THIS REPORT IS NOT A FINAL ORDER OF DISCIPLINE*

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

In the Matter of:	:	
	:	
ARCHIE L. RICH, II,	:	
	:	Board Docket No. 18-BD-042
Respondent.	:	Disc. Docket Nos. 2013-D003 & 2013-
	:	D181
A Member of the Bar of the District	:	
of Columbia Court of Appeals	:	
(Bar Registration No. 471754)	:	

REPORT AND RECOMMENDATION OF
THE AD HOC HEARING COMMITTEE

Respondent, Archie L. Rich, II, is charged in Count One of the Specification of Charges filed by the Office of Disciplinary Counsel ("ODC") with reckless or intentional misappropriation, commingling, and failure to promptly pay parties funds they were entitled to receive, in violation of Rules 1.15(a) and 1.15(c) of the District of Columbia Rules of Professional Conduct (the "Rules"). Respondent is charged in Count Two of the Specification of Charges with failure to make reasonable efforts to ensure that his firm had in effect measures giving reasonable assurance that his paralegal's conduct was compatible with his professional obligations and failure to make reasonable efforts to ensure that his paralegal's conduct was compatible with his professional obligations, in violation of Rules 5.3(a) and 5.3(b). In Count Three, Disciplinary Counsel charges Respondent with failure to provide competent representation and serve his client with the skill and

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

care commensurate with that generally afforded to clients by other lawyers in similar matters; failure to represent his client zealously and diligently and/or failure to act with reasonable promptness in representing his clients; and failure to keep his client reasonably informed about the status of his matter and failure to explain the matter to the extent reasonably necessary to permit his client to make informed decisions about the representation, in violation of Rules 1.1(a) and (b), Rules l.3(a) and (c), and Rules l.4(a) and (b).

All exhibits offered by either party having been admitted, as set out below, the Committee has carefully weighed the evidence submitted and the testimony adduced in this matter and applied the facts to the standards in the Court of Appeals' opinion in *Kersey*[1] and related cases. We have determined that, as contemplated in *Kersey*, Respondent is entitled to mitigation of the otherwise mandated sanctions for his admitted violations of the Rules of Professional Conduct.

I. PROCEDURAL HISTORY

The Committee's work on this matter has been made more difficult by the manner in which Respondent has approached it. On June 19, 2018, Disciplinary Counsel served Respondent with a Specification of Charges charging Respondent as set out above. Respondent was served with the Specification of Charges on June 19, 2018. Pursuant to Board Rule 7.5, his Answer was due on July 9, 2018.

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[1] *In re Kersey*, 520 A.2d 321 (D.C. 1987).

Both during the investigation that preceded Disciplinary Counsel's Specification of Charges and afterwards, Respondent engaged in a long and elaborate series of efforts to delay the proceeding. The history during the investigation is described below in FF[2] 30-56.

After receiving the Specification, Respondent first filed a consent motion to extend time to file an Answer, which was granted on August 1, 2018. Shortly after, Respondent filed a second consent motion for the same purpose, requesting an extension to August 20, 2018. Then in a third Motion, opposed by Disciplinary Counsel, Respondent requested an extension of time to October 20, 2018, within which to file his Answer. Respondent asserted that "he still has not obtained counsel and . . . for practical and financial reasons, obtaining counsel and allowing time for him/her to absorb the now voluminous case file, then review and file the Answer is simply not realistic." Motion, ¶10. This motion was granted in part, extending the time for filing Respondent's Answer to September 24, 2018 and setting, in a separate Order, a pre-hearing conference for September 28, 2018. The Committee Chair ordered that there would be no further extensions of time. Respondent filed an Answer *pro se* on September 25, 2018.[3]

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[2] Findings of Fact.

[3] Despite the Order that there would be no further extensions of time, prior to filing his answer Respondent communicated with the ODC advising that he would need an extra day to file. The ODC agreed to Respondent's request provided that Respondent email a copy of the response to the ODC. Without consulting with the Committee, Respondent filed his Answer one day late with a motion to enlarge time. In effect Respondent undertook to determine that his motion was or would be granted, a determination in the sole authority of the Committee. Similarly, when

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A pre-hearing conference was held on September 28, 2018. At that conference, the Committee Chair inquired of the parties as to why this matter had been delayed for almost six years. No one could provide a satisfactory answer. *See generally* Tr. 9/28/18, and specifically, *id.* at pp. 14-17.[4] Respondent reported that he had not yet obtained counsel. The Chair noted that Respondent was aware of the ODC's ongoing investigation for more than five years and, having been provided a draft copy of the Specification of Charges more than six months prior to the September 28th prehearing, was or should have been aware that those charges could result in his disbarment. Nonetheless, Respondent had either failed or neglected to obtain counsel over that extended period.

At the September 28th prehearing the Chair advised that the matter would move forward with dispatch and with no unnecessary delays. Tr. 9/28/18, pp. 30-43. Deadlines were established for certain filings and actions to be achieved before an additional prehearing scheduled for November 16, 2018. Respondent

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Respondent moved to continue the February 11th hearing date, in direct violation of an order not to so do, he then scheduled a conflicting court appearance before the Committee could rule on his motion to continue. *See* pp. 6 and 7, *infra*. We considered this type of conduct to his detriment in assessing Respondent's credibility.

Additionally, because Respondent's Answer had significant formatting problems rendering it difficult to read, the Committee Chair directed him to file an Amended Answer correcting those problems. Respondent's Amended Answer, identical to his original Answer in all substantive respects, was filed on October 15, 2018.

[4] "Tr." followed by a numerically expressed date reflects the transcript of a hearing on the date; "Tr." without a noted date refers to the transcript of the hearing held on May 13, 14, 15 and 17, 2019. *See* also *fn.* 15, *infra*.

was advised to timely secure counsel before the November 16th hearing or be prepared to represent himself. An Order was issued on October 1, 2018 memorializing the dates set at the September 28th prehearing.

On November 6, 2018, ten days before the scheduled hearing, Abraham C. Blitzer, Esquire, entered his appearance on behalf of Respondent and moved to continue the pre-hearing conference and extend the deadlines set in the October 1, 2018 Order. For good cause shown in that motion and without objection of the ODC, the deadlines set in that Order were extended.

As the November 15, 2018 Amended Order explained, the Chair directed the parties to consult their witnesses regarding their witnesses' availability, to confer, and to advise the Committee of the results. Having been advised by the parties, on November 28, 2018, the Committee issued an Order directing that the evidentiary hearing in the matter would commence on February 11, 2019 and providing for subsequent hearing dates on February 12, 2019 through February 15, 2019.

By motions filed on January 15, 2019, Respondent advised the Committee that it was his intention to seek disability mitigation and that his expert witness was not available the week of February 11th. By Order issued January 17th, the Committee directed the parties to determine if they could be ready to proceed the week of February 19th. Pursuant to the Chair's request, on January 18, 2019, the ODC advised that, with one exception, it would be prepared to go forward in the

week of February 19th.[5] Respondent's counsel advised the Chair that his client could not be available to conduct the evidentiary hearing in this matter until the week of March 18, 2019 and asked that the Chair schedule the matter for that week.

In an effort to resolve these scheduling difficulties, a telephone conference was conducted on January 23, 2019. When the Chair inquired if, with the exception of Respondent's expert, the parties were otherwise ready to go forward on February 11th, the Chair was advised that Respondent had assumed the matter was to be continued and had an obligation that week.[6] Further, due to another court commitment, counsel for Respondent was unavailable the morning of February 13th. The Chair advised the parties that due to the extensive time this matter had been in the disciplinary process, this matter was not going to be continued and would go forward as then scheduled.[7] The Chair indicated that recesses would be taken to accommodate Respondent's and his counsel's court appearances and if the Committee made a preliminary non-binding finding of a

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[5] The ODC had not been able to contact one of its witnesses but advised that if that witness was unavailable the week of February 19th, it would file a motion to take that witness's testimony in the week of February 11th.

[6] Respondent's counsel was reminded that the Order setting the hearing had directed Respondent to avoid all commitments that week. The Chair directed Respondent's counsel file a notice advising the Committee as to the particulars of Respondent's obligation. Tr. 1/23/19, at 8-9. No such filing was made and due to further developments, the Committee did not pursue the matter. Tr. 1/23/19, at 5.

[7] *See* Order issued January 24, 2019.

violation, a recess would be taken so all experts could testify on the same or successive days.[8]

On January 28, 2019, four days later, counsel for Respondent filed a motion to continue the hearing, stating "[r]espondent has directed undersigned counsel to move to continue the Hearing in this matter on the grounds that counsel is not prepare [sic] to proceed with the hearing." *See* Respondent's Motion to Continue, January 28, 2019. On the same date, counsel filed a motion to withdraw, stating that "[r]elations between Counsel and Respondent have deteriorated to the pont [sic] where Counsel believes that he can no longer effectively represent Respondent's interests in this matter." *See* Motion to Withdraw, January 28, 2019. Disciplinary Counsel opposed the continuance but did not oppose the motion to withdraw provided that "it does not delay these proceedings any further. Specifically, whether Respondent proceeds with current counsel, new counsel, or *pro se.* Disciplinary Counsel submits that the hearing should move forward on February 11 (for the reasons described in Disciplinary Counsel's Opposition to Respondent's simultaneously-filed motion to continue)." The Chair issued an Order directing that all parties appear for a status hearing on February 1, 2019.

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[8] The ODC advised that its expert would like to hear Respondent's expert's testimony and the Chair advised that the request would be accommodated.

At that status hearing, Mr. Blitzer was permitted to withdraw his appearance[9], and two dates were considered for the pending evidentiary hearing, April 15, and 30, 2019. The Chair made clear its preference for the earlier of those dates in order to bring this long, delayed matter to a prompt conclusion. The choice between the two dates was to be premised on the availability of witnesses for both parties. Respondent was advised that he would be expected to proceed on those dates whether *pro se* or with counsel of his choice and, given his level of experience with the disciplinary process, *see* Tr. 2/1/19, pp. 80-81, he would be wise to obtain counsel with such experience. He was further advised that a list of attorneys with such experience was available in the Office of the Executive Attorney. *Id.* Finally, Respondent was advised (as he had been earlier, Tr. 9/28/18) that because of the need to proceed with dispatch and the extensive record in this matter, if he intended to obtain counsel he should do so as soon as possible. *See id.*, at pp. 81-83.

Seven weeks later, on March 26, 2019, Mark W. Foster, Esquire, and Dermot W. Lynch, Esquire, of Zuckerman Spaeder LLP, entered their appearances on behalf of Respondent and moved to continue the evidentiary hearing. On that same date Disciplinary Counsel filed a response indicating it had no opposition to

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[9] Before Mr. Blitzer was permitted to withdraw, the Chair attempted to inquire as to whether Mr. Blitzer was ready to proceed on the current hearing date. Respondent repeatedly refused to permit Mr. Blitzer to answer the Chair's question, arguing that Mr. Blitzer is no longer his attorney, and citing attorney-client privilege. *See* Tr. 2/1/19, pp. 55-70. Rather than argue with Respondent the Chair permitted counsel to withdraw and proceeded as set out herein.

the entry of appearance provided it did not delay the hearing, and also filed an opposition to the motion to continue.[10] On March 28, 2019, a telephonic pre-hearing conference was held with the ODC and Messrs. Foster and Lynch. During that hearing the ODC advised that it was prepared to go forward on April 15th and while it did not know for certain, the ODC had no reason to believe it could not go forward on the alternate date of April 30th. Respondent's counsel advised that they would not be prepared to go forward on April 15th. On inquiry from the Chair counsel for Respondent advised that due to their very recent involvement in this matter, the extensive record, and a need to research a unique defense to Count Two, they could not be ready for the April 15th date.[11] Tr. 3/28/19, pp. 6-19. The Chair made clear that it was intent on proceeding in this matter either on April 30th or on May 13th. Tr. 3/28/19, pp. 21-25. Later, the Chair overruled Respondent's counsel's objection and ruled that the matter would proceed to hearing on May 13, 2019.

On May 10, 2019 the parties notified the Committee that they had agreed that Respondent would stipulate to his violation of the charges contained in the Specification of Charges and that the parties agreed that the hearing should

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[10] Messrs. Foster and Lynch had in fact filed their pleadings on March 22, 2019 and sent copies to the ODC on that date. Due to a clerical error, those pleadings were not signed before they were transmitted. Thus, the ODC had "advance" notice before the pleadings were filed in conformity with Board Rules, and the ODC filed its responses on the same date the pleadings were officially filed.

[11] In addition to these substantive reasons, Mr. Foster had a personal scheduling problem that would certainly have necessitated a continuance from the April 15th date.

proceed to the sanctions phase during which Respondent would advance mitigation pursuant to *In re Kersey*, *supra*. A hearing was held on May 13, 14, 15, and 17, 2019, before this Ad Hoc Hearing Committee (the "Committee"). Disciplinary Counsel was represented at the hearing by Joseph C. Perry, Esquire, Assistant Disciplinary Counsel. Respondent was represented at the hearing by Mark W. Foster, Esquire, and Dermot W. Lynch, Esquire.

When the hearing began on May 13, 2019, the Committee first heard the parties with regard to admitting the ODC's exhibits in support of the violations charged in this matter. Respondent, by counsel, argued that the ODC's exhibits should not be admitted because Respondent had stipulated to the facts and circumstances and therefore admitted to the violations charged. The ODC, referencing the Court of Appeals' decision in *In re Nave*, 197 A.3d 511, 516 (D.C. 2018) (per curiam), where the Court ruled that a stipulation could not cure an infirmity in the original charge, was concerned to ensure that the record was complete. Accepting the ODC's concern and aware that Respondent could not and did not designate any harm to Respondent from the admission of evidence of the acts to which he had stipulated he was responsible, the Committee ruled that all exhibits would be admitted. Specifically, these include Disciplinary Counsel's

exhibits 1-112 (but not exhibits 65, 81, 82, 83, and 88, as they were left intentionally blank),[12] and Respondent's exhibits 1-9. Tr. 14-15, 20, 36, 47-48.

When the Chair then asked if the parties were ready to proceed, Respondent's counsel repeatedly gave a qualified response intimating that the Committee's continuance of more than four weeks following his late entry of appearance on behalf of Respondent was insufficient for him to be prepared.[13] This despite the fact that as counsel he had endorsed a stipulation of responsibility. In response to repeated inquiries, counsel continually equivocated in his response. After suggesting that given counsel's equivocal responses the stipulation should not be accepted, the Committee then inquired of Respondent.

> COMMITTEE CHAIR O'MALLEY: Mr. Rich, have you had an opportunity to read and consider the stipulations?
>
> THE WITNESS: Yes.

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[12] Respondent's counsel's argument was, in its simplest form, that responsibility having been stipulated, the exhibits were unnecessary. In short, his position was not an objection but merely a suggestion.

[13] As set out, *supra*, to this point in time following the filing of charges Respondent had twice retained counsel and once discharged counsel at the very last moment necessitating continuances. This, despite the fact that Respondent had been told that he should advise any counsel he retained that counsel's late entry of appearance would not support a continuance. *See* Tr. 2/1/19, pp. 80-83. Counsel never indicated how, having stipulated to his client's responsibility for the violations charged, he was not ready to proceed, particularly in light of the fact that he presented not one but two experts in support of his client's claim of *Kersey* impairment. Counsel simply implied that given he had been "kicking around this system for 50 years" and given more time he would have been more ready, clearly an opinion to be respected and just as clearly a statement of the obvious, but nonetheless a contention insufficient to support a continuance. Tr. 42. Indeed, when asked if had anything else in support of his need for continuance, counsel responded, "I have nothing to add . . . ." Tr. 44.

COMMITTEE CHAIR O'MALLEY: And do you have any reservation with respect to the stipulations?

THE WITNESS: No.

COMMITTEE CHAIR O'MALLEY: And the facts and circumstances set out in the stipulations, you admit to those facts and circumstances?

THE WITNESS: Yes.

COMMITTEE CHAIR O'MALLEY: Okay. Is there any reason known to anybody why I shouldn't accept the stipulations on behalf of the committee?

MR. FOSTER: Not by me.

MR. PERRY: Not from Disciplinary Counsel, Mr. Chairman.

COMMITTEE CHAIR O'MALLEY: Mr. Rich, as a lawyer, do you have any reasons why we shouldn't accept the stipulations?

THE WITNESS: Not that occurs to me.

COMMITTEE CHAIR O'MALLEY: Just a little louder, Mr. Rich.

THE WITNESS: No.

Tr. 45-46. It being clear to the Committee at that point that there was absolutely no reason not to go forward and accept the stipulations, the Committee found that there was sufficient evidence of a violation to proceed to the sanctions portion of the hearing.

These many procedural tactics undermined the Committee process and caused unnecessary delay and expense.

II. THE HEARING

During the hearing on mitigation that followed, the burden of going forward having shifted and Respondent's exhibits having been admitted without objection,

Respondent testified on his own behalf and called Clara Rich, Katheryn Joyner, Kenneth Ward, Denise Perme, Ryan Michael Krute, Thomas Dawson, III, Dr. Ronald Smith, M.D., Dr. Marcia LoBrano, M.D., and Dr. Christiane Tellefsen, M.D., as witnesses. Disciplinary Counsel's exhibits[14] in support of the Specification of Charges were admitted over the objection of Respondent, and the ODC called as witnesses Dr. Richard Cooter and Jacqueline Mendizabal during the hearing on sanctions.[15] Exhibits offered by the parties during the hearing on mitigation were admitted without objection (specifically Disciplinary Counsel's 201-214, and Respondent's 1-9) and before the close of the hearing the Committee requested, without objection, that Respondent submit additional exhibits to be filed after the hearing.[16]

Respondent's counsel submitted its Proposed Findings of Fact, Conclusions of Law, and Recommendation as to Sanction on July 16, 2019, and Disciplinary Counsel filed his Proposed Findings of Fact, Conclusions of Law, and Recommendation as to Sanction on August 12, 2019. Respondent's Reply brief was filed on August 27, 2019. In short, Respondent contends that as a result of his alcoholism, pursuant to *Kersey*, the sanctions otherwise mandated for his violations

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[14] "DX" refers to Disciplinary Counsel's exhibits. "RX" refers to Respondent's exhibits. "Tr." followed by a date refers to the transcript of a hearing on that date. "Tr." refers to the transcript of the hearing held on May 13, 14, 15 and 17, 2019.

[15] Without objection, to accommodate witnesses and avoid recesses, witnesses were called out of order.

[16] Those exhibits marked as RX 10-14 are hereby admitted.

should be mitigated consistent with the Court of Appeals holding in *Kersey*. Disciplinary Counsel contends that Respondent committed the charged violations and that he has failed to establish but-for causation as to Counts I and II, or that he is substantially rehabilitated. Disciplinary Counsel contends that as a result of his failure to meet the requirements of *Kersey*, Respondent should be disbarred as a sanction for his misconduct.

Disciplinary Counsel must establish by clear and convincing evidence that Respondent violated the Rules of Professional Conduct. "This more stringent standard expresses a preference for [the attorney's] interests by allocating more of the risk of error to [Disciplinary] Counsel, who bears the burden of proof." *In re Allen*, 27 A.3d 1178, 1184 (D.C. 2011) (first alteration in original) (citation and internal quotations omitted). Clear and convincing evidence is more than a preponderance of the evidence, it is "evidence that will produce in the mind of the trier of fact a firm belief or conviction as to the facts sought to be established." *In re Cater*, 887 A.2d 1, 24 (D.C. 2005) (citation and quotation marks omitted). On the basis of the record as a whole and consistent with the standard set out in *Cater* and *Allen*, the Hearing Committee makes the following findings of fact and conclusions of law.

As set forth below, based upon the evidence admitted and the Stipulation of the parties, the Hearing Committee finds by clear and convincing evidence that Respondent violated Rule 1.15(a) by engaging in commingling and misappropriation, and that the charged misappropriations were reckless or

intentional. The Committee also finds by clear and convincing evidence that Respondent violated Rule 1.15(c) by failing to promptly pay parties funds they were entitled to receive. The Committee further finds by clear and convincing evidence that Respondent violated Rules 5.3(a) and 5.3(b) by failing to make reasonable efforts to ensure that his paralegal's conduct was compatible with his professional obligations.

The Committee also finds by clear and convincing evidence that Respondent violated Rules 1.1(a) and (b), l.3(a) and (c), and l.4(a) and (b) by failing to provide competent representation and serve his client with the skill and care commensurate with that generally afforded to clients by other lawyers in similar matters; failing to represent his client zealously and diligently and to act with reasonable promptness in representing his clients; and failing to keep his client reasonably informed about the status of matters and to explain the matter to the extent reasonably necessary to permit his client to make informed decisions about the representation.

After hearing the parties on sanctions and considering the arguments set forth in their concluding motions, the Committee finds that consistent with the Court of Appeals' opinion in *Kersey* and its progeny, particularly *In re Temple*, 596 A.2d 585 (D.C. 1991), and *In re Stanback*, 681 A.2d 1109 (D.C. 1996), Respondent has established by evidence substantially exceeding the standard of clear and convincing evidence for prongs (1) and (3), and the standard of preponderance of evidence for prong (2). Specifically,

(1) that he suffered from an AUD[17] at the time the charged misconduct;
(2) that his AUD substantially caused him to engage in the charged misconduct; and
(3) that he is substantially rehabilitated from his AUD.

III. FINDINGS OF FACT

On the basis of the record as a whole, the Hearing Committee makes the Findings of Fact and Conclusions of Law set forth below, each of which we find are supported by clear and convincing evidence.

1. Respondent is a member of the Bar of the District of Columbia Court of Appeals, having been admitted on July 11, 2008, and assigned Bar number 471754. *See* DX 1.

2. Respondent is the managing attorney of The Rich Law Firm, P.C. *See* RX 12 at 1.

3. It is important as we set out our findings of fact in this matter that we make clear our view of Respondent's testimony. Respondent's testimony at the hearing in this matter was often defensive, argumentative, or non-responsive. There are aspects of his testimony (such as the inability ever to arrange to complete an accounting) that never were explained. *See* FF 30-56, *infra.* Because it is

[17] Because of the negative connotations of previously used terminology such as alcoholism and alcoholic, alcohol use disorder or AUD is now the terminology preferred by the American Psychiatric Association. *See Diagnostic and Statistical Manual of Mental Disorders* (5th ed. 2013), 2019 ICD-10-CM Diagnosis Code F10.10. In this document we will use that terminology, basically for brevity's sake since it is easily abbreviated as AUD. However, throughout the hearing, and thus in all quotes from the hearing, all persons referred to Respondent's disability as alcoholism.

unnecessary to our duties here, we do not find that these reflected a conscious attempt to deceive; it appears to be a defensive reaction to questions perceived to be adverse. But they nonetheless detracted from the credibility of Respondent's testimony. Accordingly, although we do not discount his testimony entirely, we approach it with some skepticism and with regard to significant facts have relied only on aspects that are corroborated by other evidence.

Respondent's Violations of the Rules

4. The parties have stipulated to the facts and violations alleged in Disciplinary Counsel's Specification of Charges. *See* Joint Stipulation (May 10, 2019). This stipulation includes: Count I's charges of reckless or intentional misappropriation from medical providers, commingling of funds, and failure to promptly disburse funds to third parties, *see* DX 2, Spec. Charges ¶¶ 3-66; Count II's charges of failing to make reasonable efforts to ensure that his paralegal was conveying accurate information to medical providers, *id*. ¶¶ 67-74; and Count III's charges related to failing to meet a statute of limitations deadline, *id.* ¶¶ 75-81.

Count I

Misappropriation from Medical Providers and Client, Commingling of Funds, and Failure to Promptly Disburse Funds to Third Parties

5. Mr. Rich agreed to represent clients on a contingency basis in the following matters: Thomas; Hubbard; M. Childs; E. Childs; Crossland; Dudley; Mickens; Johnson; Holland; Alami; Mitchell; Stewart; Richards; Wilson; Forde; Andre; Payne; and Sellers. *See, e.g.*, DX 5 at 13 (settlement memo referencing attorney's fees); DX 7 at 1; DX 9 at 1 (retainer agreements); DX 11 at 3; DX 13 at

4; DX 15 at 7 (memos referencing fees); DX 17 at 1; DX 19 at 1; DX 21 at 1; DX 23 at 1; DX 25 at 2; DX 27 at 1; DX 29 at 1 (retainer agreements); DX 31 at 4; DX 33 at 5 (memos referencing fees); DX 35 at 1 (retainer agreement); DX 37 at 7; DX 39 at 1 (memos referencing fees).

6. At all times relevant to Count I, Mr. Rich maintained a CitiEscrow "Control Account" ending in 2811, in the name of "The Rich Firm, P.C." DX 46 (statements). The 2811 account was not an IOLTA account. DX 77 at 4 (acknowledging 2811 was not an IOLTA). Mr. Rich was the sole signatory on the 2811 account. *See* Tr. 246 (Rich); DX 47 at 1.

7. Frequently, but not always, Mr. Rich first deposited or caused to be deposited client settlement checks from personal injury matters into "sub-accounts," which were IOLTA accounts and designated for individual client matters. *See, e.g.*, Tr. 260-62 (Rich); DX 6, 8, 10 (sub-account records with IOLTA designation). Mr. Rich then transferred or caused to be transferred settlement funds from the sub-account to the 2811 account prior to disbursement. *Id.*

8. Mr. Rich also maintained a firm operating account ending in 3889. DX 41; DX 42 (statements); DX 43 (checks). In or around June 2012, Mr. Rich and/or his firm settled five client matters: Thomas, E. Childs, M. Childs, Crossland, and Hubbard. In June 2012, Mr. Rich deposited settlement proceeds from these matters into their respective sub-accounts, and then transferred them into the 2811 account. *See* DX 5 at 9 (Thomas settlement check); DX 6 at 1

(Thomas sub-account statement reflecting deposit and transfer to 2811 account); DX 46 at 5 (2811 statement reflecting transfer from sub-account); DX 11 at 2 (E. Childs settlement check); DX 12 at 1 (E. Childs sub-account statement); DX 46 at 5 (2811 statement reflecting transfer from sub-account); DX 9 at 5 (M. Childs settlement check); DX 10 at 1 (M. Childs sub-account statement); DX 46 at 5 (2811 statement); DX 13 at 2 (Crossland settlement check); DX 14 at 1 (Crossland sub-account statement); DX 46 at 5 (2811 statement); DX 7 at 7 (Hubbard settlement check); DX 8 at 1 (Hubbard sub-account statement); DX 46 at 5 (2811 statement).

9. The first transfer into the 2811 account from these matters was the Thomas settlement ($7,400), and took place on June 20, 2012. DX 46 at 5; DX 5 at 10 (deposit receipt). That same day, Mr. Rich also transferred $10,000 out of the 2811 account, which previously had a $10,088.90 balance. DX 46 at 5. Accordingly, the only funds Mr. Rich had in the 2811 account at the end of June 20 were the Thomas settlement funds and an additional $88.90 which, for purposes of these disciplinary proceedings, Disciplinary Counsel assumes belonged to Mr. Rich. *See* DX 46 at 5.

10. On June 28, 2012, Mr. Rich transferred the E. Childs, M. Childs, Crossland, and Hubbard settlements into the 2811 account. DX 46 at 5. The Thomas client's check for his settlement proceeds ($2,937) also posted that day. DX 46 at 5; DX 48 at 1 (check).

11. On June 29, 2012, Mr. Rich made a $5,500 transfer to his operating account. DX 46 at 5; DX 42 at 5. As set forth in the attached chart[18] and citations below, the remaining clients (M. Childs, Crossland, E. Childs, and Hubbard) were paid on July 2, 2012. From that point on, additional client matters settled, Mr. Rich's firm delayed payments to multiple medical providers (*see* FF 78-80), and Mr. Rich misappropriated monies from multiple providers and one client (Andre). *See* Appendices 1-2. Specifically, the balance in Respondent's account dipped below the amount of funds he was required to hold in trust on July 3-4, August 2-October 16, and October 26, 2012. *See id.* In addition, between September 26, 2012 and October 10, 2012, when the client was paid, Respondent was supposed to hold $38,322.52 in trust for Mr. or Ms. Andre. However, his account balance fell to $37,324.35 on October 9, 2012, below the amount he owed Mr. or Ms. Andre alone, to say nothing of the other clients for whom he held entrusted funds. *Id.*

12. Additionally, on July 18, 2012 and July 24, 2012, Respondent transferred his fees from a subaccount into the 2811 account. *See id.* At the time of each transfer, the 2811 account contained entrusted funds.

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[18] We recognize that both parties stipulated to the charged violations in Counts I-III, which includes intentional or reckless misappropriation charged in Count I. So it may follow, arguably, that intentional or reckless misappropriation is not at issue.

But Disciplinary Counsel must prove these charged violations by clear and convincing evidence. And two recent decisions by the Court, *Nave*, 197 A.3d at 511, and *In re Ekekwe-Kauffman*, 210 A.3d 775 (D.C. 2019) (per curiam), help elucidate this standard. Specifically, Disciplinary Counsel must generate sufficient evidence tracking the relevant funds from when they were first deposited, to the point where these funds were not appropriately safeguarded. Mindful of this, we set out these relevant transactions sequentially in Appendix 1, which can be read alongside our Findings of Fact for Count I.

13. Mr. Rich's conduct violated Rule 1.15(a) (reckless or intentional misappropriation and commingling) and Rule 1.15(c) (failure to promptly pay parties funds they were entitled to receive).

Count II

False Information Provided to Medical Providers

14. In fourteen client matters addressed in Count I (and identified in Appendix 3), Mr. Rich's paralegals sent medical providers letters that: 1) stated insurance companies had made "final" offers when they had not; 2) understated the final offer amounts the matters actually settled for; and/or 3) represented that Mr. Rich's firm had agreed to reduce its fees to facilitate settlement when, as set out below, in the referenced matters they were not. *See* FF 18, *infra*. In sum, Respondent's firm sent such letters to medical providers in fourteen separate client matters. *See* Appendix 3, *infra*.

15. The medical providers agreed to reduce their fees in response to these letters. *See* DX 5 at 6 (letter countersigned by provider); DX 7 at 6 (same); DX 9 at 3 (same); DX 11 at 1 (same); DX 13 at 1 (same); DX 15 at 2 (same); DX 17 at 2 (same); DX 97 (materials from Phillips and Green; faxed letter at Bates 9); DX 21 at 3 (letter countersigned by provider); DX 25 at 5-6 (signed letter faxed back to "Atty Archie Rich III"); DX 27 at 2 (letter countersigned by provider); DX 29 at 3 (same); DX 31 at 1 (same); DX 33 at 2 (same).

16. In at least one case (the Johnson matter), the case already had settled for the higher amount at the time of the representation concerning a final

settlement offer. *Compare* DX 19 at 16 (settlement check stub dated 6/27/12), *and* DX 20 at 1 (7/2/12 deposit), *with* DX 97 at 9 (copy of letter provided to Phillips and Green, with July 3, 2012 fax line).

17. Mr. Rich did not inform the medical providers when the matters ultimately settled for a higher amount than represented. *See* Tr. 408 (Rich) ("[I]n the vast majority of instances when the reduction is obtained, there is not a circling back to the provider to disclose a higher settlement offer.").

18. Mr. Rich did not reduce his fees in connection with any of the above-referenced matters. *See* DX 5 at 13; DX 7 at 9; DX 9 at 7; DX 11 at 3; DX 13 at 4; DX 15 at 7; DX 17 at 6; DX 19 at 22; DX 21 at 10; DX 25 at 7; DX 27 at 4; DX 29 at 5; DX 31 at 4; DX 33 at 5; DX 35 at 2 (settlement sheets; sometimes stating "30%" but still collecting a third). He did not inform the medical providers of this fact. *See* Tr. 408 (Rich) (no "circling back").

19. In the Johnson matter, which settled on June 27, 2012, the negotiated balance due to Phillips and Green, the medical provider, after they were provided false information, was $4,435. *See* DX 19 at 22; DX 97 at 9-10. In March 2015, Mr. Rich offered Phillips and Green $3,500 "in full resolution of any outstanding invoices." *See* DX 97 at 11.

20. Phillips and Green accepted Mr. Rich's offer. However, upon learning that the settlement amount had been misrepresented, they demanded the remaining balance and Mr. Rich complied. DX 97 at 8 (call log provided by Patricia Rudolph of Phillips and Green) (4/15/16 entry: "I called and spoke with

atty [*sic*] Rich, concerning incorrect settlement amount given by his staff around 7/2012, I informed that the full amount is due by 5/6/2016. P. Rudolph.").

21. Respondent had insufficient measures to ensure that his paralegal acted in compliance with the Rules. His paralegal operated on her own in connection with negotiating with these medical providers in fourteen client matters. Respondent was unaware that the medical providers were being provided false information or that those providers had agreed to reduce their fees based on that false information.

22. Mr. Rich violated Rules 5.3(a) and (b).

Count III

23. On February 3, 2007, Vance L. Turner was injured in an automobile accident in Washington, D.C. *See* DX 112 at 9 (retainer referencing accident).

24. On August 1, 2008, Mr. Turner retained Mr. Rich and the Rich Law Firm to represent him in the matter. DX 112.

25. Between August 2008 and February 2010, Mr. Rich attempted to settle the case with Geico. *See* DX 108 (Geico activity log) at 47-56 (notes that Mr. Rich entered his appearance on August 7, 2008).

26. In the months leading up to February 3, 2010 (the date the statute of limitations would expire), Mr. Rich did not discuss the option of filing suit with Mr. Turner or advise him of the approaching statute of limitations. *See* Tr. 808 (Mendizabal) (no "alarm" for approaching statutes of limitation).

27. Mr. Rich did not file suit on behalf of Mr. Turner before the statute of limitations expired. *See, e.g.*, Tr. 796-98 (Mendizabal); Tr. 170-77 (Rich); DX 108 at 3-4; DX 110 at 3-4 (letters to Disciplinary Counsel acknowledging missed statute).

28. Sometime after February 3, 2010, Mr. Rich met with Mr. Turner to inform him that the statute of limitations had run on his claim. Tr. 170-77 (Rich). Mr. Turner subsequently hired separate counsel to represent him in a legal malpractice claim against Mr. Rich. DX 111 (docket for malpractice action) (noting Mary D. Burgess as counsel for Mr. Turner).

29. Mr. Rich's conduct violated Rules 1.1(a) and (b), Rules 1.3(a) and (c), and Rules 1.4(a) and (b).

Respondent's Conduct During Disciplinary Counsel's Investigation[19]

30. On April 15, 2013, Mr. Rich advised that he "and his accountant are currently investigating his records to determine where the accounting error occurred with regard to his IOLTA account. Once that review is complete, Mr. Rich will provide Bar Counsel with a supplemental response." DX 60 at 1, 4; Tr. 480-81 (Rich). Some process of accounting for what happened in the 2811 account had started by April 2013. *See* Tr. 481; Tr. 197 (Rich) ("[T]his was a disciplinary matter now, and so I got an attorney, and I needed help trying to figure it out.").

31. On August 4, 2014, Disciplinary Counsel sent Mr. Rich a letter identifying the specific time frame (May 2012 through October 2012) that would

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[19] In assessing Respondent's conduct during the ODC's investigation we considered the possibility that Respondent's "delaying tactics" might have resulted from his determination that he needed time to establish that he was indeed rehabilitated. Although we ultimately affirmatively found that this was not the case, in reviewing the law with regard to the *Kersey* defense, it seems to us that Board Rule 7.6, the only rule that seems to apply, should be amended to permit a respondent suffering from a *Kersey* disability, upon a finding or admission of an ethical violation, to delay the sanction portion of the hearing to permit time to establish rehabilitation, through a process that protects clients. Here, there was sufficient time (six years, ultimately) for Mr. Rich to rehabilitate himself. Still, if Respondent (or any other respondent similarly situated) was not rehabilitated, delaying tactics would operate to the respondent's benefit, permitting the respondent to continue to practice to the detriment of the public we are charged to protect. Thus, any delay pursuant to a rule change must be premised on a requirement that the respondent's practices be monitored during the delay. The suggested rule change, consistent with the objectives of *Kersey* and its successors, would further encourage respondents to seek assistance and work to rehabilitate themselves while offering additional protection to the public we serve. The purpose of this suggestion is to speed the intercession of whatever steps are necessary to protect the public we serve. As a consequence, all parties to the process must act with appropriate dispatch. Respondent's current state of rehabilitation ameliorates our concerns in this matter.

become the subject of Count I. DX 75. The letter specified the matters from which funds were deposited during that period. *ld.*

32. On October 14, 2014, Disciplinary Counsel sent Mr. Rich a follow-up letter stating that a review of the documents provided and bank records "suggests multiple instances of misappropriation over four months, in an amount over $27,000." DX 78.

33. On May 11, 2016, Disciplinary Counsel sent Mr. Rich another letter, again inquiring about the same period (May 2012 through October 2012) and debits made from the 2811 account. DX 94. This letter also expressed concern about misrepresentations to medical providers during negotiations, which would become the subject of Count II, and enclosed a subpoena for documentation, which included a request for documents concerning negotiations with medical providers to date. *Id.*

34. In October 2016, two years after he stopped drinking, Mr. Rich represented to Disciplinary Counsel that an accounting still had to be done and/or was being done in connection with the 2811 account. Tr. 482-483 (Rich); DX 102.

35. On November 1, 2016, Disciplinary Counsel forwarded to Mr. Rich a draft Specification of Charges and informed him that he had "provided Disciplinary Counsel with no information that serves to adequately address the apparent misappropriations detailed in the draft charges." DX 102.

36. In January 2017, Mr. Rich reported to Dr. Tellefsen that "[h]e now has a bookkeeper and an accountant, who are still working on auditing all of the accounts." DX 201 at 7; Tr. 484-85 (Rich).

37. More than two months later, by letter dated March 31, 2017, the accounting firm Miller Musmar set out for Mr. Rich the scope of its proposed services: a. Work to classify IOLTA transactions for 2012 calendar year which represents 28 matters; and b. Attempt to document and reconcile up to 4 client matter accounts as chosen by legal counsel from inception to signed settlement date. RX 12 at 3.

38. Miller Musmar estimated the work would take 40-50 hours at a discounted hourly rate. RX 12 at 3 ("*" and"**" notations). The estimate was based on "the assumption that [Miller Musmar] will receive full cooperation from The Rich Firm, PC and that unexpected circumstances will not be encountered." *Id.*

39. Mr. Rich agreed to the terms set forth in the March Miller Musmar letter by letter dated June 12, 2017. RX 12 at 6-7.

40. One year later, on June 19, 2018, Mr. Rich was served with the Specification of Charges in this matter. DX 3 at 2.

41. On July 9, 2018, Mr. Rich opened an Insured Money Market Account (IMMA) (# 8038), not an escrow account. *See* RX 12 at 2. Mr. Rich opened the account when it became clear to him that there would not be enough money to pay outstanding obligations with the 2811 account. Tr. 207-09 (Rich).

42. On July 19, 2018, Mr. Rich emailed Mr. Musmar of Miller Musmar stating his belief that "we need to alter the scope of work in a manner that will require your guidance and authorization." RX 12 at 28.

43. On July 21, 2018, Mr. Musmar emailed Mr. Rich that the firm could alter the scope of their work. RX 12 at 34.

44. By August 3, 2018, it appears Mr. Rich had sent Miller Musmar a copy of the Specification of Charges. *See* RX 12 at 45 ("Angie will let you know when she's able to go over the specification of charges with you").

45. The last apparent email exchange in the record between Mr. Rich and Miller Musmar occurred in August 2018. *See* RX 12 at 55 (re: good afternoon), 49 ("[P]lease do not send me written responses").

46. On January 28, 2019, Mr. Rich, through counsel, filed a proposed Exhibit 3 for these proceedings: "Spreadsheet showing status of [Mr. Rich's] payments to medical providers." DX 211; Tr. 485-87 (Rich).

47. Thereafter, Disciplinary Counsel subpoenaed information about Mr. Rich's repayment to medical providers. *See* Disciplinary Counsel's March 26, 2019 Opposition to Mr. Rich's Motion to Continue Hearing at 6-7; Mr. Rich's March 26, 2019 Motion to Continue Hearing at 2; Tr. 487 (Rich). Disciplinary Counsel had subpoenaed information about any and all discussions and negotiations with medical providers before (*see* DX 94) and had advised Mr. Rich that his responses to Disciplinary Counsel's subpoenas were all past due. *See*

DX 102 at 1 (November 1, 2016 letter). At the hearing, Mr. Rich recalled "a number of subpoenas[.]" Tr. 487.

48. On March 29, 2019, following a pre-hearing, the Chair ordered Mr. Rich to respond to Disciplinary Counsel's subpoena by April 3, 2019.

49. On April 3, 2019, Mr. Rich provided some materials and represented, through counsel, that he would continue to provide materials on a '"rolling basis.'" DX 212 (quoting Mr. Rich). Mr. Rich made an additional production on April 23, 2019. *Id.*

50. On May 2, 2019 Disciplinary Counsel sent Mr. Rich a letter detailing concerns that he had still not fully complied with its subpoena, including i) Mr. Rich's failure to confirm he had searched his email for responsive materials; and ii) the potential existence of more comprehensive documentation from Miller Musmar that Mr. Rich was failing to provide. DX 212. The letter identified these materials as "relevant to your *Kersey* mitigation claim (specifically rehabilitation)." *Id.*

51. On May 11, 2019, the weekend before hearing, Mr. Rich provided additional documentation in purported response to Disciplinary Counsel's subpoena. *See* Disciplinary Counsel's June 7, 2019 Supplement to Record (attaching May 11, 2019 Production, Bates #1-120).

52. The 119 pages Mr. Rich provided do little to illuminate who is still owed monies or the efforts Mr. Rich undertook to ensure medical providers were repaid. *See* May 11, 2019 Production.

53. Mr. Rich advised that "there is no comprehensive 'report' detailing payment obligations to medical providers." *See id.* at 1.

54. At the hearing, Mr. Rich testified to the existence of a report from Miller Musmar that motivated him to create a new bank account and segregate funds that might still be owed providers. *See* Tr. 492-93 (Rich) (Miller Musmar "report indicated at that time that there was a certain specific amount of money that was owed to providers as a net, as a sum"), 495 ("Miller[]Musmar told me was the total outstanding amount owed to providers"), 496-97 ("At the time -- at a time I received a report from Miller[]Musmar"), 207-209.

55. This report was not provided in response to Disciplinary Counsel's subpoena asking for documents about repayments to medical providers. Mr. Rich's explanation was that "it's still a work in progress." Tr. 500 (Rich).

56. Although, as explained below, we find that Respondent proved the original violations charged were caused by his AUD; however, his AUD does not explain the failure to provide a forthright accounting, the delay in response, or the incomplete compliance. To date there has not yet been a complete accounting of account 2811. Especially when coupled with the many delays attending the scheduling of the hearing, Respondent's conduct leaves us with a firm conviction that he purposely delayed his responses to the ODC's efforts to investigate this matter. We considered this conduct to his detriment in our findings and suggestions in this report.

Respondent's Alcoholism

Respondent's Evidence

57. Respondent testified to his experiences with alcohol; its effect on his work performance; its connection to his misconduct; his inability to remember events during the time he was an active alcoholic; his commitment to sobriety; and his efforts at rehabilitation.

58. Respondent testified that he began abusing alcohol at an early age and continuing through every educational institution he attended from junior high through law school. Tr. 79-90.

59. Respondent's heavy drinking became progressively worse after law school and throughout his professional life until late 2014, adversely affecting his relationships with family and friends. *See, e.g.*, Tr. 103:4-107:17; Tr. 107:13-17; Tr. 114:18-115:10; Tr. 140:22-141:2.

60. With the exception of two non-expert witnesses, all of the witnesses presented at the hearing testified credibly that Respondent was suffering from severe alcoholism during the period between 2010 and 2014.

61. The two witnesses who did not testify that Respondent was suffering from alcoholism were employees/associates in Respondent's law firm whose association with Respondent was largely limited to the office. They did testify to facts and circumstances consistent with Respondent's claims regarding the effects of his alcoholism on his professional life, and their testimony corroborated

Respondent's testimony that he did not appear in the office when he was under the influence of alcohol or actively suffering from a "hangover." *See* FF 63-65, *infra.*

62. Respondent testified that during the period of his active alcoholism he would often be aware of a work commitment the following day but would nevertheless binge drink into the early morning hours such that he would fail to appear as required. Tr. 134-37.

63. Mr. Rich's testimony regarding his failure to meet his obligations is corroborated by the testimony of witnesses. Tr. 615-17 (Ms. Joyner), 755-57 (Mr. Dawson), 798 (Ms. Mendizabal). Days on which Respondent failed to appear for obligations and to advise of his intended absence occurred between three and ten times a month from the founding of the Rich Firm in 2008. Tr. 144:3-145:2. Jacqueline Mendizabal, Mr. Rich's paralegal during some of his time as an active alcoholic, estimated that on average Mr. Rich was in the office only nine days per month. Tr. 798:20-22.

64. This pattern of absenteeism persisted through the entire period of Respondent's alleged misconduct and the absences became frequent over time. Tr. 142:4-12, 145:11-146:7.

65. Such absenteeism is common in alcoholics who often engage in "binge drinking, just disconnecting, [and] unplugging themselves from their normal lives." What happened in Respondent's office was consistent with what occurred with many other individuals suffering alcoholism and attention deficit problems. Tr. 562:18-563:3, 583:14-21 (Tellefson).

66. The adverse effects of Respondent's binges also lasted longer than just a hangover the next morning. It takes at least twenty-four hours to clear the effects of three or four drinks from your system and longer to clear the full effects of more intense drinking and longer drinking sessions. Tr. 894:16-19, 895:2-6 (Smith).

67. Respondent testified credibly that the lingering effects of alcohol often made his days at the office useless. Tr. 393:7-13.

68. Respondent's alcohol induced absenteeism caused him personnel problems, as it left an associate lawyer or paralegal essentially running the business, and caused staff, such as Ms. Mendizabal, to quit. Tr. 143:5-11, 798:16, 799:3, 153:9-17.

69. The damage that the progressively longer binges took on Mr. Rich made it difficult for him to focus and complete work tasks when he was at work. Years of drinking would make it "harder and harder" for him to do work when technically sober, and as Respondent's drinking became more severe, his "attentional problems" would "get worse," which would make it harder for him to work. Tr. 569:12-18, 567:9-18 (Tellefson).

70. Respondent's alcoholism also impaired his ability to exercise sound judgment. Dr. Tellefsen concluded that "alcohol . . . had infiltrated everything he was doing in some way, whether he was actively intoxicated or barely sober, . . . his life was circling the drain." "[P]eople who drink like [Mr. Rich] can get very apathetic, depressed, [and] motivation[-]less[.]" Such alcoholics cannot

accomplish complicated tasks so they instead say, "[']I'll just go to the bar instead.[’] They just blow stuff off. . . . [T]hey stop caring. . . . [I]t's a disease that takes its toll . . . on your brain, your personality, your motivation, your body[.]" Tr. 588:8-11, 582:2-582:13.

71. Alcohol use can create "holes in your memory from day-to-day." Tr. 561:22-562:1 (Tellefsen). "Even to today" Mr. Rich "would have little to no ability to remember a lot of things that happened while he was drinking." Tr. 594:17-22 (Tellefsen).

72. Disciplinary Counsel's expert noted that he did not dispute that alcohol would "color people's judgments," and that alcohol could continue to affect someone's good judgment in the aftermath of a "severe bout with binge drinking." Tr. 935:14-15, 990:1-10 (Cooter). When Respondent drank, "his judgment was impaired . . . extensively. . . ." "Alcohol . . . disinhibits judgment" and makes an alcoholic take actions, such as driving or spending excessively, that the alcoholic would not have taken if sober. Tr. 887:13-16, 888:13-14, 872:2-9 (Smith). "[O]ne [of] the products of excessive alcohol is excessive bad judgment . . . ." Tr. 889:2-3. With continued severe drinking, "the complications get worse, the judgment gets worse." Tr. 893:22-894:3 (Smith).

73. Respondent admitted that he used cocaine during binges "particularly when the bars closed and [he] was now in that area of after-hours drinking." Tr. 114:1-2. He repeatedly testified that he used cocaine only after using alcohol and because "it helped me sustain a state of inebriation without falling asleep."

Tr. 114:18-20; *see* Tr. 117:6-9 (Mr. Rich: "I cannot remember a time that I started using cocaine when I wasn't already under the influence of alcohol"), 117:22-118:4 (Mr. Rich again testifying that he used cocaine to prevent falling asleep), 122:17-123:4, 124:11-16.

74. Considering this pattern of alcohol use followed by cocaine use, Dr. Tellefsen concluded that Respondent was primarily addicted to alcohol. Tr. 547:14-21. Dr. Tellefsen explained that in treating substance abuse appropriately, a clinician must "identify" a patient's "drug of choice," that is "the drug that [the patients] are physiologically dependent on"; "the one that they crave"; the drug that will cause "physiologic difficulty with withdrawal, where you might have to address their withdrawal medically, like with medication or observation"; and the one "you want to focus on in treatment." Tr. 548:12-549:2.

75. Based on her clinical interview and review of treatment records, Dr. Tellefsen determined that "that [Respondent's] drug of choice is alcohol," even if he also used cocaine. Tr. 549:5-8. Dr. Tellefsen testified that this is "a common practice because alcohol slows you down and makes you a little sleepy, and cocaine wakes you up. So people who abuse alcohol often use a stimulant in order to drink longer." Tr. 548:19-549:15. Regardless of whether this is a common practice, the Committee finds that it was, in fact, the case with Respondent. More specifically, the Committee finds that Respondent's disability was alcoholism.

76. Respondent's medical records from Kolmac Clinic also support this conclusion. Those records consistently identify alcohol as the drug primarily

causing Respondent's substance abuse disorder and supported Respondent's contention, and the Committee's finding, that alcohol was the cause of Respondent's disability. *See* DX 209; *see also* Tr. 876:16-877:4 (Dr. Smith noting that the Kolmac records identify alcohol as Mr. Rich's "drug of choice"); Tr. 875:15-876:5 (same); Tr. 878:16-879:12 (same); Tr. 881:10-21 (Dr. Smith noting the Kolmac records support his diagnosis that alcohol was the primary cause of Mr. Rich's disability).

77. Dr. Cooter did testify differently: he expressed his opinion that alcohol was not the primary cause of Respondent's disability. He testified that Mr. Rich was "suffering at least equally and perhaps more from cocaine abuse," Tr. 933:8-9, and that he could not offer a "primary diagnosis . . . one way or the other" as between cocaine and alcohol abuse, Tr. 934:2-3. It is clear to the Committee from hearing both Dr. Cooter and Respondent testify that Dr. Cooter's interview of Respondent elicited the same defensive and evasive attitude from Respondent as Respondent repeatedly displayed in his appearance before the Committee.[20] This attitude resulted in Dr. Cooter's conclusion that he could not

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[20] For example, while admitting he would "have had to have done a whole lot more work" to make a diagnosis as to these issues, Dr. Cooter speculated that Respondent suffered from "characterological" problems, including "narcissism," Tr. 951:9-20, and a "pattern of deceiving." Tr. 957:13. Dr. Cooter also suggested that Mr. Rich "basically denied responsibility for pretty much everything" that had caused the disciplinary charges, Tr. 954:19-20, and that there is "no indication" that Mr. Rich "assume[d] responsibility for [his actions]." Tr. 960:3-6. The Committee observed these same problems in Respondent's testimony, and that observation resulted in our determination to question testimony from Respondent and, when the fact was important, to disregard his testimony when not corroborated. As with our prior comment about

Footnote continued on next page

offer a "primary diagnosis . . . one way or the other" as between cocaine and alcohol abuse, Tr. 934:2-3. Thus, the Committee's determination to discount Dr. Cooter's conclusion was a direct result of its determination to discount Respondent's testimony. *See* FF 3.

Disciplinary Counsel's Evidence Regarding *Kersey*

78. In Count I, Mr. Rich's misconduct evinced an intent to misuse a specific category of funds (only those entrusted funds belonging to medical providers) for a specific purpose, to fund the operating expenses of his firm. *See* FF 77-82, *infra*.

79. In at least some instances, checks were written out to providers at the time of settlement but were not sent out. *Compare* DX 21 at 9 (check no. 1347, dated 7/18/12), *and* DX 33 at 9 (check no. 1371, dated 9/25/12), *with* DX 46 at 59 (check no. 1347 posts to 2811 account on October 3), *and* DX 33 at 10 (new check written to same provider as check no. 1371, dated May 2013).

80. Delaying the sending of medical provider checks created a pool of funds from which Mr. Rich could misappropriate. *See* FF 9, *supra* (before Thomas deposit and subsequent case settlements, only $88.90 in 2811 account).

Footnote continued from previous page

not believing that Respondent consciously attempted to deceive, we certainly do not believe that Dr. Cooter attempted to deceive. Rather, Respondent's antagonistic attitude and Dr. Cooter's understandable and reasonable response to it caused us not to rely on either witness (except, of course, in explaining our reasoning in so evaluating Respondent's testimony).

81. Mr. Rich's testimony demonstrates he knew at the time that this is what delaying payments accomplished. *See* Tr. 373-394 (Mr. Rich discussing DX 21 at 9, DX 33 at 9, and delayed payments generally), 393-94 (In discussing delayed checks, Mr. Rich describes understanding he had financial issues at the time and engaging in "patchwork" designed to plug "the biggest leaks."). He instructed his paralegal to withhold sending checks for that purpose. *See* Tr. 248 (Rich) ("[n]o one other than me signed disbursement checks"), 383 (Rich) ("And so . . . the checks are written for disbursement and then they're presented to me for signature. I sign them; paralegal sends them out."); DX 21 at 9; DX 33 at 9 (notation: "alr said he will not sign check 'right now' he will let me know when").

82. Through July and August of 2012, Mr. Rich misappropriated over $22,000 in medical provider funds from the 2811 account in order to maintain a positive balance in his firm's operating account (3889). He did this through multiple transfers. *Compare* DX 46 at 18, 31 (2811 records for July and August 2012), *with* DX 42 at 6-11 (3889 records for same period). *See generally* Appendix 1.

83. From July 3, 2012 through October 26, 2012, the 2811 account balance was frequently below the required balance when taking into account outstanding obligations to clients and medical providers. *See* Appendix 1. However, there were only two instances where the balance fell past a point that endangered Mr. Rich's ability to pay both providers and clients (specifically the

Andre and Sellers clients). *See* Appendix 1 (Andre: 10/9/12 - 10/10/12; Sellers: 10/17/12 - 10/26/12).

84. In both of these instances, Mr. Rich corrected the shortfall that would have prevented the payment of clients on the following business day. In the Andre matter, he used funds that were set aside to cover the Andre client's Medicare lien to pay her share of the settlement proceeds. *See* DX 35 at 2 ($12,497.03 Medicare Lien); DX 35 at 10 (same); DX 36 at 1-3 (Andre sub-account activity); DX 46 at 45, 59 (corresponding 2811 statements); Appendix 1 (9/26/12 – 10/10/12) (Andre activity with citations). In the Sellers matter, the check was honored by the bank on a Friday, and Mr. Rich was allowed to transmit the remaining funds from the Sellers sub-account to cover the check the following Monday. *See* Appendix 1 (10/17/12 - 10/26/12) (Sellers activity with citations); DX 46 at 59 (2811 statement) (although statement reflects "returned check" charge, balance demonstrates check was honored); DX 48 at 33 (Sellers check no. 1378 with no NSF notation), DX 40 at 1 (Sellers sub-account showing both transfers).

85. By 2012, Mr. Rich had established a practice at his firm for negotiating with medical providers, which included his paralegal. *See* Tr. 396-98 (Rich). Mr. Rich was also directly involved in negotiations with medical providers. Tr. 383. Mr. Rich was aware his paralegal was sending out communications to medical providers and is "certain" that he would have reviewed these communications at some point. Tr. 396-98 (Rich); *see also* DX 25 at 5-6 (signed letter faxed back to "Atty Archie Rich III").

86. The communications Mr. Rich's paralegal sent to the providers associated with Count I were one page in length and contained substantially similar boilerplate language, sometimes accompanied by hand-written messages. *See* DX 5 at 6; DX 7 at 6; DX 9 at 3; DX 11 at 1; DX 13 at 1; DX 15 at 2; DX 17 at 2; DX 19 at 18; DX 21 at 3; DX 25 at 6; DX 27 at 2; DX 29 at 3; DX 31 at 1; DX 33 at 2; DX 97 at 9 (provided by Phillips & Green).

87. Mr. Rich testified at length to justify his firm's negotiation procedures at the time. Tr. 400-413. The only issues with the process he appeared to acknowledge that he "missed" were i) the misrepresentation of the Johnson settlement amount to Phillips & Green, and ii) the words "set in stone" being used to reference settlement offers in letters sent to medical providers. Tr. 410-13 ("I missed it; I missed it.").

88. When Phillips & Green later confronted Mr. Rich with the letter containing a false settlement amount, he could recall his negotiations with the insurer in the Johnson case and that the matter had settled for a much higher amount. Tr. 411-12 (Rich).

89. Mr. Rich's testimony about his role in negotiating with medical providers was inconsistent with a significant factual stipulation in Count II, which suggested he was disconnected from the medical provider negotiation process. *Compare* Joint Stipulation (May 10, 2019) at ¶74 ("[Mr. Rich] maintains . . . that his paralegal was operating on her own in connection with negotiating with the medical providers."), *and* DX 205, *with* Tr. 383, 396-98 (Rich).

90. At the time Mr. Rich missed the Turner statute of limitation, it is unclear whether there was any system for recording and monitoring statutes of limitation at his firm. Tr. 421 (Rich) (cannot recall if statute was properly calendared), 805 (Mendizabal) (box recording statutes of limitation may have belonged to Larry Williams). Ms. Mendizabal, Mr. Rich's paralegal, had no role in calculating statutes of limitation before the Turner matter. Tr. 808 (Mendizabal) (no alarm would go off as a statute of limitations was getting closer). Mr. Rich recalled details of the Turner matter and his thoughts about the case at the time. *See* Tr. 170-71 (describing case details and recalling he "wanted to do a deeper dive.").

91. Upon learning of the missed statute of limitations in Turner, Mr. Rich took prompt action to address the situation, including asking Ms. Mendizabal to contact their malpractice carrier and asking her to schedule a meeting with the client. Tr. 797-98 (Mendizabal). Mr. Rich called the client either the day he returned to the office or the following day. Tr. 173 (Rich).

92. At the hearing, Mr. Rich recalled thinking carefully about how much Mr. Turner's case might be worth and ultimately made an offer in settlement that he believed represented the reasonable value of the case. Tr. 175-77 (Rich).

93. Mr. Rich described his "full process" for estimating the value of the case to Mr. Turner. Tr. 176 (Rich). Mr. Rich was aware that his presentation of a settlement offer created a potential conflict of interest, disclosed that potential

conflict to Mr. Turner, and advised Mr. Turner to contact independent counsel about the settlement. Tr. 177.

94. In response to the missed statute of limitations, Mr. Rich also sought to acquire a case management program, Needles, which Ms. Mendizabal believed had a statute of limitations alert. Tr. 799 (Mendizabal).

95. When Mr. Rich returned to the office after a binge, he gave every appearance of being able to function competently. *See* FF 90-91, *supra* (handling of missed statute of limitations); Tr. 800-801 (Mendizabal) (never saw signs Mr. Rich was under the influence of alcohol and never smelled alcohol on his breath), 815 ("he always looked dapper; he always talked coherent[ly]; he didn't smell of any liquor that I know"); DX 201 at 8-9 (pages 7 and 8 of Tellefsen report). Mr. Rich reported to Dr. Tellefsen he often sleeps through the withdrawal. DX 201 at 8-9; *see also* FF 67.

96. Mr. Rich's binges did not get progressively worse. Although he initially testified affirmatively when asked if his "no call, no show" days increased in frequency over time (Tr. 142), Respondent later clarified,

> When I look at the history of my alcoholism and the binges throughout that period of time, I can't remember that in terms of on a month-to-month basis or in the context of, true or false, is there this gradual progression that is sort of a slope, discernable slope of increase or decrease. I just cannot give an answer that -- that I believe is accurate from my memory and from my experience, ...

Tr. 149.

97. The frequency of Mr. Rich's binges varied. For example, "there may be two months where there was no 'no call, no show' at all. And there may also be a month that [Mr. Rich] was in the office maybe five times for that month." Tr. 146-47; *see also* Tr. 798 (Mendizabal) (on average Mr. Rich showed up nine days a month during the year she left the firm).

98. Mr. Rich had the ability to avoid binging when professional circumstances warranted. As Mr. Dawson testified, "I have seen Archie say I am done. I have [seen] him do that. He does have the ability in himself to say I'm done, and I have seen that. Or he recognize[s] that he has something else to do. I have seen that as well. So I would say that ability lies with him, and I have seen him do that on occasion. Absolutely." Tr. 754 (Dawson); *see also* Tr. 104-05 (Rich) (discussing how he sometimes planned drinking around the extent of his work obligations the following day).

99. On at least some occasions, either during or immediately after a binge, Mr. Rich had an awareness of meetings or appointments he needed to reschedule, and did reschedule those meetings or appointments. *See* Tr. 139 (Rich) (would advise office of need to reschedule appointments via email).

100. In matters involving harm or potential harm to clients, Mr. Rich worked promptly to redress the situation, even during 2010 through 2014. *See* FF 84, 91-94, *supra* (with citations). In matters involving harm to medical providers, Mr. Rich has not worked promptly to redress his misconduct, even after achieving sobriety. *See* FF 30-56, *supra* (with citations) (Mr. Rich aware of

potential outstanding obligations for over six years, more than four of which he has been sober; issues still not resolved).

101. Although Mr. Rich continued to drink for at least another four years following the missed statute of limitations in the Turner matter, he never missed another statute of limitations. Tr. 505 (Rich).

102. Although he did not stop drinking until September or October of 2014 (*see* Tr. 192-93), Mr. Rich's misappropriations were concentrated two years earlier, in 2012. *See* Appendix 1; July 15, 2019 sworn declaration of Mr. Rich (hereinafter "July Declaration"), at ¶1 ("To be sure, my firm paid almost all of the balances owed to medical providers, even during the time of my active alcoholism. An outside accounting firm, Miller Musmar, verified as much"), ¶9 (discussing matters with potentially outstanding obligations that "came due in 2012 at the latest, when the cases on which these settlements relied occurred"); Tr. 200 (Rich) ("[T]he focus was 2012, believing that that was the big year, and that an effort to reconcile 2012 would also capture any flaws that 2012 inherited from 2011.").

IV. CONCLUSIONS OF LAW

Respondent has admitted all of the charged Rule violations. However, out an abundance of caution, the Hearing Committee briefly discusses the clear and convincing evidence in support of each of the admitted violations.[21]

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[21] In *In re Verra*, the Board confirmed the need for an evidentiary basis to support stipulations to Rule violations, stating: "[n]otwithstanding Respondent's concessions, the Board has a duty to determine whether the evidence presented proves the violations charged." Bar Docket No. 166-

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COUNT I

Misappropriation in Violation of Rule 1.15(a)

Rule 1.15(a) prohibits misappropriation of entrusted funds. Misappropriation is "any unauthorized use of client's funds entrusted to [an attorney], including not only stealing but also unauthorized temporary use for the lawyer's own purpose, whether or not [the attorney] derives any personal gain or benefit therefrom." *In re Cloud*, 939 A.2d 653, 659 (D.C. 2007) (quoting *In re Harrison*, 461 A.2d 1034, 1036 (D.C. 1983)).

Misappropriation requires proof of two distinct elements. First, Disciplinary Counsel must establish the unauthorized use of client funds. *See In re Anderson*, 778 A.2d 330, 335 (D.C. 2001). Misappropriation is essentially a per se offense and does not require proof of improper intent. *See id.* at 335. It occurs where "the balance in [the attorney's] trust account falls below the amount due to the client [or third party]." *In re Ahaghotu*, 75 A.3d 251, 256 (D.C. 2013) (internal quotation marks and citations omitted).

Second, Disciplinary Counsel must establish whether the misappropriation was intentional, reckless, or negligent. *See Anderson*, 778 A.2d at 336. Intentional misappropriation most obviously occurs where an attorney intentionally takes a

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02 at 16 (BPR July 20, 2006), *recommendation adopted*, 932 A.2d 503 (D.C. 2007). The Board then proceeded to review the sufficiency of the evidence supporting each violation, and concluded that Disciplinary Counsel had not proven a Rule 8.1(b) violation, despite Respondent's concession that he had violated the Rule.

client's funds for the attorney's personal use. *See id*. at 339 (intentional misappropriation occurs where an attorney handles entrusted funds in a way "that reveals . . . an intent to treat the funds as the attorney's own" (citations omitted)).

"Reckless misappropriation reveal[s] an unacceptable disregard for the safety and welfare of entrusted funds, and its hallmarks include: the indiscriminate commingling of entrusted and personal funds; 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." *Ahaghotu*, 75 A.3d at 256 (internal quotation marks and citation omitted); *see also Anderson*, 778 A.2d at 339 ("[R]ecklessness is a state of mind in which a person does not care about the consequences of his or her action." (internal citations and quotation marks omitted)). Further, "'[r]eckless misconduct requires a conscious choice of a course of action, either with knowledge of the serious danger to others involved in it or with knowledge of facts that would disclose this danger to any reasonable person.'" *Anderson*, 778 A.2d at 339 (quoting 57 Am. Jur. 2d Negligence § 302 (1989)). Thus, an objective standard should be applied in assessing whether a respondent's misappropriation was reckless.

Finally, where Disciplinary Counsel establishes the first element of misappropriation (unauthorized use), but fails to establish that the misappropriation was intentional or reckless, "'then [Disciplinary] Counsel proved no more than

simple negligence.'" *Anderson*, 778 A.2d at 338 (quoting *In re Ray*, 675 A.2d 1381, 1388 (D.C. 1996)).

As discussed above, we find that the balance in Respondent's account dipped below the amount of funds he was required to hold in trust repeatedly between July and October 2012. Moreover, Respondent intentionally or recklessly misused those entrusted funds in order to fund the operating expenses of his firm. *See* FF 80-83. Thus, Respondent violated Rule 1.15(a).

Commingling in Violation of Rule 1.15(a)

Rule 1.15(a) also prohibits commingling, providing, in pertinent part, that:

> A lawyer shall hold property of clients or third persons that is in the lawyer's possession in connection with a representation separate from the lawyer's own property. Funds of clients or third persons that are in the lawyer's possession (trust funds) shall be kept in one or more trust accounts . . . .

Commingling occurs when an attorney fails to hold entrusted funds in an account separate from his own funds. *In re Moore*, 704 A.2d 1187, 1192 (D.C. 1997). Thus, "commingling is established 'when a client's money is intermingled with that of his attorney and its separate identity is lost so that it may be used for the attorney's personal expenses or subjected to the claims of its creditors.'" *In re Malalah*, Board Docket No. 12-BD-038 (BPR Dec. 31, 2013), appended Hearing Committee Report at 12 (quoting *In re Hessler*, 549 A.2d 700, 707 (D.C. 1988)), *recommendation adopted where no exceptions filed*, 102 A.3d 293, 293 (D.C. 2014) (per curiam); *see also Moore*, 704 A.2d at 1192 ("Commingling occurs when an attorney fails to hold entrusted funds in a special account, separate from

his own funds."). To establish commingling, the entrusted and non-entrusted funds must be in the same account at the same time. "The rule against commingling has three principal objectives: to preserve the identity of client funds, to eliminate the risk that client funds might be taken by the attorney's creditors, and most importantly, to prevent lawyers from misusing/misappropriating client funds, whether intentionally or inadvertently." *In re Rivlin*, 856 A.2d 1086, 1095 (D.C. 2004).

On July 18, 2012 and July 24, 2012, Respondent transferred his fees from a subaccount into the 2811 account. FF 12. At the time of each transfer, the 2811 account contained entrusted funds. Thus, Respondent commingled his funds with entrusted funds in violation of Rule 1.15(a).

Failure to Promptly Pay Funds Owed to Third Parties in Violation of Rule 1.15(c)

Rule 1.15(c) requires a lawyer to "promptly notify the client or third person" "upon receiving funds . . . in which a client or third person has an interest" and to "promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive."

On multiple occasions, Respondent received settlement funds owed to medical providers but delayed sending payments to those providers. *See* FF 79-81. His conduct plainly violated Rule 1.15(c).

COUNT II

Failure to Supervise in Violation of Rules 5.3(a) and (b)

Rule 5.3(a) requires that a partner in a firm establish "measures" giving reasonable assurance that the conduct of nonlawyer personnel in the firm is compatible with the professional obligations of the lawyer. Comment [1] to Rule 5.3 states that a lawyer should give nonlegal assistants "appropriate instructions and supervision" about the ethical aspects of their employment. The comment also notes that lawyers should account for the fact that nonlawyers lack legal training and are not subject to rules of professional discipline.

Rule 5.3(b) provides that "[a] lawyer having direct supervisory authority over [a] nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer[.]" The requirement that a lawyer make "'reasonable efforts to ensure' that an employee's conduct is compatible with the lawyer's professional obligations is a proactive standard that requires more than careful selection and appropriate training of the employee." *In re Cater*, 887 A.2d 1, 15 (D.C. 2005). Thus, "there must be some system of timely review and internal control to provide reasonable assurance that the supervising lawyer will learn whether the employee is performing the delegated duties honestly and competently or not. If no such system is in place, it will not do for a lawyer to profess ignorance of the employee's dishonesty or incompetence. Internal controls and supervisory review are essential precisely because employee dishonesty and incompetence are not always identifiable in advance." *Id*. at 15-16.

As discussed herein, the record evidence establishes that Respondent's firm failed to establish measures to ensure that his paralegal acted in compliance with the Rules. His paralegal operated on her own in connection with negotiating with these medical providers in fourteen client matters. FF 21. Consequently, he was not aware that the medical providers were being provided false information or that those providers had agreed to reduce their fees based on that false information. *Id.* This conduct violated Rules 5.3(a) and (b).

COUNT III

Failure to Represent a Client with Diligence and Zeal in Violation of Rule 1.3(a)

Rule 1.3(a) states that an attorney "shall represent a client zealously and diligently within the bounds of the law." Rule 1.3(a) "does not require proof of intent, but only that the attorney has not taken action necessary to further the client's interests, whether or not legal prejudice arises from such inaction." *In re Bradley*, Bar Docket Nos. 2004-D240 & 2004-D302, at 17 (BPR July 31, 2012), *adopted in relevant part*, 70 A.3d 1189, 1191 (D.C. 2013) (per curiam).

In representing Mr. Turner, Respondent failed to exercise the requisite level of diligence and zeal. He failed to advise his client of the impending statute of limitations and, indeed, permitted the statute of limitations to run and caused prejudice to Mr. Turner. FF 26-28. This conduct violated Rule 1.3(a).

Failure to Act with Reasonable Promptness in Violation of Rule 1.3(c)

Rule 1.3(c) provides that an attorney "shall act with reasonable promptness in representing a client." "Perhaps no professional shortcoming is more widely

resented by clients than procrastination," and "in extreme instances, as when a lawyer overlooks a statute of limitations, the client's legal position may be destroyed." Rule 1.3, cmt. [8].

For the reasons discussed above, Respondent's representation of Mr. Turner violated Rule 1.3(c) as well.

Failure to Communicate and Explain Matters to Client in Violation of Rules 1.4(a)-(b)

Rule 1.4(a) provides that "[a] lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information." Under Rule 1.4(a), an attorney must not only respond to client inquiries, but must also initiate contact to provide information when needed. *See, e.g.*, *In re Robbins*, 192 A.3d 558, 564-5 (D.C. 2018); *In re Bernstein*, 707 A.2d 371, 376 (D.C. 1998).

Similarly, Rule 1.4(b) states than an attorney "shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation." This Rule provides that the attorney "must be particularly careful to ensure that decisions of the client are made only after the client has been informed of all relevant considerations." Rule 1.4, cmt. [2]. The Rule places the burden on the attorney to "initiate and maintain the consultative and decision-making process if the client does not do so and [to] ensure that the ongoing process is thorough and complete." *Id*.

As discussed above, Respondent's inadequate communication with Mr. Turner violated Rule 1.4(a) and (b) as well.

KERSEY **MITIGATION**

As we indicated earlier, the Committee finds that consistent with the Court of Appeals' opinion in *Kersey*, *supra*, and its progeny, particularly *Stanback*, *supra*, and *Temple*, *supra*, Respondent has established by clear and convincing evidence that he suffered from a alcohol use disorder (AUD) at the time the charged misconduct and that he is substantially rehabilitated from his AUD. After hearing the testimony and reviewing all the evidence in this matter, those two things are abundantly clear to the Committee. To carry his burden in establishing a *Kersey* basis for departing from the standard sanction for the violations of which he has been found responsible, pursuant to *Stanback*, in addition to establishing an accepted disorder and rehabilitation from that disorder, Respondent bears the burden of establishing, by a preponderance of the evidence, a causal connection between his AUD and the violations found.

In setting out for the Board our reasoning in making the Committee's recommendation in this matter we will depart from the order which logically proceeds from the standards set out in the Court's opinion in *Stanback.* We will first discuss Respondent's proof of AUD (*Stanback* standard one) and then his rehabilitation from that disorder (*Stanback* standard three). We will thereafter discuss what, in the Committee's view of the record in this matter, was the only *Kersey/Stanback* question in issue – whether there is, by a preponderance of the evidence, a causal connection between Respondent's AUD and the violations found in this matter.

A. *Did Respondent Suffer From Alcohol Use Disorder*

A person who cannot control their use of alcohol, compulsively abuses it despite negative ramifications, and/or experiences emotional distress when they are not drinking may be suffering from an alcohol use disorder (AUD) or alcoholism. Nat'l Inst. on Alcohol Abuse & Alcoholism, *Alcohol Use Disorder*, https://www.niaaa.nih.gov/alcohol-health/overview-alcohol-consumption/alcohol-use-disorders (last visited May 13, 2020). AUD is a chronic, relapsing disease that is diagnosed based on an individual meeting certain criteria outlined by the *Diagnostic and Statistical Manual of Mental Disorders (DSM-5)*. *Id.* To be diagnosed with AUD, individuals must meet any two of the below criteria within the same 12-month period:

- Using alcohol in higher amounts or for a longer time than originally intended.
- Being unable to cut down on alcohol use despite a desire to do so.
- Spending a lot of time obtaining, using, and recovering from the effects of alcohol.
- Cravings, or a strong desire to use alcohol.
- Being unable to fulfill major obligations at home, work, or school because of alcohol use.
- Continuing to abuse alcohol despite negative interpersonal or social problems that are likely due to alcohol use.
- Giving up previously enjoyed social, occupational, or recreational activities because of alcohol use.
- Using alcohol in physically dangerous situations (such as driving or operating machinery).
- Continuing to abuse alcohol despite the presence of a psychological or physical problem that is probably due to alcohol use.
- Having a tolerance (i.e. needing to drink increasingly large or more frequent amounts of alcohol to achieve desired effect).
- Developing symptoms of withdrawal when efforts are made to stop using alcohol.

Nat'l Inst. on Alcohol Abuse & Alcoholism, *Alcohol Use Disorder: A Comparison Between DSM–IV and DSM–5* (Feb. 2020), https://www.niaaa.nih.gov/publications/brochures-and-fact-sheets/alcohol-use-disorder-comparison-between-dsm.

At the hearing in this matter the parties produced a total of three experts. Two experts, Dr. Ronald Smith and Dr. Christiane Tellefsen, testified on behalf of Respondent, and Dr. Richard A. Cooter testified on behalf of Disciplinary Counsel. Each of these experts agreed that Respondent was suffering from AUD and that he was suffering from AUD during the period when the charged violations were committed, and we concur in that conclusion.

Disciplinary Counsel presented the testimony of Dr. Cooter, the Director of the Forensic Psychology Program at George Washington University, who is a practicing psychologist and attorney. Dr. Cooter testified to having conducted a forensic interview of Respondent and concluded that

> Ultimately, my diagnosis was -- I'm going to make sure it's there -- [consulting his report, DX 204] cocaine use disorder, severe; alcohol use disorder, severe; and attention deficit disorder, and that was by history. That is: He had a history of being diagnosed that. I didn't diagnose it. I just looked at the history.

Tr. 932. Clearly Dr. Cooter believed that Respondent was suffering from AUD, but he believed that he could not testify whether alcohol or cocaine addiction was Respondent's primary disability. He was also familiar with the reports filed by Drs. Smith and Tellefsen and substantially agreed with their diagnoses but, based

largely on his interviews with Ms. Mendizabal and Mr. Gaffney, Dr. Cooter departed from their conclusion that Respondent's primary disability was AUD.

The ODC has, for all practical purposes abandoned its position that Respondent's disability was addiction to cocaine rather than AUD. ("[Y]ou're not going to see in our briefing we assert cocaine was the primary diagnosis, primary cause; therefore, it would fall into *Kersey*." Mr. Perry, Tr. 1067: 11-14).[22] We believe however that this is the only reasonable position. In his evaluation of Mr. Rich, with regard to the question of Respondent's primary addiction, Dr. Cooter gave particular weight to Mr. Gaffney's observations. He did so based on Mr. Gaffney's experience in medical malpractice. Apart from Dr. Cooter expressing this opinion, however, there is no evidence on the record of what experience Mr. Gaffney had. Moreover, although experience in medical malpractice[23] may make an attorney observant of symptomatic behavior it does not make an attorney skilled in diagnosis based on those observations. Dr. Cooter cited Ms. Mendizabal's and Mr. Gaffney's observations that while Respondent never appeared to be drunk in the office (their exposure to him was almost solely limited to the office and the record makes clear his drinking was done outside the office and office hours),

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[22] The Court has held that *Kersey* mitigation does not apply to respondents suffering from addiction to cocaine and other illegal drugs. *In re Marshall*, 762 A.2d 530, 536-39 (D.C. 1990).

[23] The record is void with regard to the nature of Gaffney's medical malpractice experience, providing no information as to the extent of that experience, the nature of the medical malpractice cases Mr. Gaffney was involved in, and the number of those cases involving cocaine and/or alcohol abuse. Common sense suggests that little in medical malpractice involves cocaine use and addiction.

"Respondent "had dilated pupils, he was sweating a lot, he seemed more agitated. He said -- and, again, he's been around this stuff a lot -- that it was more indicative of drug abuse than it was alcohol." Tr. 941. We note again, there was no record evidence of how often Gaffney "had been around this stuff."

Ms. Mendizabal and Mr. Gaffney did confirm Respondent's testimony regarding the effect of his AUD on his professional activities, to the extent that Ms. Mendizabal testified that during the critical time period he was frequently absent from the office and missed appointments. They reported never seeing him intoxicated in the office and their experience with him outside the office was limited. In sum, with the exception of Mr. Gaffney's "diagnosis" from observation of Respondent's "symptoms," Mr. Gaffney and Ms. Mendizabal were corroborative of Respondent's testimony.[24]

In addition to Ms. Mendizabal there were seven other witnesses who were not experts. Respondent's mother and sister were particularly persuasive in their description of Respondent's behavior during the period when he was actively suffering from AUD. They described behavior which was entirely consistent with the AUD Respondent reported, including frequent unexplained absences and the "symptoms" diagnosed by Gaffney. *See* Tr. 602-05 (Mr. Rich's mother), 612-17 (Mr. Rich's sister).

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[24] Indeed, but for Gaffney's *conclusion* based on his non-expert observations, they were entirely corroborative because Respondent never actually denied the "symptoms," he simply stated he was a binge drinker who confined his drinking to after hours.

We conclude that as a matter of fact and of law there can be no doubt that (1) Respondent suffered from AUD during the period when the offenses alleged in the Specification of Charges occurred; and (2) although Respondent also abused cocaine, it was not a disability which contributed to his violations charged in this matter.

B. Has Respondent Been Rehabilitated

We would submit at this point that there can be little doubt that Respondent is in recovery from his AUD. It was an old adage of Alcoholics Anonymous and other similar twelve-step addiction programs that at best a person suffering from AUD is always recovering, never recovered. Given his roughly five years of abstention, the Committee believes that Respondent has clearly and convincingly demonstrated that he is in recovery from medical and psychological aspects of his AUD and, as long as he continues to abstain from alcohol (and he has a nearly five-year history of doing so), he will remain in recovery.

Disciplinary Counsel raises appropriate questions as to whether Respondent's rehabilitation can be considered sufficient given that he has not completed restitution to those medical service providers that his practice intentionally misled during the process of distribution of settlement proceeds following a settlement agreement between his client and insurance companies. It is clear to the Committee from the record in this matter that Respondent's efforts to bring his financial records in to balance have been less than diligent. Respondent engaged an accountant sometime before or during April 2013, during Disciplinary

Counsel's investigation of Respondent's practices. *See* FF 30. It is unclear whether that firm's slow resolution of Respondent's financial affairs results from the delays that have characterized Respondent's actions in this matter before Mr. Foster's entry of appearance, Respondent's inability to meet Miller Musmar's financial requirements, a deficiency or inadequacy in the records Respondent could provide, or ineptitude on the part of Miller Musmar (while this is a possibility, we have no substantial reason to believe it is a fact), but the ODC is correct in noting that those who were defrauded as a result of Respondent's actions charged in Count Two have not been made whole. *See* RX 14 (Respondent's August 20, 2019 Declaration).

That having been said, it seems to us that the import of the Court of Appeals' requirement of rehabilitation is in insuring as much as possible that disabled attorneys will not again breach ethical requirements as a result of their disabilities. In this regard we commend Mr. Rich's efforts in the community and in restoring his relations with his friends and family. Most important is Mr. Rich's admirable and thus far successful struggle with his AUD. He has, to date, over a period of some five years, been alcohol free. This we understand is the type of rehabilitation that the Court of Appeals envisioned and requires. Assuming that a respondent suffers from AUD (or any other disability which impairs his performance and is cognizable under *Kersey*), the obvious intent of the rehabilitation requirement of *Kersey* is to eliminate the disability which adversely affects an attorney's performance and his duty to his clients. The fact that Mr.

Rich has been in recovery the last five years justifies optimism for his future performance. We therefore find by clear and convincing evidence that Respondent is rehabilitated within the meaning of *Kersey*, *Stanback*, and *Temple.*[25]

C. *Is There a Causal Connection Between Respondent's AUD and His Violation of Ethical Requirements*

Our Court of Appeals in *Temple* went to some length to explain the "but for" standard established by *Kersey*.[26] Temple was addicted to legally obtained prescription drugs and during the period of his addiction he violated a significant number of ethical standards. In its recommendation in *Temple*, the Board concluded that the "but for" test of *Kersey* requires that an addiction must be proven to be the sole cause of an attorney's misconduct before it may be considered in mitigation of sanction. The Board cited *Kersey* for that proposition. The Court noted that in finding that Temple's addiction did not permit *Kersey* mitigation, the Board relied on the following holding in *Kersey*:

> But for Kersey's alcoholism, his misconduct would not have occurred. We hold that this "but for" test is the standard that must be met in order to prove causation in disciplinary cases involving alcoholism.

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[25] We do, however, agree with ODC that Mr. Rich must mitigate the losses suffered by medical providers as a result of Mr. Rich's violation charged in Count Two. Whether or not Mr. Rich is found to satisfy the *Kersey* standard, he must be required to resolve those claims by reimbursing the medical providers including standard interest or, in cases where the providers cannot be adequately identified, by contributing the restitution including standard interest to the Bar's client indemnity fund. Such should be a condition of his probation or his readmission after disbarment.

[26] The Court in *Temple* also held, *inter alia*, that addiction to prescription drugs lawfully obtained was a permissible disability for *Kersey* mitigation.

Temple, *supra*, 596 A.2d at 589 (quoting *Kersey*, *supra*, 520 A.2d at 327). The Court in *Temple* ruled that the Board interpreted too narrowly the rule announced in *Kersey* and went on to explain:

> When considered in context of the whole opinion, it becomes apparent that what must be shown by the attorney seeking to rely upon alcoholism as a mitigating factor is that the condition substantially affected his or her professional conduct. Just prior to the statement containing the "but for" language, we noted that "a sufficient nexus between Kersey's alcoholism and his misconduct" had been established. The court accepted the Board's conclusion that removal of the substantial contributing factor (alcoholism) would eliminate the offensive conduct, even though the attorney candidly admitted unacceptable reasons for some of the misconduct. Thus, alcoholism was not the "sole cause" of the misconduct, but a substantial contributing one, the elimination of which was expected to assure the attorney's fitness to practice law.
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> * * *
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> The decision in *Kersey* was not based upon a "sole cause" test, but rather, as reflected in the opinion as a whole, upon the fact that the attorney's misconduct was substantially affected by alcoholism. Thus, in applying the "but for" test, the focus of the inquiry is on whether removal of the substantial contributing factor will end the misconduct. [Citations omitted, emphasis supplied.]

Temple, *supra*, 596 A.2d at 589-90.

Our task then is to determine whether Respondent's rehabilitation will end the misconduct in which he engaged during his alcohol abuse. Given that the misconduct charged in Count Three was clearly the result of negligence we have no difficulty in finding that Respondent's rehabilitation will end the misconduct charged in Count Three. Respondent's actions on being advised that the statute of limitations in his client's cause of action had expired clearly evidence that this

failure to note the approaching expiration was negligence. Respondent promptly notified the client of his failure and accepted responsibility with the client and with his insurance company, and the client was made whole.

With respect to the behavior cited in Count One, this too seems to us a relatively simple task. His misappropriations in Count One were, in our opinion, the result of at least reckless misconduct, but we find that Respondent's rehabilitation will end the misconduct charged in Count One. The ODC has a valid point when it argues that the alleged "mistakes" charged in Count One appear to be only in Respondent's favor. That is, none of the "mistakes" resulted in a loss to Respondent, but rather result only in in favor of Respondent. This, coupled with the fact that due to the passage of time Respondent could not directly associate any single misappropriation with his AUD, either because he was actually drunk or actively suffering from over indulgence the prior night, lends weight to Disciplinary Counsel's argument. In part we have rejected that point because the Court has made clear that a respondent is not obligated to offer evidence to show that he was directly in the throes of alcohol when the misappropriation occurred. However, singly the misappropriations were relatively minor and spread over an extended period of time so that the conduct resembles that found in *Kersey*, conduct which our Court of Appeals deemed subject to mitigation.

It is also relatively easy to find that the violation in Count Two falls within the reasoning *Kersey* and *Temple* used to approve mitigation in those cases. What troubles us with regard to Count Two is that based on the admitted evidence, as

opposed to the stipulation of responsibility, the activity respondent failed to adequately supervise, conduct to which Respondent has admitted, is of a significantly different character than that charged in Counts One and Three. The conduct charged in Counts One and Three is, in our view, distinctly different from the conduct in Count Two. Each and every time Respondent and/or his firm acted to defraud a medical provider that act was premised upon a lie to that provider for the benefit of Respondent's firm.[27] This results in what to the Committee takes on separate formulation of *mens rea,* a separate determination to undertake to defraud a separate individual.

Moreover, repeated use of that fraudulent scheme established a continuing course of action such that each and every use of the scheme "validated" the prior uses. Each use involved a knowing and intelligent determination to permanently deprive the medical services provider of payment to which the medical provider was entitled and which Respondent had promised to pay. Such conduct exhibits a *mens rea* and an ethic which we do not believe can be attributed to Respondent's disability. However, each and every act to defraud medical providers occurred when Respondent was in the throes of his disability. The facts as we understand them compel a conclusion that such misrepresentations were standard practice in the Rich Firm. *See* Respondent's Answer, ¶68; DX 5 at 6-13; DX 7 at 6-9; DX 9

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[27] We acknowledge that there was no financial benefit to anyone but the client. The only benefit to Rich or his firm was to their "reputation" in any word of mouth endorsements resulting from the benefit to the clients.

at 3-7; DX 11 at 1-3; DX 13 at 1-4; DX 15 at 2-6; DX 19 at 17-22; DX 21 at 3-10; DX 25 at 6-7; DX 27 at 2-4; DX 29 at 3-5; DX 31 at 1-4; DX 33 at 2-5. Respondent's admission of responsibility with regard to misrepresentations to medical providers was a failure to adequately supervise his paralegal, it is clear from the record and our understanding of standard practice that Respondent must have reviewed and authorized the memoranda regarding the dispersal of settlement funds. Committee member Hirsh pointed out that in the matter of Respondent's client Warren Johnson, the discrepancy between Garcia's representation of the settlement offer – $12,000 – and the actual settlement – $87,500 – was striking. In point of fact the difference was more than seven times the amount represented in Garcia's letter.

When the Committee inquired of Respondent concerning the discrepancy in his paralegal's letter[28] regarding the Johnson matter, Respondent testified as follows:

> MR. RICH: . . . And when I looked at that memo, I mean, there's no way around that. I mean, this was our firm telling him that we settled a case for $12,000, and I knew that we had settled that case for a lot more. And we did have a -- I think the initial offer was about 12,000

[28] Understandably given the stipulation of violations, neither party called the paralegal, Ms. Garcia, even though each of the fraudulent letters to medical providers was signed by her. Indeed, the letters were worded in a way that suggests they were in fact form letters, *e.g.*, "offer set in stone," Rich was "reducing [his] fee." Several of the letters had handwritten notes, apparently from Ms. Garcia, entreating the providers to reduce their fees. Upon careful review of the evidence and exhibits, the Committee considered re-opening the record to hear from Ms. Garcia, but when we reached that point we determined that too much time had passed since the hearing had been closed and, moreover, her testimony was not relevant to any charge pending.

in the case.

At some point, it was presented as final, and we negotiated a lien and then much later, you know, we rolled up our sleeves and kept swinging and we got it resolved, and we never circled back to correct that. That back-and-forth that I described does not explain that. It does not explain that. And the language "set in stone" was just -- well, it's not, it's not accurate.

COMMITTEE CHAIR O'MALLEY: What does explain it?

MR. FOSTER: I'm sorry?

COMMITTEE CHAIR O'MALLEY: What does explain it?

MR. FOSTER: Explain...

COMMITTEE CHAIR O'MALLEY: The process he described does not explain it; what does?

THE WITNESS: I missed it; I missed it.

Tr. 411-12. In the absence of evidence to the contrary, the testimony supports a conclusion that Respondent reviewed the settlement memos even if he did not read the letters from Garcia or her actions in securing the "reductions," and due to his disability failed to consider that the settlement memoranda required further inquiry by him. Moreover, each of the memos in cases where Garcia's letter resulted in a reduced provider's fee reflect that Respondent's fee was negotiated from some specific amount and, in fact, in none of those matters did Respondent "reduce his fee" as represented in the letters to providers.[29]

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[29] Respondent alleges that there was an early offer of settlement of $12,000 in Johnson. Tr. 411. Nothing in the record supports that claim save allegations by Respondent, and given the widely

Footnote continued on next page

Despite the repetitious reliance by his paralegal on the unethical scheme in dealing with medical providers, it is abundantly clear that those actions occurred during the period of Respondent's disability. Given the record and his admission, we are constrained by the law and the stipulations in this matter to deal with the question of whether "but for" Respondent's AUD the misconduct charged in Count Two would not have occurred. The Court's explanation in *Temple* of the *Kersey* "but for" standard requires that we find by a preponderance of the evidence that "but for" Respondent's AUD the misconduct charged in Count Two would not have occurred.

V. RECOMMENDATION FOR SANCTION

We note as well that Respondent has no prior disciplinary record.

Consistent with our conclusion that Respondent qualifies for *Kersey* mitigation, the Committee recommends that Respondent serve a term of three years' probation with conditions. Those conditions would require Respondent to remain in treatment for his AUD and that he should provide proof of that treatment to the D.C. Bar's Lawyer's Assistance Program, which should otherwise supervise his treatment. We also recommend that within 90 days Respondent must complete

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Footnote continued from previous page

disparate final settlement in Johnson and Mr. Rich's testimony as a whole, we do not credit that claim. He further alleges, and his attorney early on suggested, that such ploys in negotiation as in his dealings with medical providers are common practice. While law enforcement is permitted to lie to a suspect in eliciting a confession, we know of no instance in which a lawyer is permitted to outright lie about the facts as opposed to not admitting all the facts. We fail to see how completely false representations can comport with an attorney's duties pursuant to Rule 4.1. *See also* Rule 4.1, cmt. [1].

and provide to the ODC the review of his professional accounts being conducted by Miller Musmar (or some other accounting professional retained at Respondent's expense) and that thereafter Respondent attend and complete a CLE course approved by the ODC on the management of funds in the conduct of a law firm. Respondent should also be required to undertake procedures to ensure that the Rich Firm monitors its cases and matters to ensure that time limits and statutes of limitation are not exceeded. Finally, we recommend that under the supervision of the ODC, including providing such evidence as the ODC may require, Respondent be required to reimburse with standard interest all medical providers for the funds he defrauded from them and, in the event that defrauded medical providers cannot be located, Respondent should be required to contribute the funds defrauded from any provider not located, including standard interest, to the Bar's Client Security Fund.[30]

[30] We acknowledge that the defrauded funds were disbursed to clients in the settlement process. That does not change or otherwise alter the fact that by his firm's actions medical providers were defrauded of funds they earned and should have been paid. Regardless of how he utilized those funds, Respondent is responsible for their loss to the providers. He should be required to reimburse them or make equivalent contributions to the Client Security Fund.

AD HOC HEARING COMMITTEE

William J. O'Malley, Jr., Chair

Dr. William Hindle, Public Member

Merril Hirsh, Attorney Member

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

In the Matter of:	:	
	:	
ARCHIE L. RICH, II,	:	
	:	Board Docket No.18-BD-042
Respondent.	:	Disc. Docket Nos. 2013-D003 & 2013-
	:	D181
A Member of the Bar of the District	:	
of Columbia Court of Appeals	:	
(Bar Registration No. 471754)	:	

APPENDICES TO THE REPORT AND RECOMMENDATION OF THE AD HOC HEARING COMMITTEE[31]

[31] Appendices 1 and 2 were developed with significant reliance on the chart included in the Specification of Charges, appended to the parties' joint stipulation as Exhibit A. In an effort to assist the Board and the Court, the Hearing Committee extensively reviewed the record evidence in this matter to provide additional details more concretely identifying the movement of entrusted funds that resulted in misappropriation and commingling in violation of Rule 1.15(a).

APPENDIX 1: TRANSACTIONS REFLECTING USE OF ENTRUSTED FUNDS

1. June 20, 2012 (transaction)	Respondent deposited the $7,400 settlement check from the Thomas matter into his 2811 account. Of those funds, $4,927 were held in trust for Respondent's client ($2,937) and the client's medical provider ($1,990). DX 46 at 5 (2811 bank statement); DX 5 at 13 (settlement sheet).
2. June 20, 2012 (daily closing bal.)	$7,488.90, which represents the $7,400 settlement check deposit and $88.90, which both parties assume belong to Respondent. DX 46 at 5; Stip. at ¶8.
3. June 28, 2012 (transactions)	Respondent deposited the $5,300 settlement check from the Crossland matter into his 2811 account. Of those funds, $3,502.20 were held in trust for Respondent's client ($2,257.24) and the client's medical providers ($1,244.96). DX 46 at 5 (2811 bank statement); DX 13 at 4 (settlement sheet). Respondent deposited the $7,750 settlement check from the Hubbard matter into his 2811 account. Of those funds, $5,167 were held in trust for Respondent's client ($2,567.04) and the client's medical providers ($2,599.96). DX 46 at 5 (2811 bank statement); DX 7 at 9 (settlement sheet). Respondent deposited the $7,800 settlement check from the E. Childs matter into his 2811 account. Of those funds, $5,200 were held in trust for Respondent's client ($2,320.04) and the client's medical providers ($2,879.96). DX 46 at 5 (2811 bank statement); DX 11 at 3 (settlement sheet). Respondent deposited the $7,900 settlement check from the M. Childs matter into his 2811 account. Of those funds, $5,267 were held in trust for Respondent's client ($2,153.52) and the client's medical providers ($3,113.48). DX 46 at 5 (2811 bank statement); DX 9 at 7 (settlement sheet). Respondent's $2,937 check to his client in the Thomas matter was debited from his 2811 account. DX 46 at 5 (2811 bank statement); DX 5 at 13 (settlement sheet); *see also* DX 48 at 1 (check to Thomas).

4. June 28, 2012 (daily closing bal.)	$33,301.90, of which $21,126.20 were entrusted funds belonging to Respondent's clients and the medical providers. DX 46 at 5 (2811 bank statement). • *Amount needed to be held in trust.* $1,990 (Thomas medical owed) + $3,502.20 (Crossland) + $5,167 (Hubbard) + $5,200 (E. Childs) + $5,267 (M. Childs) = $21,126.20.
5. June 29, 2012 (transaction)	Respondent transferred $5,500 out of his 2811 account into his 3889 operating account. DX 46 at 5 (2811 bank statement); DX 42 at 5 (3889 bank statement).
6. June 29, 2012 (daily closing bal.)	$27,801.90, which was higher than the $21,126.20 he needed to hold in trust at this time. DX 46 at 5 (2811 bank statement); DX 42 at 5 (3889 bank statement); *see also* entry 4, *supra*.
7. July 2, 2012 (transactions)	Respondent's $2,153.52 check to his client in the M. Childs matter was debited from his 2811 account. DX 46 at 18 (2811 bank statement); DX 9 at 7 (settlement sheet); *see also* DX 48 at 2 (check to M. Childs). Respondent's $2,257.24 check to his client in the Crossland matter was debited from his 2811 account. DX 46 at 18 (2811 bank statement); DX 13 at 4 (settlement sheet); *see also* DX 48 at 3 (check to Crossland). Respondent's $2,575.04 check[32] to his client in the E. Childs matter was debited from his 2811 account. DX 46 at 18 (2811 bank statement); DX 11 at 3 (settlement sheet); *see also* DX 48 at 4 (check to E. Childs).

[32] The $2,575.04 paid to E. Childs was a higher amount than the $2,320.04 owed to E. Childs as per the settlement sheet. *Compare* DX 48 at 4 (check to E. Childs), *with* DX 11 at 3 (settlement sheet). We note this solely for completeness, as Respondent overpaid E. Childs by $255 with Respondent's earned fees, which does not affect our misappropriation analysis.

	Respondent's $2,812.04 check[33] to his client in the Hubbard matter was debited from his 2811 account. DX 46 at 18 (2811 bank statement); DX 7 at 9 (settlement sheet); *see also* DX 48 at 5 (check to Hubbard).
8. July 2, 2012 (transaction)	Respondent transferred $3,000 out of his 2811 account into his 3889 operating account. DX 46 at 18 (2811 bank statement); DX 42 at 6 (3889 bank statement).
9. July 2, 2012 (daily closing bal.)	$15,004.06, which was higher than the amount he needed to hold in trust at this time ($11,828.36). DX 46 at 18 (2811 bank statement); DX 42 at 6 (3889 bank statement). • *Amount needed to be held in trust.* $1,990 (Thomas) + $1,244.96 (Crossland) + $2,599.96 (Hubbard) + $2,879.96 (E. Childs) + $3,113.48 (M. Childs) = $11,828.36.
10. July 3, 2012 (transaction)	Respondent transferred $9,333.33 out of his 2811 account into his 3889 operating account. DX 46 at 18 (2811 bank statement); DX 42 at 6 (3889 bank statement).
11. July 3, 2012 (daily closing bal.)	$5,670.73, which was $6,157.63 *below* the amount he needed to hold in trust at this time ($11,828.36). DX 46 at 18 (2811 bank statement); DX 42 at 6 (3889 bank statement); *see also* entry 9, *supra*.
12. July 5, 2012 (transactions)	Respondent deposited the $6,000 settlement check from the Dudley matter into his 2811 account. Of those funds, $4,000 were held in trust for Respondent's client ($2,558) and the client's medical provider ($1,442). DX 46 at 18 (2811 bank statement); DX 15 at 7 (settlement sheet). Respondent deposited the $7,000 settlement check from the Mickens matter into his 2811 account. Of those funds,

[33] Like with E. Childs, the $2,812.04 paid to Hubbard was $245 higher than the $2,567.04 owed to Hubbard as per the settlement sheet. *Compare* DX 48 at 5 (check to Hubbard), *with* DX 7 at 9 (settlement sheet). As with E. Childs, we note this solely for completeness.

	$4,637.76 were held in trust for Respondent's client ($2,892.80) and the client's medical providers ($1,744.96). DX 46 at 18 (2811 bank statement); DX 17 at 6 (settlement sheet). Respondent deposited the $87,500 settlement check from the Johnson matter into his 2811 account. Of those funds, $54,912.39 were held in trust for Respondent's client ($50,477.39) and the client's medical provider ($4,435). DX 46 at 18 (2811 bank statement); DX 19 at 22 (settlement sheet).
13. July 5, 2012 (transaction)	Respondent transferred $29,166.66 out of his 2811 account into his 3889 operating account. DX 46 at 18 (2811 bank statement); DX 42 at 6 (3889 bank statement).
14. July 5, 2012 (daily closing bal.)	$77,004.07, which was higher than the amount he needed to hold in trust at this time ($75,378.51). DX 46 at 18 (2811 bank statement); DX 42 at 6 (3889 bank statement). • *Amount needed to be held in trust*. $11,828.36 (amount owed to first five medical providers) + $4,000 (Dudley) + $4,637.76 (Mickens) + $54,912.39 (Johnson) = $75,378.51.
15. July 6, 2012 (transactions)	Respondent's $2,558 check to his client in the Dudley matter was debited from his 2811 account. DX 46 at 18 (2811 bank statement); DX 15 at 7 (settlement sheet); *see also* DX 48 at 6 (check to Dudley). Respondent's $2,892.80 check to his client in the Mickens matter was debited from his 2811 account. DX 46 at 18 (2811 bank statement); DX 17 at 6 (settlement sheet); *see also* DX 48 at 7 (check to Mickens). Respondent's $50,477.39 check to his client in the Johnson matter was debited from his 2811 account. DX 46 at 18 (2811 bank statement); *see also* DX 48 at 8 (check to Johnson).
16. July 6, 2012 (daily closing bal.)	$21,075.88, which was higher than the amount he needed to hold in trust at this time ($19,450.32). DX 46 at 18 (2811 bank statement); DX 19 at 22 (settlement sheet). • *Amount needed to be held in trust.* $11,828.36 (amount

owed to first five medical providers) + $1,442 (Dudley medical owed) + $1,744.96 (Mickens medical owed) + $4,435 (Johnson medical owed) = $19,450.32.

17. July 18, 2012 (transactions and daily closing bal.)

Respondent transferred $3,900 from his 6802 sub-account (Alami) into his 2811 account, which represented a portion of his attorney's fees in the Alami matter. At the time of this transfer, Respondent was already holding entrusted funds in his 2811 account. DX 24 at 1 (6802 subaccount statement); DX 46 at 18 (2811 bank statement); DX 23 at 6 (Alami settlement sheet); Stip. at ¶20; Stip. at pg. 10; *see also* previous entries outlining medical provider fees in 2811 account.

Respondent transferred the $3,900 from his 2811 account into his 3889 account. DX 46 at 18 (2811 bank statement); DX 42 at 7 (3889 bank statement). As a result, the 2811 balance ($21,075.88), as well as the 2811 entrusted amount ($19,450.32), remained the same.

18. July 19, 2012 (transactions)

Respondent deposited the $20,500 settlement check from the Holland matter into his 2811 account. Of those funds, $13,480.19 were held in trust for Respondent's client ($8,729.04) and the client's medical provider ($4,751.15). DX 46 at 18 (2811 bank statement); DX 21 at 10 (settlement sheet).

Respondent transferred $6,833 out of his 2811 account into his 3889 operating account. DX 21 at 10 (settlement sheet); DX 46 at 18 (2811 bank statement); DX 42 at 7 (3889 bank statement).

Three of Respondent's checks to his client totaling $8,729.04 in the Holland matter were debited from his 2811 account. DX 46 at 18 (2811 bank statement); DX 21 at 10 (settlement sheet); *see also* DX 21 at 11 (checks to Holland).

19. July 19, 2012 (daily closing bal.)

$26,013.84, which was higher than the amount he was required to hold in trust at this time ($24,201.47). DX 46 at 18 (2811 bank statement).

- *Amount needed to be held in trust.* $11,828.36 (amount owed to first five medical providers) + $1,442 (Dudley

	medical owed) + $1,744.96 (Mickens medical owed) + $4,435 (Johnson medical owed) + $4,751.15 (Holland medical owed) = $24,201.47.
20. July 24, 2012 (transactions)	Respondent transferred $4,000 from his 6802 sub-account (Alami) into his 2811 account. This amount represented a portion of Respondent's fees in the Alami matter. At the time of this transfer, Respondent was already holding entrusted funds in the 2811 account. *See* DX 46 at 18 (2811 bank statement); DX 24 at 1 (6802 sub-account statement); DX 23 at 6 (Alami settlement sheet); Stip. at ¶20; Stip at pg. 10; *see also* previous entries outlining medical provider fees in 2811 account. Respondent transferred $1,400 out of his 2811 account into his 3889 operating account. *See* DX 46 at 18 (2811 bank statement); DX 42 at 7 (3889 bank statement).
21. July 24, 2012 (daily closing bal.)	$28,613.84, which was higher than the amount Respondent was required to hold in trust at this time ($24,201.47). DX 46 at 18 (2811 bank statement); DX 42 at 7 (3889 bank statement); *see also* entry 19, *supra*.
22. July 31, 2012 (transactions)	Respondent's $1,442 check to the medical provider in the Dudley matter was debited from his 2811 account. DX 46 at 18 (2811 bank statement); DX 15 at 7 (settlement sheet); *see also* DX 15 at 6 (check to Metro Medical Clinics). Respondent's $1,500 check to a medical provider in the Mickens matter was debited from his 2811 account. DX 46 at 18 (2811 bank statement); DX 17 at 6 (settlement sheet); *see also* DX 17 at 5 (check to Metro Medical Clinics). Respondent's $2,150 check to a medical provider in the M. Childs matter was debited from his 2811 account. DX 46 at 18 (2811 bank statement); DX 9 at 7 (settlement sheet); *see also* DX 9 at 9 (check to Metro Medical Clinics).
23. July 31, 2012 (daily closing bal.)	$23,521.84, which was higher than the $19,109.47 he was required to hold in trust at this time. DX 46 at 18 (2811 bank statement).

- *Amount needed to be held in trust.* $19,109.47:
  - $11,828.36 (originally owed to medical providers for first five clients) – $2,150 (check paid to a medical provider in M. Childs) = $9,678.36 (amount remaining owed to medical providers for first five clients).
  - $9,678.36 + $244.96 (Mickens: $1,500 amount paid, subtracted from $1,744.96 total owed) + $4,435 (Johnson medical owed) + $4,751.15 (Holland medical owed) = $19,109.47.

24. Aug. 2, 2012 (transaction)	Respondent transferred $10,000 out of his 2811 account into his 3889 operating account. DX 46 at 31 (2811 bank statement); DX 42 at 9 (3889 bank statement).
25. Aug. 2, 2012 (daily closing bal.)	$13,521.84, which was $5,587.63 *below* the amount he needed to hold in trust at this time ($19,109.47). DX 46 at 31 (2811 bank statement); DX 42 at 9 (3889 bank statement); *see also* entry 23, *supra*: $19,109.47 he needed to hold in trust.
26. Aug. 9, 2012 (transaction)	Respondent transferred $9,000 out of his 2811 account into his 3889 operating account. DX 46 at 31 (2811 bank statement); DX 42 at 9 (3889 bank statement).
27. Aug. 9, 2012 (daily closing bal.)	$4,521.84, which was $14,587.63 *below* the amount he needed to hold in trust at this time ($19,109.47). DX 46 at 31 (2811 bank statement); DX 42 at 9 (3889 bank statement); *see also* entry 23, *supra*: $19,109.47 he needed to hold in trust.
28. Aug. 14, 2012 (transaction)	Respondent deposited the $12,000 settlement check from the Mitchell matter into his 2811 account. Of those funds, $8,000 were held in trust for Respondent's client ($4,500) and the client's medical provider ($3,500). DX 46 at 31 (2811 bank statement); DX 25 at 7 (settlement sheet).
29. Aug. 14, 2012 (daily closing bal.)	$16,521.84, which was *below* the $27,109.47 now needed to be held in trust ($19,109.47 + $8,000 (Mitchell entrusted funds) = $27,109.47).
30. Aug. 15, 2012	Respondent transferred $6,000 out of his 2811 account into his

(transaction) 3889 operating account. DX 46 at 31 (2811 bank statement); DX 42 at 10 (3889 bank statement).

31. Aug. 15, 2012 (daily closing bal.) $10,521.84, which was $16,587.63 below the amount he needed to hold in trust at this time ($27,109.47). DX 46 at 31 (2811 bank statement); DX 42 at 10 (3889 bank statement); *see also* entry 29, *supra*.

32. Aug. 20, 2012 (transactions) On August 20, 2012, Respondent transferred $3,500 out of his 2811 account into his 3889 operating account. DX 46 at 31 (2811 bank statement); DX 42 at 10 (3889 bank statement).

Respondent's $4,500 check to his client in the Mitchell matter was debited from his 2811 account. DX 46 at 31 (2811 bank statement); DX 25 at 7 (settlement sheet); *see also* DX 25 at 8 (check to Mitchell).

33. Aug. 20, 2012 (daily closing bal.) $2,521.84, which was $20,087.63 below the amount he needed to hold in trust at this time ($22,609.47). DX 46 at 31 (2811 bank statement).

- *Amount needed to be held in trust.* $22,609.47:
  - $9,678.36 (amount remaining owed to medical providers for first five clients) + $244.96 (Mickens: $1,500 amount paid, subtracted from $1,744.96 total owed) + $4,435 (Johnson medical owed) + $4,751.15 (Holland medical owed) = $19,109.47.
  - $19,109.47 + $3,500 (Mitchell medical owed) = $22,609.47.

34. Aug. 24, 2012 (transaction) Respondent transferred $2,000 out of his 2811 account into his 3889 operating account. DX 46 at 31 (2811 bank statement); DX 42 at 10 (3889 bank statement).

35. Aug. 24, 2012 (daily closing bal.) $521.84, which was $22,087.63 *below* the amount he needed to hold in trust at this time ($22,609.47). DX 46 at 31 (2811 bank statement); DX 42 at 10 (3889 bank statement); *see also* entry 33, *supra*.

36. Aug. 28, 2012 (transaction) Respondent's $1,990 check to the medical provider in the Thomas matter was debited from his 2811 account. DX 46 at 31

(2811 bank statement); DX 5 at 13 (settlement sheet); *see also* DX 5 at 14 (check to Metro Medical Clinics).

37. Aug. 28, 2012 (daily closing bal.)

–$1,468.16, which was $22,087.63 *below* the amount he needed to hold in trust at this time ($20,619.47). DX 46 at 31 (2811 bank statement).

- *Amount needed to be held in trust.* $20,619.47:
  - $9,678.36 (amount remaining owed to medical providers for first five clients) + $244.96 (Mickens: $1,500 amount paid, subtracted from $1,744.96 total owed) + $4,435 (Johnson medical owed) + $4,751.15 (Holland medical owed) = $19,109.47.
  - $19,109.47 + $3,500 (Mitchell medical owed) = $22,609.47.
  - $22,609.47 – $1,990 (Thomas medical paid) = $20,619.47.

38. Aug. 29, 2012 (transaction)

$1,990 Thomas medical provider check was returned to Respondent. DX 46 at 31 (2811 bank statement). This triggered a $35 fee on the same day. *Id.*

39. Aug. 29, 2012 (daily closing bal.)

$486.84 (–$1,468.16 (previous balance) + $1,990.00 (returned check) = $521.84); ($521.84 – $35.00 = $486.84), which was $22,122.63 *below* the amount he needed to hold in trust at this time ($22,609.47). DX 46 at 31 (2811 bank statement).

- *Amount needed to be held in trust.* $22,609.47:
- $20,619.47 (previous entrusted amount) + $1,990 = $22,609.47.

40. Aug. 30, 2012 (transactions)

Respondent deposited the $9,000 settlement check from the Stewart matter into his 2811 account. Of those funds, $5,938.61 were held in trust for Respondent's client ($4,293.61) and the client's medical provider ($1,645). DX 46 at 31 (2811 bank statement); DX 27 at 4 (settlement sheet).

Respondent transferred $9,000 out of his 2811 account into his 3868 sub-account (Stewart). DX 46 at 31 (2811 bank statement); DX 28 at 1 (3868 sub-account).

Respondent transferred $3,000 out of his 3868 sub-account

	(Stewart) to his 2811 account. DX 28 at 1 (3868 sub-account); DX 46 at 31 (2811 bank statement). Respondent transferred $3,000 out of his 2811 account to his 3889 operating account. DX 46 at 31 (2811 bank statement); DX 42 at 10 (3889 bank statement).
41. Aug. 30, 2012 (daily closing bal.)	$486.84[34] *See* #39 (–$1,468.16 + $1,990.00 = $521.84) ($521.84 – $35.00 = $486.84), which was $22,122.63 *below* the amount he needed to hold in trust at this time ($22,609.47).
42. Aug. 31, 2012 (transactions)	Respondent deposited $4,200 into his 2811 account. DX 46 at 31 (2811 bank statement). Disciplinary Counsel and Respondent stipulate that these funds belonged to Respondent. Stip. at ¶36a; Stip. at pg. 19. Respondent transferred $6,000—the entrusted funds in Stewart[35]—out of his 3868 sub-account (Stewart) to his 2811 account. DX 28 at 1 (3868 sub-account); DX 46 at 31 (2811 bank statement). Respondent transferred $4,200 out of his 2811 account into his 3889 operating account. DX 46 at 31 (2811 bank statement); DX 42 at 11 (3889 bank statement).
43. Aug. 31, 2012 (daily closing bal.)	$6,486.84, which was $22,061.24 *below* the amount he needed to hold in trust at this time ($28,548.08). DX 46 at 31 (2811 bank statement). • *Amount needed to be held in trust.* $28,548.08: ○ $9,678.36 (amount remaining owed to medical

[34] The $3,000 taken by Respondent represent his fees for the Stewart matter. DX 27 at 4 (settlement sheet); *see* entry 40, *supra*. The remaining $6,000 was, at this moment, in the Stewart sub-account. Thus for purposes of the 2811 daily closing balance on August 30, the Stewart funds are not factored in.

[35] As previously noted in entry 40, the settlement sheet in Stewart designated $5,938.61 in entrusted funds. As to the $61.39—the difference when subtracting $5,938.61 (entrusted amount on settlement sheet) from $6,000 (amount Respondent transferred)—both parties stipulate to these funds representing costs owed to Respondent. Stip. at ¶38a.; Stip. at pgs. 18-19.

providers for first five clients) + $244.96 (Mickens: $1,500 amount paid, subtracted from $1,744.96 total owed) + $4,435 (Johnson medical owed) + $4,751.15 (Holland medical owed) = $19,109.47.
    - $19,109.47 + $3,500 (Mitchell medical owed) = $22,609.47.
    - $22,609.47 – $1,990 (Thomas medical paid) = $20,619.47.
    - $20,619.47 + $1,990 (Thomas medical returned) = $22,609.47.
    - $22,609.47 + $5,938.61 (Stewart entrusted funds) = $28,548.08.

44. Sept. 4, 2012 (transaction)	Respondent deposited $5,981.25 into his 2811 account. DX 46 at 45 (2811 bank statement). Both parties stipulate that these were earned fees awarded to one of Respondent's associates. Stip. at ¶36b; Stip. at pg. 19.
45. Sept. 4, 2012 (daily closing bal.)	$12,468.09, which was $16,079.99 *below* the amount he needed to hold in trust at this time ($28,548.08). DX 46 at 45 (2811 bank statement); *see also* entry 43, *supra*.
46. Sept. 6, 2012 (transactions)	Respondent's $4,293 check to his client in the Stewart matter was debited from his 2811 account. DX 46 at 45 (2811 bank statement); DX 27 at 4 (settlement sheet); *see also* DX 27 at 5 (check to Stewart). Respondent's $3,500 check to the medical provider in the Mitchell matter (*see* #28.) was debited from his 2811 account. DX 46 at 45 (2811 bank statement); DX 25 at 7 (settlement sheet); *see also* DX 25 at 9 (check to Physical Therapy & Sports Assessment Center).
47. Sept. 6, 2012 (daily closing bal.)	$4,674.48, which was $16,079.99 *below* the amount he needed to hold in trust at this time ($20,754.47). DX 46 at 45 (2811 bank statement). • *Amount needed to be held in trust.* $20,754.47: ○ $9,678.36 (amount remaining owed to medical providers for first five clients) + $244.96 (Mickens:

$1,500 amount paid, subtracted from $1,744.96 total owed) + $4,435 (Johnson medical owed) + $4,751.15 (Holland medical owed) = $19,109.47.
  - $19,109.47 + $1,645 (Stewart medical owed) = $20,754.47.

48. Sept. 7, 2012 (transactions)

Respondent deposited the $8,500 settlement check from the Richards matter into his 2811 account. Of those funds, $5,667 were held in trust for Respondent's client ($3,297) and the client's medical providers ($2,370). DX 46 at 45 (2811 bank statement); DX 29 at 5 (settlement sheet).

Respondent transferred $2,833.33 out of his 2811 account into his 3889 operating account. DX 46 at 45 (2811 bank statement); DX 42 at 12 (3889 bank statement).

Respondent transferred $4,000 out of his 2811 account into his 3889 operating account. DX 46 at 45 (2811 bank statement); DX 42 at 12 (3889 bank statement).

49. Sept. 7, 2012 (daily closing bal.)

$6,341.15, which was $20,080.32 *below* the amount he needed to hold in trust at this time ($26,421.47). DX 46 at 45 (2811 bank statement).

- *Amount needed to be held in trust.* $26,421.47:
  - $9,678.36 (amount remaining owed to medical providers for first five clients) + $244.96 (Mickens: $1,500 amount paid, subtracted from $1,744.96 total owed) + $4,435 (Johnson medical owed) + $4,751.15 (Holland medical owed) = $19,109.47.
  - $19,109.47 + $1,645 (Stewart medical owed) = $20,754.47.
  - $20,754.47 + $5,667 (Richards entrusted funds) = $26,421.47.

50. Sept. 13, 2012 (transactions)

Respondent deposited the $5,500 settlement check from the Wilson matter into his 2811 account. Of those funds, $3,667 were held in trust for Respondent's client ($2,167) and the client's medical provider ($1,500). DX 46 at 45 (2811 bank statement); DX 31 at 4 (settlement sheet).

	Respondent deposited $12,000 of personal funds into his 2811 account. DX 46 at 45 (2811 bank statement); Stip. at pg. 20. Respondent transferred the Wilson $5,500 settlement funds out of his 2811 account into the 4074 sub-account (Wilson). DX 46 at 45 (2811 bank statement); DX 32 at 1 (4074 sub-account). Respondent transferred $6,000 out of his 2811 account into his 3889 account. DX 46 at 45 (2811 bank statement); DX 42 at 12 (3889 bank statement).
51. Sept. 13, 2012 (daily closing bal.)	$12,341.15, which was $14,080.32 *below* the amount he needed to hold in trust at this time ($26,421.47). DX 46 at 45 (2811 bank statement). • *Amount needed to be held in trust.* $26,421.47: o $9,678.36 (amount remaining owed to medical providers for first five clients) + $244.96 (Mickens: $1,500 amount paid, subtracted from $1,744.96 total owed) + $4,435 (Johnson medical owed) + $4,751.15 (Holland medical owed) = $19,109.47. o $19,109.47 + $1,645 (Stewart medical owed) = $20,754.47. o $20,754.47 + $5,667 (Richards) = $26,421.47.[36]
52. Sept. 14, 2012 (transaction)	Respondent transferred $4,000 out of his 2811 account into his 3889 account. DX 46 at 45 (2811 bank statement); DX 42 at 12 (3889 bank statement).
53. Sept. 14, 2012 (daily closing bal.)	$8,341.15, which was $18,080.32 *below* the amount he needed to hold in trust at this time ($26,421.47). DX 46 at 45 (2811 bank statement); *see also* entry 51, *supra*.
54. Sept. 17, 2012 (transaction)	Respondent deposited $4,070 of personal funds into his 2811 account. DX 46 at 45 (2811 bank statement); Stip. at pg. 20.

[36] Because Wilson funds were in sub-account at this time, they are not added to the required entrusted funds to be held in the 2811 account.

55. Sept. 17, 2012 (daily closing bal.)

$12,411.15, which was $14,010.32 *below* the amount he needed to hold in trust at this time ($26,421.47). DX 46 at 45 (2811 bank statement); *see also* entry 51, *supra*.

56. Sept. 19, 2012 (transactions)

Respondent transferred $5,500 settlement funds out of his 4074 sub-account (Wilson) into his 2811 account. DX 32 at 1 (4074 sub-account); DX 46 at 45 (2811 bank statement).

Respondent transferred $1,833.33 out of his 2811 account into his 3889 account. DX 46 at 45 (2811 bank statement); DX 42 at 13 (3889 bank statement).

Respondent transferred $4,000 out of his 2811 account into his 3889 account. DX 46 at 45 (2811 bank statement); DX 42 at 13 (3889 bank statement).

57. Sept. 19, 2012 (daily closing bal.)

$12,077.82, which was $18,010.65 *below* the amount he needed to hold in trust at this time ($30,088.47). DX 46 at 45 (2811 bank statement).

- *Amount needed to be held in trust.* $30,088.47:
  - $9,678.36 (amount remaining owed to medical providers for first five clients) + $244.96 (Mickens: $1,500 amount paid, subtracted from $1,744.96 total owed) + $4,435 (Johnson medical owed) + $4,751.15 (Holland medical owed) = $19,109.47.
  - $19,109.47 + $1,645 (Stewart medical owed) = $20,754.47.
  - $20,754.47 + $5,667 (Richards) = $26,421.47.
  - $26,421.47 + $3,667 (Wilson) = $30,088.47.

58. Sept. 21, 2012 (transactions)

Respondent deposited the $12,000 settlement check from the Forde matter into his 2811 account. Of those funds, $7,921.65 were held in trust for Respondent's client ($5,899.15) and the client's medical provider ($2,022.50). DX 46 at 45 (2811 bank statement); DX 33 at 5 (settlement sheet).

Respondent transferred $4,000 out of his 2811 account into his 3889 account. DX 46 at 45 (2811 bank statement); DX 42 at 13 (3889 bank statement).

59. Sept. 21, 2012 (daily closing bal.)

$20,077.82, which was $17,932.30 *below* the amount he needed to hold in trust at this time ($38,010.12). DX 46 at 45 (2811 bank statement).

- *Amount needed to be held in trust.* $30,088.47 (previous required entrusted amount) + $7,921.65 (Forde) = $38,010.12.

60. Sept. 25, 2012 (transactions)

Respondent's $2,167 check to his client in the Wilson matter was debited from his 2811 account. DX 46 at 45 (2811 bank statement); DX 31 at 4 (settlement sheet); *see also* DX 31 at 5 (check to Wilson).

Respondent's $3,297 check to his client in the Richards matter was debited from his 2811 account. DX 46 at 45 (2811 bank statement); DX 29 at 5 (settlement sheet); *see also* DX 29 at 7 (check to Richards).

61. Sept. 25, 2012 (daily closing bal.)

$14,613.82, which was $17,932.30 *below* the amount he needed to hold in trust at this time ($32,546.12). DX 46 at 45 (2811 bank statement).

- *Amount needed to be held in trust.* $32,546.12:
  - $9,678.36 (amount remaining owed to medical providers for first five clients) + $244.96 (Mickens: $1,500 amount paid, subtracted from $1,744.96 total owed) + $4,435 (Johnson medical owed) + $4,751.15 (Holland medical owed) = $19,109.47.
  - $19,109.47 + $1,645 (Stewart medical owed) = $20,754.47.
  - $20,754.47 + $7,921.65 (Forde) = $28,676.12.
  - $28,676.12 + $1,500 (Wilson medical owed) + $2,370 (Richards medical owed) = $32,546.12.

62. Sept. 26, 2012 (transactions)

Respondent deposited the $85,000 settlement check from the Andre matter into his 2811 account. Of those funds, $50,819.55 were held in trust for Respondent's client ($38,322.52) and the client's medical provider ($12,497.03). DX 46 at 45 (2811 bank statement); DX 35 at 2 (settlement sheet).

Respondent transferred $28,333.33 out of his 2811 account into

his 3889 account. DX 46 at 45 (2811 bank statement); DX 42 at 13 (3889 bank statement).

63. Sept. 26, 2012 (daily closing bal.) — $71,280.49, which was $12,085.18 *below* the amount he needed to hold in trust at this time ($83,365.67). DX 46 at 45 (2811 bank statement).

- *Amount needed to be held in trust.* $83,365.67:
  - $9,678.36 (amount remaining owed to medical providers for first five clients) + $244.96 (Mickens: $1,500 amount paid, subtracted from $1,744.96 total owed) + $4,435 (Johnson medical owed) + $4,751.15 (Holland medical owed) = $19,109.47.
  - $19,109.47 + $1,645 (Stewart medical owed) = $20,754.47.
  - $20,754.47 + $7,921.65 (Forde) = $28,676.12.
  - $28,676.12 + $1,500 (Wilson medical owed) + $2,370 (Richards medical owed) = $32,546.12.
  - $32,546.12 + $50,819.55 (Andre) = $83,365.67.

64. Sept. 27, 2012 (transactions) — Respondent's $5,899.15 check to his client in the Forde matter was debited from his 2811 account. DX 46 at 45 (2811 bank statement); DX 33 at 5 (settlement sheet); *see also* DX 35 at 8 (check to Richards).

65. Sept. 27, 2012 (daily closing bal.) — $65,381.34, which was $12,085.18 *below* the amount he needed to hold in trust at this time ($77,466.52). DX 46 at 45 (2811 bank statement).

- *Amount needed to be held in trust.* $77,466.52:
  - $9,678.36 (amount remaining owed to medical providers for first five clients) + $244.96 (Mickens: $1,500 amount paid, subtracted from $1,744.96 total owed) + $4,435 (Johnson medical owed) + $4,751.15 (Holland medical owed) = $19,109.47.
  - $19,109.47 + $1,645 (Stewart medical owed) = $20,754.47.
  - $20,754.47 + $2,022.50 (Forde medical owed) = $22,776.97.
  - $22,776.97 + $1,500 (Wilson medical owed) + $2,370 (Richards medical owed) = $26,646,97.
  - $26,646.97 + $50,819.55 (Andre) = $77,466.52.

66. Sept. 28, 2012 (transactions)

Respondent's $123.52 check to a medical provider in the M. Childs matter was debited from his 2811 account. DX 46 at 45 (2811 bank statement); DX 9 at 7 (settlement sheet); *see also* DX 9 at 10 (check to Southern Maryland Hospital).

Respondent's $540 check to a medical provider in the M. Childs matter was debited from his 2811 account. DX 46 at 45 (2811 bank statement); DX 9 at 7 (settlement sheet); *see also* DX 9 at 11 (check to Prince George County MD/Fire EMS).

67. Sept. 28, 2012 (daily closing bal.)

$64,717.82, which was $12,085.18 *below* the amount he needed to hold in trust at this time ($76,803). DX 46 at 45 (2811 bank statement).

- *Amount needed to be held in trust.* $76,803:
  - $9,678.36 – $123.52 – $540 (two of M. Childs' medical providers paid) = $9,014.84 (amount remaining owed to medical providers for first five clients).
  - $9,014.84 + $244.96 (Mickens: $1,500 amount paid, subtracted from $1,744.96 total owed) + $4,435 (Johnson medical owed) + $4,751.15 (Holland medical owed) = $18,445.95.
  - $18,445.95 + $1,645 (Stewart medical owed) = $20,090.95.
  - $20,090.95 + $2,022.50 (Forde medical owed) = $22,113.45.
  - $22,113.45 + $1,500 (Wilson medical owed) + $2,370 (Richards medical owed) = $25,983.45.
  - $25,983.45 + $50,819.55 (Andre) = $76,803.

68. Oct. 2, 2012 (transactions)

Respondent's $1,000 check to a medical provider in the Crossland matter was debited from his 2811 account. DX 46 at 59 (2811 bank statement); DX 13 at 6 (settlement sheet); *see also* DX 13 at 4 (check to Metro Medical Clinic).

Respondent's $1,500 check to the medical provider in the Wilson matter was debited from his 2811 account. DX 46 at 59 (2811 bank statement); DX 31 at 4 (settlement sheet); *see also* DX 31 at 6 (check to Metro Medical Clinic).

	Respondent's $1,890 check to a medical provider in the Richards matter was debited from his 2811 account. DX 46 at 59 (2811 bank statement); DX 29 at 5 (settlement sheet); *see also* DX 29 at 8 (check to Metro Medical Clinic).
69. Oct. 2, 2012 (daily closing bal.)	$60,327.82, which was $12,085.18 *below* the amount he needed to hold in trust at this time ($72,413). DX 46 at 59 (2811 bank statement). • *Amount needed to be held in trust.* $72,413: o $9,014.84 – $1,000 (one of Crossland's medical providers paid) = $8,014.84 (amount remaining owed to medical providers for first five clients). o $8,014.84 + $244.96 (Mickens: $1,500 amount paid, subtracted from $1,744.96 total owed) + $4,435 (Johnson medical owed) + $4,751.15 (Holland medical owed) = $17,445.95. o $17,445.95 + $1,645 (Stewart medical owed) = $19,090.95. o $19,090.95 + $2,022.50 (Forde medical owed) = $21,113.45. o $21,113.45 + $480 (Richards medical owed) = $21,593.45. o $21,593.45 + $50,819.55 (Andre) = $72,413.
70. Oct. 3, 2012 (transaction)	Respondent's $4,751.15 check to the medical provider in the Holland matter was debited from his 2811 account. DX 46 at 59 (2811 bank statement); DX 21 at 10 (settlement sheet); *see also* DX 21 at 9 (check to Washington Spine and Injury Center).
71. Oct. 3, 2012 (daily closing bal.)	$55,576.67, which was $12,085.18 *below* the amount he needed to hold in trust at this time ($67,661.85). DX 46 at 59 (2811 bank statement) • *Amount needed to be held in trust.* $67,661.85: o $8,014.84 (amount remaining owed to medical providers for first five clients) + $244.96 (Mickens: $1,500 amount paid, subtracted from $1,744.96 total owed) + $4,435 (Johnson medical owed) = $12,694.80. o $12,694.80 + $1,645 (Stewart medical owed) = $14,339.80.

- $14,339.80 + $2,022.50 (Forde medical owed) = $16,362.30.
- $16,362.30 + $480 (Richards medical owed) = $16,842.30.
- $16,842.30 + $50,819.55 (Andre) = $67,661.85.

72. Oct. 4, 2012 (transactions)

Respondent transferred $12,497.03—the amount of the Medicare lien in the Andre matter—out of his 2811 account into the 5666 sub-account (Andre). DX 46 at 59 (2811 bank statement); DX 36 at 3; *see also* DX 35 at 2 (settlement sheet).

Respondent's $299.96 check to the medical provider in the M. Childs matter was debited from his 2811 account. DX 46 at 59 (2811 bank statement); DX 9 at 7 (settlement sheet); *see also* DX 9 at 12 (check to Medical Emergency Professionals).

Respondent's $380 check to a medical provider in the Richards matter was debited from his 2811 account. DX 46 at 59 (2811 bank statement); DX 29 at 5 (settlement sheet); *see also* DX 29 at 8 (check to Eric Dawson MD).

73. Oct. 4, 2012 (daily closing bal.)

$42,399.68, which was $12,085.18 *below* the amount he needed to hold in trust at this time ($54,484.86). DX 46 at 59 (2811 bank statement).

- *Amount needed to be held in trust.* $54,484.86:
  - $8,014.84 – $299.96 (remaining M. Childs medical provider paid) = $7,714.88 (amount remaining owed to medical providers for first five clients).
  - $7,714.88 + $244.96 (Mickens: $1,500 amount paid, subtracted from $1,744.96 total owed) + $4,435 (Johnson medical owed) = $12,394.84.
  - $12,394.84 + $1,645 (Stewart medical owed) = $14,039.84.
  - $14,039.84 + $2,022.50 (Forde medical owed) = $16,062.34.
  - $16,062.34 + $100 (Richards medical owed) = $16,162.34.
  - $16,162.34 + $38,322.52 (Andre client) = $54,484.86.

74. Oct. 9, 2012 (transaction)

Respondent's $5,075.33 check to the client in the Payne matter was debited from his 2811 account.[37] DX 46 at 59 (2811 bank statement); DX 37 at 7 (settlement sheet); *see also* DX 37 at 6 (check to Payne).

75. Oct. 9, 2012 (daily closing bal.)

$37,324.35, which was $17,160.51 *below* the amount he needed to hold in trust at this time ($54,484.86). DX 46 at 59 (2811 bank statement).

- *Amount needed to be held in trust.* $54,484.86:
  - $8,014.84 – $299.96 (remaining M. Childs medical provider paid) = $7,714.88 (amount remaining owed to medical providers for first five clients).
  - $7,714.88 + $244.96 (Mickens: $1,500 amount paid, subtracted from $1,744.96 total owed) + $4,435 (Johnson medical owed) = $12,394.84.
  - $12,394.84 + $1,645 (Stewart medical owed) = $14,039.84.
  - $14,039.84 + $2,022.50 (Forde medical owed) = $16,062.34.
  - $16,062.34 + $100 (Richards medical owed) = $16,162.34.
  - $16,162.34 + $38,322.52 (Andre client) = $54,484.86.

76. Oct. 10, 2012 (transactions)

Respondent transferred $5,666 out of the 5666 sub-account (Andre) into his 2811 account. DX 46 at 59 (2811 bank statement); DX 36 at 3 (5666 sub-account).

Respondent's $38,322.52 check to the client in the Andre matter was debited from his 2811 account. DX 46 at 59 (2811 bank statement); DX 35 at 2 (settlement sheet); *see also* DX 35 at 3 (check to Andre).

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[37] Both parties stipulate to Respondent depositing, prior to Oct. 9, $8,779.33 in settlement funds into the 5437 sub-account for the Payne matter. Stip. at ¶54. These funds consisted of $5,075.33 belonging to the client; $3,666.52 belonging to Respondent as attorney fees; and $37.48 for copying fees. DX 37 at 7 (settlement sheet). Respondent did not transfer these settlement funds into his 2811 account until a week later. *See* entry 78, *infra*.

77. Oct. 10, 2012 (daily closing bal.)

$4,667.83, which was $17,160.51 *below* the amount he needed to hold in trust at this time ($21,828.34). DX 46 at 59 (2811 bank statement).

- *Amount needed to be held in trust.* $21,828.34:
  - $8,014.84 – $299.96 (remaining M. Childs medical provider paid) = $7,714.88 (amount remaining owed to medical providers for first five clients)
  - $7,714.88 + $244.96 (Mickens: $1,500 amount paid, subtracted from $1,744.96 total owed) + $4,435 (Johnson medical owed) = $12,394.84.
  - $12,394.84 + $1,645 (Stewart medical owed) = $14,039.84.
  - $14,039.84 + $2,022.50 (Forde medical owed) = $16,062.34.
  - $16,062.34 + $100 (Richards medical owed) = $16,162.34.
  - $16,162.34 + $5,666 (portion for Andre medical provider lien) = $21,828.34.

78. Oct. 16, 2012 (transactions)

Respondent transferred the $8,779.33 settlement funds in the Payne matter out of the 5437 sub-account (Payne) into his 2811 account. Respondent had already paid the client their share (*see* entry 74, *supra*); the remaining amount consisted of attorney and copying fees. *See* entry 74 n.37, *supra*; DX 46 at 59 (2811 bank statement); DX 38 at 2 (5437 sub-account); DX 37 at 7 (settlement sheet).

Respondent transferred $3,666.66 out of his 2811 account into his 3889 account. DX 46 at 59 (2811 bank statement); DX 42 at 15 (3889 bank statement).

79. Oct. 16, 2012 (daily closing bal.)

$9,780.50, which was $12,047.84 *below* the amount he needed to hold in trust at this time ($21,828.34). DX 46 at 59 (2811 bank statement).

- *Amount needed to be held in trust.* $21,828.34:
  - $8,014.84 – $299.96 (remaining M. Childs medical provider paid) = $7,714.88 (amount remaining owed to medical providers for first five clients).
  - $7,714.88 + $244.96 (Mickens: $1,500 amount

paid, subtracted from $1,744.96 total owed) + $4,435 (Johnson medical owed) = $12,394.84.
- $12,394.84 + $1,645 (Stewart medical owed) = $14,039.84.
- $14,039.84 + $2,022.50 (Forde medical owed) = $16,062.34.
- $16,062.34 + $100 (Richards medical owed) = $16,162.34.
- $16,162.34 + $5,666 (portion for Andre medical provider lien) = $21,828.34.

80. Oct. 17, 2012 (transactions)

Respondent transferred $46,000 out of the 5658 sub-account (Sellers)[38] into his 2811 account, representing his attorney fees in the Sellers matter. DX 46 at 59 (2811 bank statement); DX 40 at 1 (5658 sub-account); DX 39 at 1 (settlement sheet); Stip. at ¶57.

Respondent's $100 check to the client in the Richards matter was debited from his 2811 account. DX 46 at 59 (2811 bank statement); DX 29 at 5 (settlement sheet); *see also* DX 29 at 8 (check to Howard University Hospital).

81. Oct. 17, 2012 (daily closing bal.)

$55,680.50, which was $33,952.16 higher than the amount he needed to hold in trust at this time ($21,728.34). DX 46 at 59 (2811 bank statement).

- *Amount needed to be held in trust.* $21,728.34:
  - $8,014.84 – $299.96 (remaining M. Childs medical provider paid) = $7,714.88 (amount remaining owed to medical providers for first five clients).
  - $7,714.88 + $244.96 (Mickens: $1,500 amount paid, subtracted from $1,744.96 total owed) + $4,435 (Johnson medical owed) = $12,394.84.
  - $12,394.84 + $1,645 (Stewart medical owed) = $14,039.84.
  - $14,039.84 + $2,022.50 (Forde medical owed) =

[38] Both parties stipulate that prior to Oct. 17, Respondent deposited the settlement proceeds from the Sellers matter into the 5658 sub-account. Stip. at ¶57.

$16,062.34.
- $16,062.34 + $5,666 (portion for Andre medical provider lien) = $21,728.34.

82. Oct. 19, 2012 (transactions)

Respondent transferred $10,000 out of his 2811 account into his 3889 account. DX 46 at 59 (2811 bank statement); DX 42 at 15 (3889 bank statement).

Respondent's $1,645 check to the medical provider in the Stewart matter was debited from his 2811 account. DX 46 at 59 (2811 bank statement); DX 27 at 4 (settlement sheet); *see also* DX 27 at 7 (check to Metro Medical Clinic).

83. Oct. 19, 2012 (daily closing bal.)

$44,035.50, which was $23,952.16 higher than the amount he needed to hold in trust at this time ($20,083.34). DX 46 at 59 (2811 bank statement).

- *Amount needed to be held in trust.* $20,083.34:
  - $8,014.84 – $299.96 (remaining M. Childs medical provider paid) = $7,714.88 (amount remaining owed to medical providers for first five clients).
  - $7,714.88 + $244.96 (Mickens: $1,500 amount paid, subtracted from $1,744.96 total owed) + $4,435 (Johnson medical owed) = $12,394.84.
  - $12,394.84 + $2,022.50 (Forde medical owed) = $14,417.34.
  - $14,417.34 + $5,666 (portion for Andre medical provider lien) = $20,083.34.

84. Oct. 26, 2012 (transaction)

Respondent's $57,216 check to the client in the Sellers matter was debited from his 2811 account.[39] DX 46 at 59 (2811 bank statement); DX 39 at 1 (settlement sheet); *see also* DX 39 at 2 (check to The Estate of Darrell Sellers, Sr.).

85. Oct. 26, 2012 (daily closing bal.)

–$13,180.50, which—as a result of the 2811 account overdrawn by –$37,132.66—was $33,263.84 *below* the amount he needed

[39] At this time, the client funds for the Sellers matter were still in the 5658 sub-account. *See* entry 80 n.38, *supra*.

to hold in trust at this time ($20,083.34). DX 46 at 59 (2811 bank statement).

- *Amount overdrawn.* $20,083.34 (previous balance) – $57,216 (Sellers client) = –$37,132.66
- *Amount needed to be held in trust.* $20,083.34:
  - $8,014.84 – $299.96 (remaining M. Childs medical provider paid) = $7,714.88 (amount remaining owed to medical providers for first five clients).
  - $7,714.88 + $244.96 (Mickens: $1,500 amount paid, subtracted from $1,744.96 total owed) + $4,435 (Johnson medical owed) = $12,394.84.
  - $12,394.84 + $2,022.50 (Forde medical owed) = $14,417.34.
  - $14,417.34 + $5,666 (portion for Andre medical provider lien) = $20,083.34.

APPENDIX 2: DEMONSTRATIVE IN SUPPORT OF APPENDIX 1

Date	Client	Deposit/ withdrawal	Entrusted funds (per client matter)	Total entrusted funds	2811 account balance	2811 account balance above /below entrustment
	Opening Bal.				$88.90	
6/20/2012	Thomas	$7,400.00	$4,927.00			
6/20/2012	**Closing Bal.**			**$4,927.00**	**$7,488.90**	**$2,561.90**
6/28/2012	Crossland	$5,300.00	$3,502.20			
6/28/2012	Hubbard	$7,750.00	$5,167.00			
6/28/2012	E. Childs	$7,800.00	$5,200.00			
6/28/2012	M. Childs	$7,900.00	$5,267.00			
6/28/2012	Thomas	-$2,937.00				
6/28/2012	**Closing Bal.**			**$21,126.20**	**$33,301.90**	**$12,175.70**
6/29/2012	Op Acct	-$5,500.00				
6/29/2012	**Closing Bal.**			**$21,126.20**	**$27,801.90**	**$6,675.70**
7/2/2012	Op Acct	-$3,000.00				
7/2/2012	M Childs	-$2,153.52				
7/2/2012	Crossland	-$2,257.24				
7/2/2012	E. Childs	-$2,575.04				
7/2/2012	Hubbard	-$2,812.04				
7/2/2012	**Closing Bal.**			**$11,828.36**	**$15,004.06**	**$3,175.70**
7/3/2012	Op Acct	-$9,333.33				
7/3/2012	**Closing Bal.**			**$11,828.36**	**$5,670.73**	**-$6,157.63**
7/5/2012	Dudley	$6,000.00	$4,000.00			
7/5/2012	Mickens	$7,000.00	$4,637.76			
7/5/2012	Johnson	$87,500.00	$54,912.39			
7/5/2012	Op Acct	-$29,166.66				
7/5/2012	**Closing Bal.**			**$75,378.51**	**$77,004.07**	**$1,625.56**
7/6/2012	Dudley	-$2,558.00				
7/6/2012	Mickens	-$2,892.80				
7/6/2012	Johnson	-$50,477.39				

7/6/2012	**Closing Bal.**			**$19,450.32**	**$21,075.88**	**$1,625.56**
7/18/2012	Alami	$3,900.00				
7/18/2012	Alami	-$3,900.00				
7/18/2012	**Closing Bal.**			**$19,450.32**	**$21,075.88**	**$1,625.56**
7/19/2012	Holland	$20,500.00	$13,480.19			
7/19/2012	Op Acct	-$6,833.00				
7/19/2012	Holland	-$8,729.04				
7/19/2012	**Closing Bal.**			**$24,201.47**	**$26,013.84**	**$1,812.37**
7/24/2012	Alami	$4,000.00				
7/24/2012	Op Acct	-$1,400.00				
7/24/2012	**Closing Bal.**			**$24,201.47**	**$28,613.84**	**$4,412.37**
7/24/2012	**Closing Bal.**			**$24,201.47**	**$28,613.84**	**$4,412.37**
7/31/2012	Dudley	-$1,442.00				
7/31/2012	Mickens	-$1,500.00				
7/31/2012	M Childs	-$2,150.00				
7/31/2012	**Closing Bal.**			**$19,109.47**	**$23,521.84**	**$4,412.37**
8/2/2012	Op Acct	-$10,000.00				
8/2/2012	**Closing Bal.**			**$19,109.47**	**$13,521.84**	**-$5,587.63**
8/9/2012	Op Acct	-$9,000.00				
8/9/2012	**Closing Bal.**			**$19,109.47**	**$4,521.84**	**-$14,587.63**
8/14/2012	Mitchell	$12,000.00	$8,000.00			
8/14/2012	**Closing Bal.**			**$27,109.47**	**$16,521.84**	**-$10,587.63**
8/15/2012	Op Acct	-$6,000.00				
8/15/2012	**Closing Bal.**			**$27,109.47**	**$10,521.84**	**-$16,587.63**
8/20/2012	Op Acct	-$3,500.00				
8/20/2012	Mitchell	-$4,500.00				
8/20/2012	**Closing Bal.**			**$22,609.47**	**$2,521.84**	**-$20,087.63**
8/24/2012	Op Acct	-$2,000.00				
8/24/2012	**Closing Bal.**			**$22,609.47**	**$521.84**	**-$22,087.63**
8/28/2012	Thomas	-$1,990.00				
8/28/2012	**Closing Bal.**			**$20,619.47**	**-$1,468.16**	**-$22,087.63**
8/29/2012	Ret check	$1,990.00	$1,990.00			
8/29/2012	Fee	-$35.00				

8/29/2012	**Closing Bal.**			**$22,609.47**	**$486.84**	**-$22,122.63**
8/30/2012	Stewart	$9,000.00				
8/30/2012	Stewart	-$9,000.00				
8/30/2012	Stewart	$3,000.00				
8/30/2012	Stewart	-$3,000.00				
8/30/2012	**Closing Bal.**			**$22,609.47**	**$486.84**	**-$22,122.63**
8/31/2012	Personal	$4,200.00				
8/31/2012	Stewart	$6,000.00	$5,938.61			
8/31/2012	Op Acct	-$4,200.00				
8/31/2012	**Closing Bal.**			**$28,548.08**	**$6,486.84**	**-$22,061.24**
9/4/2012	Earned fees	$5,981.25				
9/4/2012	**Closing Bal.**			**$28,548.08**	**$12,468.09**	**-$16,079.99**
9/6/2012	Stewart	-$4,293.61				
9/6/2012	Mitchell	-$3,500.00				
9/6/2012	**Closing Bal.**			**$20,754.47**	**$4,674.48**	**-$16,079.99**
9/6/2012	**Closing Bal.**			**$20,754.47**	**$4,674.48**	**-$16,079.99**
9/7/2012	Richards	$8,500.00	$5,667.00			
9/7/2012	Op Acct	-$2,833.33				
9/7/2012	Op Acct	-$4,000.00				
9/7/2012	**Closing Bal.**			**$26,421.47**	**$6,341.15**	**-$20,080.32**
9/13/2012	Wilson	$5,500.00				
9/13/2012	Personal	$12,000.00				
9/13/2012	Wilson	-$5,500.00				
9/13/2012	Op Acct	-$6,000.00				
9/13/2012	**Closing Bal.**			**$26,421.47**	**$12,341.15**	**-$14,080.32**
9/14/2012	Op Acct	-$4,000.00				
9/14/2012	**Closing Bal.**			**$26,421.47**	**$8,341.15**	**-$18,080.32**
9/17/2012	Personal	$4,070.00				
9/17/2012	**Closing Bal.**			**$26,421.47**	**$12,411.15**	**-$14,010.32**
9/19/2012	Wilson	$5,500.00	$3,667.00			
9/19/2012	Op Acct	-$1,833.33				
9/19/2012	Op Acct	-$4,000.00				
9/19/2012	**Closing Bal.**			**$30,088.47**	**$12,077.82**	**-$18,010.65**

9/21/2012	Forde	$12,000.00	$7,921.65			
9/21/2012	Op Acct	-$4,000.00				
9/21/2012	**Closing Bal.**			**$38,010.12**	**$20,077.82**	**-$17,932.30**
9/25/2012	Wilson	-$2,167.00				
9/25/2012	Richards	-$3,297.00				
9/25/2012	**Closing Bal.**			**$32,546.12**	**$14,613.82**	**-$17,932.30**
9/26/2012	Andre	$85,000.00	$50,819.55			
9/26/2012	Op Acct	-$28,333.33				
9/26/2012	**Closing Bal.**			**$83,365.67**	**$71,280.49**	**-$12,085.18**
9/27/2012	Forde	-$5,899.15				
9/27/2012	**Closing Bal.**			**$77,466.52**	**$65,381.34**	**-$12,085.18**
9/28/2012	M. Childs	-$123.52				
9/28/2012	M. Childs	-$540.00				
9/28/2012	**Closing Bal.**			**$76,803.00**	**$64,717.82**	**-$12,085.18**
10/2/2012	Crossland	-$1,000.00				
10/2/2012	Wilson	-$1,500.00				
10/2/2012	Richards	-$1,890.00				
10/2/2012	**Closing Bal.**			**$72,413.00**	**$60,327.82**	**-$12,085.18**
10/3/2012	Holland	-$4,751.15				
10/3/2012	**Closing Bal.**			**$67,661.85**	**$55,576.67**	**-$12,085.18**
10/3/2012	**Closing Bal.**			**$67,661.85**	**$55,576.67**	**-$12,085.18**
10/4/2012	Andre	-$12,497.03				
10/4/2012	M. Childs	-$299.96				
10/4/2012	Richards	-$380.00				
10/4/2012	**Closing Bal.**			**$54,484.86**	**$42,399.68**	**-$12,085.18**
10/9/2012	Payne	-$5,075.33				
10/9/2012	**Closing Bal.**			**$54,484.86**	**$37,324.35**	**-$17,160.51**
10/10/2012	Andre	$5,666.00	$5,666.00			
10/10/2012	Andre	-$38,322.52				
10/10/2012	**Closing Bal.**			**$21,828.34**	**$4,667.83**	**-$17,160.51**
10/16/2012	Payne	$8,779.33				
10/16/2012	Op Acct	-$3,666.66				
10/16/2012	**Closing Bal.**			**$21,828.34**	**$9,780.50**	**-$12,047.84**

10/17/2012	Sellers	$46,000.00				
10/17/2012	Richards	-$100.00				
10/17/2012	**Closing Bal.**			**$21,728.34**	**$55,680.50**	**$33,952.16**
10/19/2012	Op Acct	-$10,000.00				
10/19/2012	Stewart	-$1,645.00				
10/19/2012	**Closing Bal.**			**$20,083.34**	**$44,035.50**	**$23,952.16**
10/26/2012	Sellers	-$57,216.00				
10/26/2012	**Closing Bal.**			**$0.00**	**-$13,180.50**	**-$33,263.84**

APPENDIX 3

Client Matter	Purported Final Settlement Offer by Insurance Company, as Represented to Medical Provider	Actual Settlement
Johnson	$12,000	$87,500
	DX 97 at 9	DX 19 at 16
Holland	$9,500	$20,500
	DX 21 at 3	DX 21 at 8
Mitchell	$5,000	$12,000
	DX 25 at 6	DX 26 at 5
Forde	$5,100	$12,000
	DX 33 at 2	DX 33 at 4
Thomas	$5,500	$7,400
	DX 5 at 6	DX 5 at 9
Hubbard	$6,375	$7,750
	DX 7 at 6	DX 7 at 7
Childs, E.	$5,800	$7,800
	DX 11 at 1	DX 11 at 2
Childs, M.	$6,200	$7,900
	DX 9 at 3	DX 9 at 5

Crossland	$2,250	$5,300
	DX 13 at 1	DX 13 at 2
Dudley	$4,405	$6,000
	DX 15 at 2	DX 15 at 4
Mickens	$4,405	$7,000
	DX 17 at 2	DX 17 at 3
Stewart	$5,000	$9,000
	DX 27 at 2	DX 28 at 4-5[40]
Richards	$5,000	$8,500
	DX 29 at 3	DX 30 at 2
Wilson	$3,200	$5,500
	DX 31 at 1	DX 32 at 4

[40] The amount on the check in DX 5 is not legible, but DX 4 shows the check amount as $9,000.