DISTRICT OF COLUMBIA COURT OF APPEALS
BOARD ON PROFESSIONAL RESPONSIBILITY

In the Matter of	:	
	:	
CHINEDU CHARLES AGWUMEZIE,	:	
	:	**Disciplinary Docket Nos. 2018-**
Respondent.	:	**D174 and 2019-D089**
	:	
A Member of the Bar of the District of Columbia Court of Appeals	:	
	:	
(Bar Registration No. 990751)	:	
	:	

AMENDED PETITION FOR NEGOTIATED DISCIPLINE

Pursuant to D.C. Bar R. XI, § 12.1 and Board Rule 17.3, Disciplinary Counsel and Respondent Chinedu Charles Agwumezie, Esquire ("Respondent") respectfully submit this Amended Petition for Negotiated Discipline in the above-captioned matters. Jurisdiction for these disciplinary proceedings is prescribed by D.C. Bar R. XI. Pursuant to D.C. Bar R. XI, § 1(a), jurisdiction is found because Respondent is a member of the Bar of the District of Columbia Court of Appeals.

I. STATEMENT OF THE NATURE OF THE MATTERS BROUGHT TO DISCIPLINARY COUNSEL'S ATTENTION

Wells Fargo sent notices to Disciplinary Counsel in 2018 and again in 2019 that Respondent had overdrawn his IOLTA or trust account. Based on the overdraft notices, Disciplinary Counsel asked Respondent to provide information and records

for a number of deposits and withdrawals in his trust account. Disciplinary Counsel also subpoenaed records from Wells Fargo. Based on the records that the bank produced and the records and information Respondent provided and was unable to provide, Disciplinary Counsel determined that Respondent had engaged in numerous violations of Rule 1.15, including commingling, misappropriation, and failure to maintain complete records, as well as other Rule violations.

II. STIPULATION OF FACTS AND RULE VIOLATIONS

1. Respondent is a member of the Bar of the District of Columbia Court of Appeals, having been admitted on November 6, 2009, and assigned Bar number 990751.

Respondent's Formation of The Cava Legal Group, PLLC

2. In or around 2010, Respondent formed a law firm, The Cava Legal Group, PLLC. Respondent was the only lawyer associated with The Cava Legal Group, which he later registered with the Department of Consumer and Regulatory Affairs (DCRA).[1]

3. Prior to and during the time he practiced law using the name The Cava Legal Group PLLC, Respondent was a full-time employee of the United States Patent and Trademark Office. As a federal employee, Respondent was prohibited

[1] The DCRA revoked The Cava Legal Group's status as a PLLC as of September 12, 2019.

from acting as counsel for others in matters before federal agencies and federal courts.

Respondent's Trust Account for The Cava Legal Group, PLLC

4. In June 2014, Respondent opened a D.C. IOLTA or trust account for The Cava Legal Group at Wells Fargo, account no. 2512. Respondent was the only signatory on the account.

5. In March 2018, Respondent overdrew his trust account when the check that he provided a client for his share of a personal injury settlement was presented for payment before Respondent had deposited the settlement check. Respondent deposited the settlement check the following day and the client received his funds four days later.

6. Respondent's trust account was again overdrawn in early 2019.

7. Wells Fargo reported the overdrafts to Disciplinary Counsel.

8. Disciplinary Counsel opened investigations and requested Respondent to explain the circumstances of the overdrafts and provide his records for the funds in his trust account.

9. As discussed below, the records that Respondent provided were not complete, and the information that Respondent supplied in response to further inquiries did not explain many of the deposits and withdrawals reflected in the bank records for his trust account. Also, in response to some inquiries, Respondent said

he would provide further information but then failed to do so, and in explaining one transaction (an advance of $3,500 to Frederick Dabankah), he gave conflicting stories.

Respondent's Records for Entrusted Funds

10. Respondent did not maintain a general ledger or client ledgers for the funds deposited and withdrawn from his trust account from at least March 2017 through at least March 2019.

11. Respondent did not provide written fee agreements to some of his clients for whom he received advance fees that he deposited in his trust account.

12. Respondent prepared settlement disbursement statements for a number of client matters for which he received settlement checks that he deposited in his trust account. In some cases, the amounts that Respondent said he was deducting as his fees on the settlement statements were not the amounts he actually withdrew from the trust account. For example:

a. On September 19, 2017, Respondent deposited a settlement check for $20,000 for Cynthia Onuoha. In his settlement statement, Respondent said he would deduct $2,665 for fees and costs, pay his client $5,360, and pay a third party $11,975. The bank records showed that he paid the client and the third party the amounts reflected in the settlement statement, but on October 2, 2017, he paid himself $2,800 in fees for the Onuoha matter.

b. Respondent deposited two settlement checks on September 19, 2018 – one for $5,500 for Olufemi Olabisi and another for $7,000 for Ayoola Uwaifa. In his settlement statements, Respondent said he would deduct reduced fees of $1,415 and $2,000, respectively. The bank records showed that on September 20, 2018, Respondent transferred $2,500 from the trust account to his personal account with a notation that the payment was for both the Olabisi and Uwaifa matters. Respondent eventually took the rest of the fees for these two clients but he had no record of when and in what amounts he took the balance.

c. On September 25, 2018, Respondent deposited six checks on behalf of Fatia Cole, Temitope Adetobi, and Genevieve Taylor and/or their minor children totaling $31,279. Respondent's settlement statements reflected that he had received only $31,000 on behalf of the clients. Respondent told his clients he would pay himself a total of $12,180 in fees and costs, but the bank records reflect that between October 1 and November 13, 2018, Respondent paid himself a total of $14,850 in fees in the Cole and Adetobi matters. Respondent wrote checks to the clients totaling $18,820. The payments Respondent made to himself and his clients exceeded the total of the settlement checks by more than $2,000.

d. On November 21, 2018, Respondent deposited a settlement check for $7,000 for Ileana Melendez Mendez. His settlement statement showed a deduction of $2,200 for his fees, but Respondent paid himself $2,800 between

November 23 and December 4, 2018. Respondent claimed that the additional funds he paid himself were for his fees in the case of her husband, Elberto Escobar, although the bank records reflected they were transfers for the "Mendez case."

e. On November 21, 2018, Respondent deposited a $5,000 settlement for Elberto Rivera Escobar. In his settlement statement, Respondent said he was deducting $1,650 for fees, but the bank records showed that he transferred only $200 for fees on November 29, 2018. Respondent eventually took the rest of the fees he was owed in Mr. Escobar's matter, but he did not have any records reflecting when and in what amounts he took the balance.

f. Respondent deposited two settlement checks for Frederick Dabankah in the trust account – one for $7,000, which was deposited on June 20, 2018, and a second for $9,500, which was deposited on December 7, 2018. According to his settlement statements, Respondent was to receive fees totaling $5,445. The bank records, however, reflect that between June 19 and December 26, 2018, Respondent paid himself a total of $9,100 in fees in the Dabankah matters. Respondent's settlement statements reflected that Mr. Dabankah would receive a total of $9,685 and his medical provider would receive $1,300. Respondent paid Mr. Dabankah in several installments, including $3,500 toward his share from the second settlement before Respondent had deposited the second settlement check. The trust account records reflect that Respondent made disbursements of $20,085

for the two Dabankah settlements – $3,585 more than the sum of the two settlement checks.

13. The bank records reflected that Respondent did not always pay the clients' medical providers the amounts shown on the settlement statements that he provided his clients. For example,

a. On December 4, 2018, Respondent deposited a $7,800 settlement for Miguel Ponce. His settlement statement showed deductions totaling $1,855 for medical expenses, but Respondent wrote checks for only $1,655 to Mr. Ponce's medical providers. Respondent and one of the medial providers later agreed that the bill would be reduced by $200 which, according to Respondent's fax to the medical provider confirming the deduction, related to a referral fee. Respondent did not advise his client of the referral fee or disburse the $200 to the client. Instead, Respondent kept the $200 for himself.

b. On December 4, 2018, Respondent deposited a $7,800 settlement for Kingsley Oba. His settlement statement reflected a deduction of $975 for medical costs, but he wrote a check for only $675. Respondent and the medical provider later agreed that the bill would be reduced by $300 which, according to Respondent's fax to the medical provider confirming the deduction, related to a referral fee. Respondent did not advise his client of the referral fee or disburse the $300 to the client. Instead, Respondent kept the $300 for himself.

14. There were other discrepancies between Respondent's settlement statements and the bank records for his trust account. For example, in June 2018, Respondent deposited in his trust account three settlement checks that he had received on behalf of Christiana Leo totaling $16,000. His settlement statements, however, reflected payments totaling $18,000. Respondent said he "mistakenly" deposited a check for $2,000 for Ms. Leo in one of his other accounts and kept it as part of his fee. In his settlement statements for the Leo settlement checks, Respondent said he would pay the client $10,473, pay the medical providers $4,565, and pay himself $5,440 in fees.

15. Respondent also took without authority funds from one of the Leo settlements and used them to pay another, unrelated client. Respondent made the disbursement before he provided and Christiana Leo approved the settlement statements showing how Respondent would disburse her settlement funds and before he made any disbursements to himself, Ms. Leo, and the medical providers.

16. In June and July 2018, Respondent made three transfers totaling $3,200 from his trust account to his personal account for fees in the Leo matters. Respondent also kept as his fee the $2,000 settlement check he said he deposited in his personal account. Respondent paid the client $10,473, and paid the medical providers only $2,087.68, leaving a balance of $239.32 from the settlement payments totaling $18,000.

17. The records for Respondent's trust account showed that, on occasion, he would advance funds to clients before depositing their settlement checks. For example, on June 28, 2017, Respondent deposited Frank Nweke's $4,800 settlement check in the trust account. Approximately a week before depositing the check, Respondent had given Mr. Nweke a $500 check drawn on the trust account which was negotiated on June 22, 2017. Respondent said that the $500 he advanced to Mr. Nweke were earned fees in another client matter, but had no records to support this. Respondent's settlement statement for Mr. Nweke's settlements showed a deduction of $606 for SunRise Rehab, but Respondent did not pay this amount to SunRise. Respondent said that in August 2017, he provided $606 in cash to Mr. Nweke "as further credit by SunRise" but there were no bank records or internal accounting records reflecting the source of funds that Respondent used to pay Mr. Nweke.

18. The bank records for Respondent's trust account showed that Respondent made a number of transfers between his personal accounts and the trust account. The transfers included, but were not limited to, a $15,000 transfer from one of his personal accounts (account 6843) to the trust account on February 25, 2019; another $15,000 transfer from Respondent's personal account (account 6843) to the trust account on February 27, 2019; a $11,000 transfer from Respondent's personal account (account 6843) to the trust account on March 4, 2019; and a $19,900 transfer from the account of Chika Agwumezie, Respondent's wife, to the

trust account on March 18, 2019.

19. Respondent also made cash deposits into his trust account. On July 20, 2018, Respondent deposited $3,400 in cash in his trust account, all of which he had withdrawn by no later than July 24, 2018. Respondent said the funds were from relatives who retained him to prepare INS Forms I-130 and I-485. Respondent had no records of his receipt and withdrawal of the fees, or the work he claimed to have performed.

20. Respondent made a cash deposit of $1,000 into his trust account on January 7, 2019. Respondent said the deposit was for a client matter for John Ewenike and that he had earned the fee by the end of January 2019, but he had no records relating to the deposit or withdrawal. He also had no written fee agreement for the client.

21. The bank records show that Respondent wrote checks and made withdrawals from the trust account that had no apparent relationship to any client matter. For example, Respondent made a number of transfers from his trust account to his personal accounts with no notation that the withdrawals were related to any client matter. The transfers included four transfers in December 2017 of $140, $400, $200, and $500. Respondent later claimed that the withdrawal for $200 was to reverse a transfer he made from his personal account to the trust account three weeks earlier. He claimed that the other withdrawals were for earned fees relating to his

representation of Kwame Obour, a client who had paid him $600 in October 2017 and an additional $600 in December 2017. Respondent had no records showing the amount of fees he received from Mr. Obour, when they were earned, when Respondent paid himself, and in what amounts. Respondent also did not have a written fee agreement for Mr. Obour.

22. Respondent paid his personal expenses with funds from the trust account. For example, on August 29, 2018, Respondent paid $1,200 to Genesis General Contactors by check. On October 4, 2018, Respondent paid $1,075 to Worldwide Travel by check for an airline ticket to Nigeria.

23. In February and March 2019, Respondent wrote checks to Sandra and Michael Onye from his trust account totaling $9,500. Respondent said the payments were reimbursement for a loan the Onyes' father had made to him while he was in Nigeria. Respondent did not have any records of the source of the $9,500 in his trust account that he used to repay the personal loan. He later claimed the payments totaling $9,500 were from settlements to his family members and other clients received in February and March 2019. However, the bank records show that the balance in the trust account fell below the amount that Respondent claimed he had as earned fees and used to pay his personal expenses or debts. The trust account had funds to cover the Onye checks only because Respondent had deposited his own funds and other client settlement checks in the account.

24. The bank records also reflect that Respondent used without authority – *i.e.*, misappropriated – the settlement funds of clients and/or their medical providers in addition to the Christiana Leo settlement funds discussed in paragraph 15 above. For example, on August 6, 2018, Respondent deposited an Allstate settlement check for $8,727 payable to Tigst Kebede and Respondent's firm. On August 7, 2018, Respondent transferred $2,350 from the trust account to his personal account (account no. 6843) and the bank statement reflects that it was for the Kebede matter. Two weeks later on August 23, 2018, Respondent transferred another $1,000 from the trust account to another personal account (account no. 8641) and the bank statement reflects that it was for the "Tigst case" for a total fee of $3,350 – $930 more than Respondent said he would charge. On September 25, 2018, Respondent wrote Ms. Kebede a check for $5,000 drawn on the trust account, which the bank paid that day. However, between August 6, 2018, when the settlement check was deposited, and September 25, 2018, when Ms. Kebede was paid $5,000, the balance in the trust account fell below $5,000 on more than one occasion.

25. Respondent also used, at least temporarily, the funds to pay Mr. Kebede's medical providers. Respondent represented to Mr. Kebede in the settlement statement that Respondent would pay his medical providers a total of $1,307. Respondent wrote two checks to the medical providers – one for $497 and another for $809 – but not until September 25, 2018. The checks were paid on

September 27 and 28, 2018, respectively. Before the bank paid the checks, the balance in the trust account fell below the amounts owed the client and the medical providers.

26. Respondent used without authority the settlement funds of his client Abebanjo Sijuwade. On February 22, 2019, Respondent deposited two checks totaling $10,000 ($7,500 and $2,500) in his trust account payable to Mr. Sijuwade. Respondent also deposited other funds in the trust account, including funds from his personal account (account no. 6843). On February 25, 2019, prior to disbursing any funds to Mr. Sijuwade, Respondent transferred $30,000 from the trust account to his personal account, leaving a balance of $1,635.73. On February 27, 2019, Respondent paid Mr. Sijuwade $4,000. The checks that Respondent wrote to Mr. Sijuwade's medical providers on February 27, 2019 for $500 and $2,375 (which was $100 less that the $2,475 Respondent deducted from Mr. Sijuwade's funds, as reflected in the settlement statement) were not paid until March 1 and 4, 2019, respectively. After February 22, 2019, but before Mr. Sijuwade and his medical providers were paid, the balance in the trust account dropped to $1,635.73. The checks to Mr. Sijuwade and his medical providers cleared because Respondent had deposited a $800 check from Robert Ubaechu and transferred $15,000 from Respondent's personal account into the trust account on February 27, 2019.

27. Respondent's conduct violated the following Rules of the District of

Columbia Rules of Professional Conduct:

a. Respondent violated Rule 1.5(b), which requires a lawyer to communicate in writing to his clients the basis or rate of his fee, the scope of the representation, and the expenses for which the clients will be responsible. Respondent failed to provide his clients John Ewenike and Kwame Obour anything in writing about his fees and the scope of the representation. *See* ¶¶ 11, 20-21.

b. Respondent violated Rule 1.7(b)(4), because his professional judgment was or reasonably could have been adversely affected by his responsibilities to or interests in a third party or his own financial, business, property, or personal interests. Respondent engaged in impermissible conflicts when he entered into agreements with his clients' medical providers to receive some of the money deducted from the clients' share of the personal injury settlement without disclosing the agreements to his clients or seeking their informed consent. *See* ¶ 13. Respondent engaged in a further impermissible conflict when he assisted clients in preparing INS forms while he was a full-time employee with the federal government. *See* ¶¶ 3, 19.

c. Respondent violated the safekeeping requirements of Rule 1.15(a), including when he commingled his funds with entrusted funds, recklessly misappropriated entrusted funds, and failed to keep complete records of entrusted funds.

Commingling: Respondent engaged in commingling when he deposited his own funds in his trust account while he was holding the funds of clients or third parties (¶¶ 18, 26), failed to withdraw earned fees from his trust account (¶¶ 17, 21-23), and deposited entrusted funds in his personal or business account (¶¶ 14, 16).

Reckless Misappropriation: Respondent engaged in misappropriation, which occurs when the balance of an attorney's trust account falls below the amount of the client's funds held in trust. *See* ¶¶ 15, 24-26. Misappropriation "includes any unauthorized use of a client's entrusted funds and does not require dishonesty or proof of a larcenous intent; even temporary unauthorized use for the lawyer's own purposes is misappropriation, whether or not the lawyer derives any personal gain or benefit." *In re Gray*, 224 A.3d 1222, 1229 (D.C. 2020), citing *In re Anderson* , 778 A.2d 330, 335 (D.C. 2001). "It 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, citing *In re Pels*, 653 A.2d 388, 339-94 (D.C. 1995). A lawyer's misappropriation is deemed reckless if it "reflects 'an unacceptable level of disregard for the safety and welfare of entrusted funds,' essentially manifesting a 'conscious indifference to the consequences of [the attorney's] behavior for the security of the [client's] funds.'" *Gray*, 224 A.3d at 1229,

quoting *In re Ahaghotu*, 75 A.3d 251, 253 (D.C. 2013), and *Anderson* , 778 A.2d at 336, 339).

Proof of commingling and inadequate recording keeping standing alone will ordinarily not be sufficient to prove reckless misappropriation. *Gray*, 224 A.3d at 1229. In *Gray*, the Court found the lawyer's misappropriation of funds was reckless based on a number of factors including: the lawyer knew of his obligation to safekeep entrusted funds and keep records, but then stopped keeping records and tracking client funds in his trust account; he left earned fees in the trust account and withdrew the funds when he needed them to pay for personal expenses; he deposited his own funds in his trust account; he did not reconcile his records with the bank records; he misappropriated the funds of two clients; and he wrote a check against insufficient funds.

Complete Records: Respondent engaged in a further violation of Rule 1.15 by failing to keep and maintain complete records. The Court requires complete records "so that the documentary record itself tells the full story of how the attorney handled client or third-party funds and whether the attorney complied with his fiduciary obligation that client or third-party funds not be misappropriated or commingled." Comment [2] to Rule 1.15, quoting *In re Clower*, 831 A.2d 1030, 1034 (D.C. 2003). The lawyer's financial records are complete only if the

documents show how the lawyer complied with his ethical obligations and Disciplinary Counsel can complete an audit of the lawyer's handling of client funds even if the lawyer or the client or both are not available. *Id.*

Respondent did not have a general ledger or client ledgers. *See* ¶ 10. Although Respondent had some records, those records were not complete and some of the records that he kept were not accurate. At least three of the settlement statements for personal injury clients did not reflect the actual disbursements he made. *See* ¶¶ 12, 14, 26. Also, he had no records of his receipt and handling of advance fees that some of his clients paid him. *See* ¶¶ 19-21.

d. Respondent violated Rule 8.1(b), when he knowingly failed to respond reasonably to some of Disciplinary Counsel's lawful demands for information and documents. During the investigation, Respondent did not disclose that he did not have some of the information and documents that Disciplinary Counsel asked him to provide. *See* ¶ 9. Although Respondent responded to Disciplinary Counsel's inquiries and subpoenas, his responses were incomplete and often raised additional questions. For example, Respondent did not respond to Disciplinary Counsel's question about whether he maintained client ledgers for months. He eventually admitted that he did not have client ledgers, but said he was hiring a bookkeeper and would create ledgers in the future.

Respondent produced a memorandum to his clients' medical provider that referred to the deductions on the medical bills as "referral fees." *See* ¶ 13. When asked about the referral fees, Respondent said the amounts deducted were funds that the medical provider owed to him or his firm for "different transactions." Despite further requests for information and documents about the funds, Respondent failed to provide any.

In explaining the source of the funds he used to advance to clients or pay his personal expenses, Respondent said they were earned fees that he had kept in his trust account. He had no contemporaneous records to support his statement. However, he later produced a listing of partially unpaid fees from a number of personal injury matters that he represented were the earned fees he was using for some of the payments. These records did not exist at the time of the payments and Respondent therefore could not have relied on them when he paid his personal expenses with funds from his trust account.

Respondent gave different and inconsistent explanations about the source of the funds in his trust account that he gave to Mr. Dabankah. Respondent initially said that the funds were earned fees. He then claimed the funds belonged to another, unrelated client which were loaned to Mr. Dabankah. When Disciplinary Counsel asked Respondent for documentation and information about the loan, he reverted back to his claim that the funds were earned fees but provided no information or

supporting records to support his claim.

Respondent failed to identify the account in which he deposited a $2,000 payment that he received on behalf of Ms. Leo, and when he took them as part of his fees. *See* ¶ 14.

e. Respondent's incomplete and inconsistent responses to Disciplinary Counsel and his initial failure to admit that he did not have and could not produce records or provide additional information also violated Rule 8.4(d). The incomplete and inconsistent responses required the expenditure of additional and considerable resources and delayed the completion of the investigation. *See In re White*, 11 A.3d 1226, 1230 (D.C. 2011) (conduct seriously interferes with the administration of justice if it is (1) improper (2) bears directly upon the disciplinary process and (3) taints the process in more than a *de minimis* way because it at least potentially impacted upon the process to a serious and adverse degree).

III. PROMISES MADE BY DISCIPLINARY COUNSEL

In connection with this Petition for Negotiated Discipline, Disciplinary Counsel agrees not to pursue any charges arising out of the conduct described in Section II, *supra*, other than those set forth above, or any sanction other than that set forth below.

IV. AGREED UPON SANCTION

Disciplinary Counsel and Respondent agree that the sanction to be imposed

in this matter is a three-year suspension, with a requirement to prove fitness as a condition of reinstatement.

Absent extraordinary circumstances, the typical sanction for reckless or intentional misappropriation is disbarment. *In re Addams*, 579 A.2d 190 (D.C. 1990) (en banc). Under Board Rule 17.5(a)(iii), however, the agreed-upon sanction in a negotiated disposition need not strictly adhere to dispositions for comparable conduct, as is called for in contested hearings by D.C. Bar Rule XI, § 9(h). Instead, a negotiated sanction must be "justified, and not unduly lenient, taking into consideration the record as a whole, including the nature of the misconduct, any charges or investigations that Disciplinary Counsel has agreed not to pursue, the strengths or weaknesses of Disciplinary Counsel's evidence, any circumstances in aggravation and mitigation (including respondent's cooperation with Disciplinary Counsel and acceptance of responsibility), and relevant precedent." In this case, a three-year suspension with a fitness requirement is justified and not unduly lenient.

Mitigating Circumstances

In *Addams*, the Court cautioned that "as a matter of course, the mitigating factors of the usual sort will suffice to overcome the presumption of disbarment only if they are especially strong and, where there are aggravating factors, they substantially outweigh any aggravating factors as well." 579 A.2d at 191 (citing *In*

re Reback, 513 A.2d 226, 233 (D.C.1986)). The Court has identified "[m]itigating factors of the usual sort" to include: "(1) an admission of wrongdoing, (2) full cooperation with the disciplinary authorities, (3) prompt return of the disputed funds, and, most importantly, (4) an unblemished record of professional conduct." *In re Edwards*, 990 A.2d 501, 527 (D.C. 2010), *as amended* (Mar. 18, 2010) (citing *In re Pierson*, 690 A.2d 941, 950 (D.C.1997)).

These factors are present here. Respondent has admitted wrongdoing, including engaging in reckless misappropriation. Although Respondent was not completely cooperative during the investigation, he responded to numerous inquiries from Disciplinary Counsel. He also provided substantial records, although not complete records, which he admitted he did not maintain at the time of the misconduct. Respondent has acknowledged that he did not respond to further inquiries after agreeing to do so, but says he does not have any further information or documents to provide. Respondent also took some remedial measures after he was under investigation, including attending a practice management class and adopting accounting procedures to better track the funds in his trust account. The misappropriations that Disciplinary Counsel uncovered were temporary takings. Disciplinary Counsel could not show that Respondent retained or failed to return the funds owed to clients or third parties. In other words, the clients and third parties ultimately received the settlement funds to which they were entitled. Notably, no

client or third party ever complained about Respondent. Also, with the exception of these overdraft matters, Respondent has never been the subject of an investigation and he does not have prior discipline.

These mitigating circumstances would be unlikely to overcome the presumption of disbarment in a contested matter. *See In re Bach*, 966 A.2d 350, 366 (D.C. 2009) (listing cases where mitigating factors of the usual sort were insufficient to overcome presumption of disbarment). Nonetheless, they should be given significant weight in a negotiated disposition where the sanction need not align with comparable cases under Board Rule 17.5(a)(iii).

Other Considerations

A three-year suspension with fitness is also justified and not unduly lenient because it provides the parties a certain outcome without the need for a prolonged and expensive adjudicative process. Disciplinary Counsel and Respondent acknowledge that a contested hearing could result in anything from a one-year suspension, if the misappropriations were found to be negligent, to disbarment. Both parties are willing to forego the possibility of a more favorable outcome in order to expedite resolution of the matter. In contested matters, it is not unusual for the Court to issue its final order in a disciplinary matter more than five years after the filing of charges. By proceeding with a negotiated disposition, the parties can expect Respondent's suspension to go into effect within a year, without committing

resources to the hearing and multiple levels of review. The imposition of a fitness requirement ensures that Respondent will not be in the position of handling entrusted funds until he has demonstrated by clear and convincing evidence that he has reformed his practices and earned the trust of the disciplinary system.

RESPONDENT'S AFFIDAVIT

In further support of this Petition for Negotiated Discipline, attached is Respondent's Affidavit pursuant to DC. Bar R. XI, § 12.1(b)(2).

CONCLUSION

Wherefore, Respondent and Disciplinary Counsel request that the Executive Attorney assign a Hearing Committee to review the petition for negotiated discipline pursuant to D.C. Bar R. XI § 12.1(c).

Dated: September __, 2020

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