abbey*, 169 A.3d 865, 872 (D.C. 2017)). Misappropriation includes "any unauthorized use of client's funds entrusted to [the lawyer], including not only stealing but also unauthorized temporary use for the lawyer's own purpose, whether

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Respondent did with the practice monitor. Based on the limited record, the Board is not confident that the Maryland agreement demonstrates that Respondent was on notice of his reconciliation obligations. And as reflected in Section III.A, the Board does not rely on these facts in its misappropriation analysis.

or not he derives any personal gain or benefit therefrom." *Anderson*, 778 A.2d at 335 (alteration in original) (quoting *In re Harrison*, 461 A.2d 1034, 1036 (D.C. 1983)). For misappropriation, "[i]t does not matter that the lawyer has sufficient funds on hand to pay the money back, or even whether the lawyer replenishes the trust account with his own funds without the client finding out that the money was missing." *Gray*, 224 A.3d at 1229.

As it relates to the sanction, the key question is the degree of culpability or state of mind proved by Disciplinary Counsel. Misappropriation that results from intentional or reckless misappropriation almost always results in disbarment. *Gray*, 224 A.3d at 1229 (citing *Anderson*, 778 A.2d at 338). "The burden is on Disciplinary Counsel to prove state of mind, . . . and if it does not prove intentional or reckless misappropriation by clear and convincing evidence, it has 'proved no more than simple negligence.'" *In re Haar*, 270 A.3d 286, 296 (D.C. 2022) (citations omitted). This burden of proof does not shift "simply because an attorney attempts to give an explanation for his conduct." *Id.*

The Court has defined negligent misappropriation as:

> [A]n 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.

Abbey, 169 A.3d at 872; *see also Anderson*, 778 A.2d at 339 (providing that negligent misappropriation occurs where "the unauthorized use was inadvertent or the result of simple negligence"). By contrast, reckless misappropriation

> reveal[s] an unacceptable disregard for the safety and welfare of entrusted funds, and its hallmarks include: the indiscriminate commingling of entrusted and personal funds; a complete failure to track settlement proceeds; the total disregard of the status of accounts into which entrusted funds were placed, resulting in a repeated overdraft condition; the indiscriminate movement of monies between accounts; and finally the disregard of inquiries concerning the status of funds.

In re Ahaghotu, 75 A.3d 251, 256 (D.C. 2013) (alteration in original) (internal quotation marks omitted).

Reckless misappropriation is not limited to cases that meet all five hallmarks. *See, e.g.*, *id.* at 255 (three of five hallmarks); *In re Pleshaw*, 2 A.3d 169, 174-75 (D.C. 2010) (no discussion of the hallmarks in probate matter); *In re Pels*, 653 A.2d 388, 395-97 (D.C. 1995) (three of five hallmarks). As the Court explained in *Gray*, "no one factor is dispositive." 224 A.3d at 1231. The question is whether the attorney's conduct "exhibited an 'unacceptable level of disregard for the safety and welfare of entrusted funds'—that is, 'a conscious indifference to the consequences of his behavior for the security of the funds.'" *Ahaghotu*, 75 A.3d at 253 (quoting *Anderson*, 778 A.2d at 336, 339). An attorney's assertion of a good faith belief that he was spending his own funds (not client funds) must be objectively reasonable to preclude a finding of recklessness. *Gray*, 224 A.3d at 1232.

1. Respondent's trust account had insufficient funds.

Respondent concedes he misappropriated entrusted funds he was holding for Mr. Gibbs, Lily's Mexican Market, Ms. Perez, and Mr. Edwards when the firm's trust account fell to less than $5, causing six trust account checks to be dishonored. After reviewing the record and the Committee's findings, the Board finds that Disciplinary Counsel proved Respondent violated Rule 1.15(a) as to those specific clients because the record demonstrates that the trust account held less than the amounts Respondent was to be holding for each of those clients. *See Gray*, 224 A.3d at 1229.

Disciplinary Counsel's theory of misappropriation also refers to "multiple misappropriations" by Respondent "when he used his clients' funds to pay the credit card fees and other bank charges" and when he mistakenly paid himself an extra $3,000 in fees when he paid himself in the Drayton matter. Brief of Disciplinary Counsel in Support of Exceptions to the Hearing Committee's Report and Recommendation ("ODC Br.") at 43. As the Committee explained:

> Due to this continuing cash drain [from the credit card fees,] the trust account remained out of balance, and every time during that period when Respondent wrote a check transferring funds for "earned" advance legal fees from this trust account to his general operating account, he was *to some indeterminate extent* misappropriating clients' funds.

HC Rpt. at 66 (emphasis added).

We do not read Disciplinary Counsel's argument so broadly as to suggest that each initial credit card fee itself is a misappropriation but that it becomes

misappropriation when Respondent did not timely reconcile and reimburse those fees. *See* ODC Br. at 45 (referring to replenishing the account for those fees). In its briefing to the Committee and the Board, Disciplinary Counsel never identifies how soon the trust account should have been reimbursed for the credit card charges, but relied on the fact that by November 2018, Respondent was "supposed to be holding tens of thousands of dollars in trust for his clients, but the balance in the trust account was less than $5." ODC Br. at 43.[4]

Disciplinary Counsel is correct that the record supports a complete failure to timely reconcile and reimburse those fees for over three years and that the account was short almost $35,000. The question before us is whether that failure was negligent or reckless.[5]

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[4] A client's use of a credit card to pay an attorney's fees is not prohibited by the Rules, but an attorney should be aware of the risks to his or her bar license if receiving payment this way. *See* D.C. Bar Legal Ethics Opinion 348 (March 2009). D.C. Bar members have been on notice since 2009 that while "there is nothing in the D.C. Rules that prohibits a lawyer from using a credit card for unearned legal fees and expenses (advance fees)," they may not allow "the use of a credit card [to] jeopardize the security of entrusted funds . . . ." *Id.*

[5] The Board has reviewed another Hearing Committee Report involving the payment of client fees through credit cards, *In re Waldeck*, Board Docket No. 21-BD-038 (BPR June 28, 2023) (appended Hearing Committee Report) (no exceptions filed), *review pending*, D.C. App. No. 23-BG-0542. There, the respondent did not participate in the disciplinary proceedings but his response letter during the disciplinary investigation indicated that he knew in January 2011 that his account was short $1,418.48 because of credit card fees that he had been unable to reimburse because he "did not have the means to do so," resulting in a bounced trust account check and the Committee's finding of "at least reckless" misappropriation. *Waldeck*, Board Docket No. 21-BD-038, at 36-37, 49 (HC Rpt. Apr. 20, 2022).

2. Respondent's inattention to his trust account was reckless.

Disciplinary Counsel argues that Respondent's misappropriation was worse than the reckless misappropriation in *Ahaghotu* (a single instance of misappropriation that lasted one day) and the negligent misappropriation in *In re Dailey*, 230 A.3d 902 (D.C. 2020) (one instance of misappropriation and one dishonored check due to a shortage of $554 that should have been held in trust). ODC Br. at 44-47. Disciplinary Counsel's argument focuses on the many warning signs Respondent ignored that included that the internal trust account records did not match the bank records, that no reconciliations were being done and the credit card fees were not replenished, and that Respondent was issuing checks without knowing what funds were in the account and to whom they belonged. ODC Br. at 44-47.

Respondent counters by focusing on the hallmarks of reckless misappropriation, arguing that he did not treat client funds as his own, *see* Respondent's Brief in Support of His Exceptions to the Findings of Facts, Conclusions of Law and Recommendations of the Ad Hoc Hearing Committee ("R. Br.") at 22, did not commingle funds, R. Br. at 22-23, and did not have a disregard for the status of the accounts because he did not have notice of problems and thus did not ignore alarm bells, R. Br. at 23-25. He argues instead that he had a good faith (but erroneous) belief that the entrusted funds were safeguarded. R. Br. at 26-27, 29-30. And he focuses his argument on the fact that he hired qualified bookkeepers and used computer software (PCLaw) to track funds. R. Br. at 29.

The Board agrees with the Committee that this is a close case, but we ultimately determine that Disciplinary Counsel proved that the misappropriation was reckless. Our determination largely turns on the fact that Respondent failed to take action to protect entrusted funds after he learned that his account was mismanaged. In mid-2016, Respondent discovered that the balance of the trust account reflected in PCLaw did not match the bank balance and that Mr. Broussard was not doing reconciliations of the account or replenishing the trust account for the credit card fees. FF 210-212. At that point, Mr. Broussard had been responsible for the trust account for over a year. And while Respondent explained that he had been "completely out of touch with the extent to which credit card payments were being accepted into his client trust account," FF 13, he was aware that credit cards were used and fees were removed from the trust account, FF 12. Thus, when he learned that Mr. Broussard failed to replace those funds for over a year, he was on notice that there was a problem.

But Respondent did not treat this as a warning. He merely told Mr. Broussard to reconcile the account and write a check for the fees (reflecting that he was aware a check was required) and then continued to be inattentive to the account. He did not notice that no check was written to the trust account in mid-2016 as directed, nor were any checks written during the next two years. He continued to sign a stack of checks without looking at them. Because the credit card fees were not replenished, the trust account had a shortage of close to $35,000. FF 217. But Respondent did not notice this shortage because he did not check the balance in PCLaw against the

bank records—even though he knew in mid-2016 that the balance in PCLaw was incorrect. *See* FF 210. And that balance remained incorrect for the next two years.

To be sure, Respondent is correct. Disciplinary Counsel did not establish all five hallmarks of reckless misappropriation. But the Court has never required proof of all five because no one factor is dispositive. *Gray*, 224 A.3d at 1231; *see also Ahaghotu*, 75 A.3d at 257-58 (the five hallmarks were not "unequivocally present," but the conduct was reckless). Disciplinary Counsel's case instead centered more on the warning signs that Respondent ignored about the management of his trust account. We agree that there were ample signs of problems beginning in mid-2016.

Respondent argues, however, that by hiring qualified staff and using a system (PCLaw) to manage the funds, he had a good faith belief that the entrusted funds were safeguarded. But *Gray* teaches us that the belief must be objectively reasonable to preclude a reckless finding. 224 A.3d at 1232; *see also* HC Rpt. at 70 (finding similarities between *Gray* and Respondent's failure to "keep close control of his trust account because he was too busy" and his reckless lack of attention toward his monthly trust account statements). Respondent made some efforts to secure the trust account funds but those efforts were incomplete. Hiring staff but failing to supervise them does not meet an attorney's obligations to safeguard funds. This is especially so when the attorney is on notice that the staff failed to follow instructions and that the internal system's balance was inaccurate. Ignoring these warning signs and being inattentive does not support an objectively held belief that the funds are safe. *See Gray*, 224 A.3d at 1233 (rejecting respondent's belief as objectively reasonable

because he knew he had a duty to safeguard funds but stopped doing so, thus "manifesting a conscious indifference to the consequences of his conduct for the security of those funds").

Both parties rely on *Ahaghotu*, which turns in large part on whether the attorney knew that there was a problem before the misappropriation. *Ahaghotu* had one instance of misappropriation that lasted one day. But the Court nonetheless found the conduct was reckless because Ahaghotu ignored problems with his trust account that started a year before the misappropriation occurred. *Ahaghotu*, 75 A.3d at 254. When Ahaghotu learned that something was wrong with the account he did not spend the time needed to determine the source of the problem, making it "likely [that] something would go wrong again." *Id.* at 257. We agree with Disciplinary Counsel that the notice in *Ahaghotu* is like the notice here. Respondent knew there was a problem two years before the misappropriation occurred but did not spend the time needed in mid-2016 to fix the problem, making it more "likely [that] something would go wrong." *Id.* Notably, the Committee similarly found that Respondent ignored obvious warning signs and showed a "casual indifference" to the status of his trust account similar to that of Ahaghotu. HC Rpt. at 69-70.

In re Gregory, 790 A.2d 573 (D.C. 2002) (per curiam) is factually most alike this matter. *See* HC Rpt. at 70 ("And, like the lawyer in *Gregory*, Respondent's supervision of Mr. Broussard was next to nonexistent.") Like Respondent here, Gregory hired staff to manage his accounts, but he otherwise was inattentive to the status of his entrusted funds—he did not look at bank records or verify that staff

were correctly managing the account. *Gregory*, 790 A.2d at 576. Prior to the overdraft notice that brought him to Disciplinary Counsel's attention, Gregory learned that staff was writing unauthorized checks on the account, but he nonetheless remained inattentive. *Id*. at 577. While Gregory did not use the phrase "good faith belief," he argued that he had "no reason to doubt" staff. *Id*. at 578. But the Court disagreed (as did the Board), explaining that "holding money in trust for clients [is] a nondelegable, fiduciary responsibility that cannot be transferred and is not excused by ignorance, *inattention*, incompetence, or dishonesty." *Gregory*, 790 A.2d at 578 (appended Board Report) (emphasis added) (quoting Ann. Model Rules of Prof'l Conduct R. 5.3, cmt. (1983)); *see also In re Cater*, 887 A.2d 1, 13 (D.C. 2005) (relying on *Gregory*). Gregory's conduct was reckless because he "abdicated his responsibility" when he "did not check the account balance or the case records to make sure that entrusted funds were secure . . . even after he was told that his assistant was writing unauthorized checks on the account." 790 A.2d at 579 (appended Board Report).

Respondent too had a responsibility to protect the funds in the trust account. But he "abdicated his responsibility" when he "did not check the account balance . . . to make sure that entrusted funds were secure . . . even after" he was on notice that the account had been mismanaged for a year. *See id*. Based on the Court's holdings in *Gray*, *Ahaghotu*, and *Gregory*, we are compelled to find that Respondent's inattention to his trust account for two years after he was on notice of a problem was reckless.

The Committee, in determining that the conduct here was negligent, relied on *In re Dailey*, 230 A.3d 902 (D.C. 2020) (per curiam).[6] The Committee explained: "The Court's holding in *Dailey* counsels that a recommendation of disbarment for reckless misappropriation should be made only in the most egregious cases." HC Rpt. at 71. But *Dailey* did not set a new standard of "most egregious" misconduct for reckless misappropriation. Instead, applying prior precedents, the Court explained that proof of commingled funds and a poor system for tracking funds alone was insufficient to find that Dailey engaged in reckless misappropriation. *See Dailey*, 230 A.3d at 912 (emphasizing that "[d]espite an investigation of respondent's trust account, Disciplinary Counsel was only able to identify one instance of misappropriation and one check that was dishonored"). Recklessness, the Court explained, requires more than poor or non-existent record-keeping and commingling. *Id*. at 911 (citing *In re Robinson*, 74 A.3d 688, 695-96 (D.C. 2013); *In re Reed*, 679 A.2d 506, 509 (D.C. 1996) (per curiam); *In re Choroszej*, 624 A.2d 434, 437 (D.C. 1992) (per curiam)). We believe the Court's holding in *Dailey* describes a failure of proof and not a decision to limit reckless misappropriation to the "most egregious" cases: "The fact that [Dailey]'s commingling and poor recordkeeping did not harm any client or third-party appears to be more than

[6] Other than *Dailey*, the Committee consistently found that Respondent's conduct was more like prior cases of reckless misappropriation: "There are certainly strong similarities between the foregoing [reckless misappropriation] cases and Respondent's conduct." HC Rpt. at 69; *see also* HC Rpt. at 67-70 (considering Respondent's conduct as similar or worse than the respondents in *Ahaghotu*, *Gray*, *In re Smith*, 817 A.2d 196 (D.C. 2003), and *Gregory*).

'serendipity,' as Disciplinary Counsel argues, but rather evidences a lack of additional violations or conduct amounting to recklessness." *Dailey*, 230 A.3d at 912.

But even if *Dailey* set a higher standard, we find that Respondent's misappropriations were more egregious than Dailey's single misappropriation. Respondent's misconduct was not limited to a single misappropriation resulting in a shortage of a few hundred dollars. His misappropriations caused a shortage in his trust account of over $30,000 and six bounced checks affecting four clients. Like Ahaghotu, he ignored obvious warning signs and showed a "casual indifference." Like Gray, his "good faith" belief that entrusted funds were safeguarded was not objectively reasonable. And like Gregory, Respondent did not look at bank records or verify that staff were correctly managing the account even though he knew there were problems.[7]

B. Respondent Violated Rule 1.16(d) When He Failed to Return the Client's File and Failed to Refund Unearned Advance Fees.

Rule 1.16(d) provides that:

> In connection with any termination of representation, a lawyer shall take timely steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers

[7] The Board adopts the Committee's finding that the Rule 1.15(a) and (e) record-keeping charges in Counts One, Two, and Three were proven. *See* HC Rpt. at 72-75. As discussed *supra* pp. 2-3, 7, 9-10, 16, Respondent does not take exception to those violations and the factual findings support the conclusion that those violations were proven by clear and convincing evidence in Counts One, Two, and Three.

> and property to which the client is entitled, and refunding any advance payment of fee or expense that has not been earned or incurred.

The Committee found that Respondent violated Rule 1.16(d) in two separate ways—by failing to refund unearned fees to Ms. Carlos and by failing to return property, her file, to Ms. Drayton.[8] The failure to promptly return Ms. Drayton's file is not in dispute, but Respondent challenges the Committee's determination that Ms. Carlos was owed a refund from the flat fees she had paid.

Having reviewed the record, we decline to deviate from the Committee's facts related to the amount of work completed on a given matter. *See, e.g.*, R. Br. at 8 (Respondent taking exception to the factual findings on the amount of work completed in the Maduwuba and Love matters). As noted earlier, we review those findings for substantial evidence, and here substantial evidence supports the Committee's detailed findings with cited documentary evidence. Essentially, on multiple discrete matters, Respondent charged Ms. Carlos a flat fee but had not performed the agreed-upon service. HC Rpt. at 77-79. Respondent does not dispute that he did not complete the matters for Ms. Carlos but argues that he completed

[8] The Specification of Charges did not allege a misappropriation for the taking of unearned fees without the client's consent, but only a failure to refund unearned fees in violation of Rule 1.16(d). The Court has held that "when an attorney receives payment of a flat fee at the outset of a representation, the payment is an 'advance of unearned fees'" and must be held as property of the client under Rule 1.15(e). *See In re Mance*, 980 A.2d 1196, 1202 (D.C. 2009). Respondent deposited Ms. Carlos's and Ms. Drayton's flat fees into the firm's trust account, but Disciplinary Counsel repeatedly asserts that he took their fees either too early or without doing any work. We, however, do not consider uncharged misconduct, and, as did the Committee, limit our misappropriation analysis to Count Three.

"substantial amounts of work" and does not owe a refund. R. Br. at 39. But the Committee included detailed findings on the incomplete work and the need to refund, at least in part, the flat fees for unearned work. HC Rpt. at 78-80.

"[A]n attorney earns fees only by conferring a benefit on or performing a legal service for the client." *Mance*, 980 A.2d at 1202 (quoting *In re Sather*, 3 P.3d 403, 410 (Colo. 2000) (en banc)). Failure to refund any unearned portion of a fee violates Rule 1.16(d). *See, e.g.*, *In re Samad*, 51 A.3d 486, 497 (D.C. 2012) (per curiam) (finding a violation where the respondent claimed that he did some work on the case, but did not "suggest that he earned the entire flat fee or that he returned any portion of the fee").

Accordingly, we agree with the Committee that Respondent violated Rule 1.16(d) when he failed to refund unearned fees as requested by Ms. Carlos. As noted earlier, Respondent concedes that he violated Rule 1.16(d) in the Drayton matter when he delayed returning his client's file.

C. Respondent Violated Rule 1.5(b) Because He Did Not Provide Written Statements Describing the Basis or Rate of Fee or Scope of Work.

Rule 1.5(b) provides: "When the lawyer has not regularly represented the client, the basis or rate of the fee, the scope of the lawyer's representation, and the expenses for which the client will be responsible shall be communicated to the client, in writing, before or within a reasonable time after commencing the representation." Comment [1] explains that "[i]n a new client-lawyer relationship . . . an understanding as to the fee should be promptly established, together with the scope of the lawyer's representation and the expenses for which the client will be

responsible." Comment [2] adds that "[a] written statement concerning the fee . . . reduces the possibility of misunderstanding." Rule 1.5(b) does not require an agreement in the traditional sense; instead, a written statement that complies with Rule 1.5(b) can be in the form of a pamphlet or a letter and it does not have to be signed by the client as evidence of his or her agreement. *See* Rule 1.5, cmt. [2] ("[T]he lawyer may utilize a standardized letter, memorandum, or pamphlet explaining the lawyer's fee practices.").[9]

We agree with the Committee that Disciplinary Counsel proved that Respondent did not provide a written document setting forth the fee and the scope of the lawyer's representation to Ms. Carlos or Ms. Drayton. While Respondent testified that his staff normally sent email messages to his clients that attached retainer agreements, the Committee credited the testimony from Ms. Carlos and Ms. Drayton that they did not receive agreements. The facts show, contrary to Respondent's testimony, his staff did not follow up with accurate written agreements. Ms. Carlos rejected the one writing she received as inaccurate because it was based on an hourly rather than a flat fee rate. And Ms. Drayton responded to the staff that the document was not attached to the email, but they did not follow up.

[9] Some of the language used by the Committee may suggest that it was basing part of its conclusion on the fact that the documents produced by Respondent as agreements were unsigned, undated, and not on firm letterhead. *See* HC Rpt. at 12 nn. 13 & 14. While signing and dating the document would be a great practice, it is not the requirement of the Rule and we do not rely on those facts to find a violation.

FF 36, 145. Thus, the credited evidence demonstrates that Respondent violated Rule 1.5(b).

D. Respondent Violated Rule 8.1(b) in Count Three and 8.4(d) in Counts Two and Three When He Knowingly Failed to Respond Reasonably to Disciplinary Counsel's Requests for Information and Seriously Interfered with the Administration of Justice.

The Committee found violations of Rules 8.1(b) and 8.4(d) in Count Three (overdraft matter) and a Rule 8.4(d) violation in Count Two (Drayton matter[10]). Respondent does not take exception, and we agree and adopt the Committee's analysis that Disciplinary Counsel proved those violations. HC Rpt. at 80-86. A violation of Rule 8.1(b) requires clear and convincing evidence that Respondent knowingly failed to respond reasonably to Disciplinary Counsel's lawful demand for information. And a violation of Rule 8.4(d) requires clear and convincing evidence that Respondent engaged in conduct that "seriously interfered with the administration of justice."

The Committee found that Respondent failed to respond to Disciplinary Counsel's requests for information on the deposits, withdrawals, and reimbursements for credit card fees in the trust account during the overdraft investigation. HC Rpt. at 83. This conduct violated Rule 8.1(b) because it was not reasonable because his replies were "totally non-responsive," and his conduct was "knowing" "because he had clearly received and was responding to ODC's inquiries." HC Rpt. at 83.

[10] The Specification of Charges did not include a Rule 8.1(b) violation in Count Two.

The Committee found Respondent's failure to provide requested information in the Drayton and overdraft matters was a violation of Rule 8.4(d). In the Drayton matter, Disciplinary Counsel was required to seek an order to compel but Respondent still did not fully comply. HC Rpt. at 85-86. Respondent's failure, the Committee found, was "improper because he repeatedly failed to cooperate with ODC's investigation;" his "conduct bore directly upon the judicial process" (the subpoena enforcement proceeding); and "Respondent interfered with the judicial process in more than a *de minimis* way by requiring the Court unnecessarily to divert its attention to dealing with ODC's motion to enforce the subpoena." HC Rpt. at 85-86. Similarly, the Committee found the failures to comply with requests for information in the overdraft investigation provided the proof of a violation of Rule 8.4(d) because it is "improper" to "knowingly fail[] to respond reasonably to lawful demands for information from ODC." HC Rpt. at 86. The conduct "bore directly on . . . ODC's investigation" and the "knowing failures to respond reasonably to ODC . . . tainted the judicial process in more than a *de minimis* way because he once again wasted the time and resources of ODC." HC Rpt. at 86.

On the other hand, the Committee concluded that Respondent's submissions to Disciplinary Counsel in the Carlos matter (Count One) did not violate Rule 8.1(b) or 8.4(d). HC Rpt. at 82-84. Disciplinary Counsel takes exception and argues that the failure to timely respond to its requests for information violated the rules. ODC Br. at 56-58. We agree with the Committee. As noted, a violation of Rule 8.1(b) requires clear and convincing evidence that Respondent *knowingly* failed to respond

reasonably to Disciplinary Counsel's lawful demand for information. "Knowingly" is defined as "actual knowledge of the fact in question" and "reasonably" refers to "the conduct of a reasonably prudent and competent lawyer." Rules 1.0(f) and (j). The Committee credited Respondent's testimony that he discovered other email messages and documents in the Carlos matter only after he began preparing for the hearing. Thus, the record does not support a finding that Respondent knowingly failed to respond reasonably to Disciplinary Counsel's requests for information in the Carlos matter. The Committee determined Disciplinary Counsel did not prove a Rule 8.4(d) violation in the Carlos matter as well based on the same findings. HC Rpt. at 82-84.

And Disciplinary Counsel cited no authority in support of its argument that violations of Rules 8.1(b) and 8.4(d) in the Carlos matter were proven by Respondent's incomplete responses alone, i.e., without a finding that the responses were *knowingly* incomplete. *See* ODC Br. at 56-58. Our review of case precedents supports the Committee's conclusion. Examples of when the Court has found Rule 8.1(b) violations include where a respondent *never* responded to letters from Disciplinary Counsel and *never* responded to Board orders compelling production, *see Cater*, 887 A.2d 1, 10-11, 17, where a respondent "without excuse" repeatedly failed to respond *at all* to Disciplinary Counsel and Board orders, *see In re Steinberg*, 864 A.2d 120, 128 (D.C. 2004) (per curiam), where a respondent had health issues hampering her response but then continued to delay "[e]ven after bringing in assistance" and "only began to prepare a response in earnest after [Disciplinary]

Counsel had filed it first petition and specification of charges," *see In re Edwards*, 990 A.2d 501, 525-26 (D.C. 2010), and where a respondent did not respond to Disciplinary Counsel's letters despite their being sent by certified mail, fax, and by messenger, *see In re Kaufman*, 878 A.2d 1187, 1188 (D.C. 2005) (per curiam). Accordingly, we deny Disciplinary Counsel's exception.

IV. SANCTION

Because we conclude that Respondent recklessly misappropriated client funds, we are bound by the en banc decision in *Addams*:

> We now reaffirm that in virtually all cases of misappropriation, disbarment will be the only appropriate action unless it appears that the misconduct resulted from nothing more than simple negligence. While eschewing a *per se* rule, we adhere to the presumption laid down in our prior decisions and shall regard a lesser sanction as appropriate only in extraordinary circumstances.

579 A.2d at 191. Respondent did not present evidence to support extraordinary circumstances in mitigation. *Anderson*, 778 A.2d at 337-38 (noting that the burden is on Respondent to prove such circumstances). Therefore, *Addams* requires us to recommend disbarment.

V. CONCLUSION

For the reasons discussed above, we find that Respondent violated Rules 1.15(a) and (e) (record-keeping and reckless misappropriation), 1.5(b) (written statement of fees), 1.16(d) (failure to promptly return property or unearned fees), 8.1(b) (knowing failure to respond reasonably to Disciplinary Counsel's legal

request for information), and 8.4(d) (serious interference with the administration of justice) and recommend disbarment.

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

BOARD ON PROFESSIONAL RESPONSIBILITY

By: 

Lucy E. Pittman
Chair

All members of the Board concur in this Report and Recommendation except Mr. Gilbertsen, who did not participate.