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:	:	
	:	
CHARLES C. AGWUMEZIE[1],	:	
	:	Board Docket No. 20-ND-005
Respondent.	:	Disc. Docket Nos. 2018-D174
	:	& 2019-D089
A Member of the Bar of the	:	
District of Columbia Court of Appeals	:	
(Bar Registration No. 990751)	:	

REPORT AND RECOMMENDATION OF THE
AD HOC HEARING COMMITTEE
APPROVING PETITION FOR NEGOTIATED DISCIPLINE

I. PROCEDURAL HISTORY

This matter came before the Ad Hoc Hearing Committee on December 23, 2020, for a limited hearing on an Amended Petition for Negotiated Discipline (the "Amended Petition"). The members of the Hearing Committee are Seth I. Heller, Esquire, Chair; LaVerne Fletcher, Public Member; and Arlus J. Stephens, Esquire, Attorney Member. The Office of Disciplinary Counsel was represented by Deputy Disciplinary Counsel Julia Porter, Esquire. Respondent, Charles C. Agwumezie, was represented by John O. Iweanoge, II, Esquire.

The Hearing Committee has carefully considered the Amended Petition signed by Disciplinary Counsel, Respondent, and Respondent's counsel, the supporting affidavit submitted by Respondent (the "Affidavit"), and the

[1] "Charles C. Agwumezie" is the name associated with D.C. Bar number 990751. Respondent is also known as "Chinedu Charles Agwumezie."

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

representations during the limited hearing made by Respondent, Respondent's counsel, and Disciplinary Counsel. The Hearing Committee also has fully considered the Chair's *in camera* review of Disciplinary Counsel's files and records and *ex parte* communications with Disciplinary Counsel. For the reasons set forth below, we approve the Amended Petition, find the negotiated discipline of a three-year suspension with a fitness requirement is justified, and recommend that it be imposed by the Court.

II. FINDINGS PURSUANT TO D.C. BAR R. XI, § 12.1(c) AND BOARD RULE 17.5

The Hearing Committee, after full and careful consideration, finds that:

1. The Amended Petition and Affidavit are full, complete, and in proper order.

2. Respondent is aware that there is currently pending against him an investigation into a proceeding involving allegations of misconduct. Tr. 16-17[2]; Affidavit ¶ 2.

3. The allegations that were brought to the attention of Disciplinary Counsel are that Respondent violated the following District of Columbia Rules of Professional Conduct: 1.5(b) (written statement of fees, scope of representation, and expenses), 1.7(b)(4) (conflict of interest), 1.15(a) (commingling, reckless misappropriation, and record-keeping), 8.1(b) (knowingly failing to respond

[2] "Tr." refers to the transcript of the limited hearing held on December 23, 2020.

reasonably to Disciplinary Counsel's lawful demands for information), and 8.4(d) (serious interference with the administration of justice). Amended Petition at 13-19.

4. Respondent has freely and voluntarily acknowledged that the material facts and misconduct reflected in the Amended Petition are true. Tr. 17, 26-27; Affidavit ¶¶ 4, 6.

A. Specifically, through his Affidavit and as written in the Amended Petition, Respondent acknowledges that:

> (1) Respondent is a member of the Bar of the District of Columbia Court of Appeals, having been admitted on November 6, 2009, and assigned Bar number 990751.
>
> (2) In or around 2010, Respondent formed a law firm, The Cava Legal Group, PLLC. Respondent was the only lawyer associated with The Cava Legal Group, which he later registered with the Department of Consumer and Regulatory Affairs (DCRA).[3]
>
> (3) Prior to and during the time he practiced law using the name The Cava Legal Group PLLC, Respondent was a full-time employee of the United States Patent and Trademark Office. As a federal employee, Respondent was prohibited from acting as counsel for others in matters before federal agencies and federal courts.
>
> (4) In June 2014, Respondent opened a D.C. IOLTA or trust account for The Cava Legal Group at Wells Fargo, account no. 2512. Respondent was the only signatory on the account.
>
> (5) In March 2018, Respondent overdrew his trust account when the check that he provided a client for his share of a personal injury settlement was presented for payment before Respondent had deposited the settlement check. Respondent deposited the settlement check the following day and the client received his funds four days later.

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

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

(7) Wells Fargo reported the overdrafts to Disciplinary Counsel.

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

(9) As discussed below, the records that Respondent provided were not complete, and the information that Respondent supplied in response to further inquiries did not explain many of the deposits and withdrawals reflected in the bank records for his trust account. Also, in response to some inquiries, Respondent said he would provide further information but then failed to do so, and in explaining one transaction (an advance of $3,500 to Frederick Dabankah), he gave conflicting stories.

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

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

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

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

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

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

d. On November 21, 2018, Respondent deposited a settlement check for $7,000 for Ileana Melendez Mendez. His settlement statement showed a deduction of $2,200 for his fees, but Respondent paid himself $2,800 between November 23 and December 4, 2018. Respondent claimed that the additional funds he paid himself were for his fees in the case of her husband, Elberto Escobar, although the bank records reflected they were transfers for the "Mendez case."

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

f. Respondent deposited two settlement checks for Frederick Dabankah in the trust account - one for $7,000, which was deposited on June 20, 2018, and a second for $9,500, which was deposited on December 7, 2018. According to his settlement statements, Respondent was to receive fees totaling $5,445. The bank records, however, reflect that between June 19 and December 26, 2018, Respondent paid himself a total of $9,100 in fees in the Dabankah matters. Respondent's settlement statements reflected that Mr. Dabankah would receive a total of $9,685 and his medical provider would receive $1,300. Respondent paid Mr. Dabankah in several installments, including $3,500 toward his share from the second settlement before Respondent had deposited the second settlement check. The trust account records reflect that Respondent made disbursements of $20,085 for the two Dabankah settlements - $3,585 more than the sum of the two settlement checks.

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

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

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

(14) There were other discrepancies between Respondent's settlement statements and the bank records for his trust account. For example, in

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

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

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

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

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

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

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

(21) The bank records show that Respondent wrote checks and made withdrawals from the trust account that had no apparent relationship to any client matter. For example, Respondent made a number of transfers from his trust account to his personal accounts with no notation that the withdrawals were related to any client matter. The transfers included four transfers in December 2017 of $140, $400, $200, and $500. Respondent later claimed that the withdrawal for $200 was to reverse a transfer he made from his personal account to the trust account three weeks earlier. He claimed that the other withdrawals were for earned fees relating to his representation of Kwame Obour, a client who had paid him $600 in October 2017 and an additional $600 in December 2017. Respondent had no records showing the amount of fees he received from Mr. Obour, when they were earned, when Respondent paid himself, and in what amounts. Respondent also did not have a written fee agreement for Mr. Obour.

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

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

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

(25) Respondent also used, at least temporarily, the funds to pay Mr. Kebede's medical providers. Respondent represented to Mr. Kebede in the settlement statement that Respondent would pay his medical providers a total of $1,307. Respondent wrote two checks to the medical providers - one for $497 and another for $809 - but not until September 25, 2018. The checks were paid on September 27 and 28, 2018, respectively. Before the bank paid the checks, the balance in the trust account fell below the amounts owed the client and the medical providers.

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

Amended Petition at 2-13.

B. Specifically, through his Affidavit and as written in the Amended Petition, Respondent acknowledges the following Rule violations:

(27) Respondent's conduct violated the following Rules of the District of Columbia Rules of Professional Conduct:

a. Respondent violated Rule **1.5(b)**, which requires a lawyer to communicate in writing to his clients the basis or rate of his fee, the scope of the representation, and the expenses for which the clients will be responsible. Respondent failed to provide his clients John Ewenike and Kwame Obour anything in writing about his fees and the scope of the representation. *See* (11), (20), and (21).[4]

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

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

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

*Reckless Misappropriatio*n: Respondent engaged in misappropriation, which occurs when the balance of an attorney's trust account falls below the amount of the client's funds held in trust (*see* (15), (24)-(26)). Misappropriation "includes any unauthorized use of a client's entrusted funds and does not require dishonesty or proof of a

[4] Where the Amended Petition refers to paragraphs in the Stipulations of Facts and Rule Violations, it uses the citation format of "¶¶ 11, 20, 25", but we use the citation format of "(11), (20), (25)" in conformity with this Report.

larcenous intent; even temporary unauthorized use for the lawyer's own purposes is misappropriation, whether or not the lawyer derives any personal gain or benefit." *In re Gray*, 224 A.3d 1222, 1229 (D.C. 2020), citing *In re Anderson*, 778 A.2d 330, 335 (D.C. 2001). "It does not matter that the lawyer has sufficient funds on hand to pay the money back, or even whether the lawyer replenishes the trust account with his own funds without the client finding out that the money was missing." *Gray*, 224 A.3d at 1229, citing *In re Pels*, 653 A.2d 388, 3[93]-94 (D.C. 1995). A lawyer's misappropriation is deemed reckless if it "reflects 'an unacceptable level of disregard for the safety and welfare of entrusted funds,' essentially manifesting a 'conscious indifference to the consequences of ([the attorney's] behavior for the security of the [client's] funds.'" *Gray*, 224 A.3d at 1229 (quoting *In re Ahaghotu*, 75 A.3d 251, 253 (D.C. 2013). and *Anderson*, 778 A.2d at 336, 339).

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

Complete Records: Respondent engaged in a further violation of Rule 1.15 by failing to keep and maintain complete records. The Court requires complete records "so that the documentary record itself tells the full story of how the attorney handled client or third-party funds and whether the attorney complied with his fiduciary obligation that client or third-party funds not be misappropriated or commingled." Comment [2] to Rule 1.15 (quoting *In re Clower*, 831 A.2d 1030, 1034 (D.C. 2003)). The lawyer's financial records are complete only if the documents show how the lawyer complied with his ethical obligations and Disciplinary Counsel can complete an audit of the lawyer's handling of client funds even if the lawyer or the client or both are not available. *Id*. Respondent did not have a general ledger or client ledgers (*see* (10)). Although Respondent had some records, those

records were not complete and some of the records that he kept were not accurate. At least three of the settlement statements for personal injury clients did not reflect the actual disbursements he made (*see* (12), (14), and (26)). Also, he had no records of his receipt and handling of advance fees that some of his clients paid him (*see* (19)-(21)).

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

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

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

Respondent gave different and inconsistent explanations about the source of the funds in his trust account that he gave to Mr. Dabankah. Respondent initially said that the funds were earned fees.

> He then claimed the funds belonged to another, unrelated client which were loaned to Mr. Dabankah. When Disciplinary Counsel asked Respondent for documentation and information about the loan, he reverted back to his claim that the funds were earned fees but provided no information or supporting records to support his claim.
>
> Respondent failed to identify the account in which he deposited a $2,000 payment that he received on behalf of Ms. Leo, and when he took them as part of his fees (*see* (14)).
>
> e. Respondent's incomplete and inconsistent responses to Disciplinary Counsel and his initial failure to admit that he did not have and could not produce records or provide additional information also violated Rule **8.4(d)**. The incomplete and inconsistent responses required the expenditure of additional and considerable resources and delayed the completion of the investigation. *See In re White*, 11 A.3d 1226, 1230 (D.C. 2011) (conduct seriously interferes with the administration of justice if it is (1) improper (2) bears directly upon the disciplinary process and (3) taints the process in more than a *de minimis* way because it at least potentially impacted upon the process to a serious and adverse degree).

Amended Petition at 13-19 (emphasis added).

5. Respondent is agreeing to the disposition because Respondent believes that he cannot successfully defend against discipline based on the stipulated misconduct. Tr. 15-16; Affidavit ¶ 5.

6. Disciplinary Counsel has made no promises nor inducements to Respondent other than what is contained in the Amended Petition. Tr. 26; Affidavit ¶ 7. Those promises and inducements are that Disciplinary Counsel agrees not to pursue any charges arising out of the conduct described in the stipulated facts, other than those set forth in the Amended Petition, or any sanctions other than the three-year suspension with a fitness requirement. Amended Petition at 19.

Respondent confirmed during the limited hearing that there have been no other promises or inducements other than those set forth in the Amended Petition. Tr. 26.

7. Respondent has conferred with his counsel. Tr. 11-12.

8. Respondent has knowingly and voluntarily acknowledged the facts and misconduct reflected in the Amended Petition and agreed to the sanction set forth therein. Tr. 17-25, 26-29; Affidavit ¶¶ 4, 6, 13.

9. Respondent is not being subjected to coercion or duress. Tr. 27; Affidavit ¶ 6.

10. Respondent is competent and was not under the influence of any substance or medication that would affect his ability to make informed decisions at the limited hearing. Tr. 12.

11. Respondent is fully aware of the implications of the disposition being entered into, including, but not limited to, the following:

a) he has the right to assistance of counsel if Respondent is unable to afford counsel;

b) he will waive his right to cross-examine adverse witnesses and to compel witnesses to appear on his behalf;

c) he will waive his right to have Disciplinary Counsel prove each and every charge by clear and convincing evidence;

d) he will waive his right to file exceptions to reports and recommendations filed with the Board and with the Court;

e) the negotiated disposition, if approved, may affect his present and future ability to practice law;

f) the negotiated disposition, if approved, may affect his bar memberships in other jurisdictions; and

g) any sworn statement by Respondent in his affidavit or any statements made by Respondent during the proceeding may be used to impeach his testimony if there is a subsequent hearing on the merits.

Tr. 30-37; Affidavit ¶¶ 1, 9-10, 12.

12. Respondent and Disciplinary Counsel have agreed that the sanction in this matter should be a three-year suspension, with a requirement to prove fitness as a condition of reinstatement. Amended Petition at 20; Tr. 8, 25, 28-29.

a) Respondent further understands that he must file with the Court an affidavit pursuant to D.C. Bar R. XI, § 14(g) in order for his suspension to be deemed effective for purposes of reinstatement. Tr. 35.

b) Respondent understands that he will be required to prove his fitness to practice law in accord with D.C. Bar R. XI, § 16 and Board Rule 9 prior to being allowed to resume the practice of law; and

c) Respondent understands that the reinstatement process may delay Respondent's readmission to the Bar. Tr. 36.

13. Disciplinary Counsel and Respondent have provided the following circumstances in mitigation which the Hearing Committee has taken into consideration: Respondent has admitted wrongdoing, including reckless misappropriation; he cooperated with Disciplinary Counsel by responding to numerous inquiries and providing to Disciplinary Counsel the documents and records that he kept (even if incomplete); he undertook remedial measures while under investigation (attended a practice management class, adopted better accounting practices); the misappropriations were "temporary takings" for which

Disciplinary Counsel could "not show that Respondent retained or failed to return the funds owed to clients or third parties"; and, Respondent has no prior discipline. Amended Petition at 21-22. In addition, no client or third party has ever complained about Respondent, and Respondent has never previously been the subject of an investigation. *Id*. at 22.

15. Disciplinary Counsel advised the Hearing Committee that there were no complainants in either matter as it was the Office of Disciplinary Counsel that opened the two investigations "based on notices from Mr. Agwumezie's bank that he had overdrawn his [trust] account," and Disciplinary Counsel noted that none of Respondent's clients had ever complained about him to the Office of Disciplinary Counsel. Tr. 9.

III. DISCUSSION

The Hearing Committee shall recommend approving an agreed negotiated discipline if it finds:

> a) that the attorney has knowingly and voluntarily acknowledged the facts and misconduct reflected in the Petition and agreed to the sanction therein;
>
> b) that the facts set forth in the Petition or as shown during the limited hearing support the attorney's admission of misconduct and the agreed upon sanction; and
>
> c) that the agreed sanction is justified.

D.C. Bar R. XI, § 12.1(c); Board Rule 17.5(a)(i)-(iii).

A. Respondent Has Knowingly and Voluntarily Acknowledged the Facts and Misconduct and Agreed to the Stipulated Sanction.

The Hearing Committee finds that Respondent has knowingly and voluntarily acknowledged the facts and misconduct reflected in the Amended Petition and agreed to the sanction therein. Respondent, after being placed under oath, admitted the stipulated facts and charges set forth in the Amended Petition, and denied that he is under duress or has been coerced into entering into this disposition. *See* Paragraphs 8-9, *supra*. Respondent understands the implications and consequences of entering into this negotiated discipline. *See* Paragraph 11, *supra.*

Respondent has acknowledged that any and all promises that have been made to him by Disciplinary Counsel as part of this negotiated discipline are set forth in writing in the Amended Petition and that there are no other promises or inducements that have been made to him. *See* Paragraph 6, *supra*.

B. The Stipulated Facts Support the Admissions of Misconduct and the Agreed-Upon Sanction.

The Hearing Committee has carefully reviewed the facts set forth in the Amended Petition and established during the hearing and we conclude that they support the admission(s) of misconduct and the agreed upon sanction. Moreover, Respondent is agreeing to this negotiated discipline because he believes that he could not successfully defend against the misconduct described in the Amended Petition. *See* Paragraph 5, *supra*.

With regard to the second factor, the Amended Petition states that Respondent violated D.C. Rules of Professional Conduct 1.5(b) (written statement of fees, scope

of representation, and expenses), 1.7(b)(4) (conflict of interest), 1.15(a) (commingling, reckless misappropriation, and record-keeping), 8.1(b) (knowingly failing to respond reasonably to Disciplinary Counsel's lawful demands for information), and 8.4(d) (serious interference with the administration of justice).

The evidence supports Respondent's admission that he violated Rule 1.5(b) in that the stipulated facts describe that Respondent did not have written fee agreements with some of his clients for whom he received advance fees. *See* (11), (20), and (21).

The evidence supports Respondent's admission that he violated Rule 1.7(b)(4) in that the stipulated facts describe instances where his professional judgment was or reasonably could have been adversely affected by his responsibilities to or his interests in a third party or his own financial, business, property, or personal interests. For example, without informing his clients, Respondent deducted referral fees from his payments to medical providers and kept the money for himself without disclosing the fact that payment to medical providers had been reduced in the two clients' settlement sheets. *See* (13)-a, b. Respondent also assisted relatives in the preparation of federal immigration papers—INS Forms I-130 and I-485—even though he concurrently worked at the United States Patent and Trademark Office and as a federal employee and was barred from acting as counsel for others in matters before federal agencies. *See* (3) and (19).

The evidence supports Respondent's admission that he violated Rule 1.15(a) in that the stipulated facts describe his commingling of his own funds with that of

clients or third parties when he deposited his own funds into his trust account, *see* (18) and (26), when he failed to timely withdraw his earned fees from his trust account, *see* (17) and (21) - (23), and when he deposited entrusted funds into his personal or business account, *see* (14) and (16).

The stipulated facts also support Respondent's admission that he committed misappropriation in violation of Rule 1.15(a), as the balance of his trust account fell below the amount of the clients' or third party's funds held in trust, which the parties stipulate was reckless. *See* (15), (24) - (26); Amended Petition at 15, 21. A lawyer's misappropriation is deemed reckless if it "reflects 'an unacceptable level of disregard for the safety and welfare of entrusted funds,' essentially manifesting a 'conscious indifference to the consequences of [the attorney's] behavior for the security of the [client's] funds.'" *Gray*, 224 A.3d at 1229 (quoting *Ahaghotu*, 75 A.3d at 253). Disciplinary Counsel does not maintain that the misappropriations were intentional, and nothing in the Chair's *in camera* file review suggested intentionality. The Specification of Charges that preceded this Amended Petition, which was approved by a Contact Member, alleged only reckless (and not intentional, or merely negligent) misappropriation.[5] We believe the stipulated facts well support the parties' agreement that the misappropriation was reckless. Respondent did not have general or client ledgers, he failed to keep complete or accurate records to track settlement proceeds, he received at least two overdraft

[5] *See In re Agwumezie*, Disc. Docket Nos. 2018-D174, 2019-D089, Specification of Charges (filed May 6, 2020) at ¶ 28(c).

notices, and he moved funds between his trust and personal accounts indiscriminately, resulting in repeated commingling of entrusted and personal funds. *See In re Abbey*, 169 A.3d 865, 872 (D.C. 2017) (hallmarks of reckless misappropriation include "indiscriminate commingling"; "a complete failure to track settlement proceeds"; "total disregard of the [trust account]" "resulting in a repeated overdraft condition"; "indiscriminate movement of monies between accounts"; and disregarding "inquiries concerning the status of funds." (citation omitted)).

The stipulated facts also describe the uncontested evidence of Respondent's numerous trust account record-keeping deficiencies. *See* (10), (19) - (21). Here, as noted above, Respondent did not keep a general or client ledger, and he failed to keep records of his receipt and handling of his advance fees in some instances. *See* (10), (19), (21). Respondent's lack of fundamental record keeping led to multiple inconsistencies; for example, in the *Leo* matter, Respondent had such poor records that he could not identify where he had deposited the $2,000 received from Ms. Leo or when he had taken the funds as part of his fees. *See* (14).

The evidence supports Respondent's admission that he violated Rule 8.1(b) in that the stipulated facts describe his knowing failure to respond reasonably to some of Disciplinary Counsel's lawful demands for information and documents. For example, in response to Disciplinary Counsel's inquiries, Respondent stated that additional information or documentation would be forthcoming, despite knowing at the time that he did not always have additional information to provide. As a result,

his responses to Disciplinary Counsel's inquiries and subpoenas were incomplete. *See* (8), (9), (27)-d; Tr. 7.

The evidence supports Respondent's admission that he violated Rule 8.4(d) in that the stipulated facts describe how Respondent's incomplete and inconsistent responses to Disciplinary Counsel's inquiries caused the "expenditure of additional and considerable resources" that delayed the completion of the disciplinary investigation. *See* (27)-e; *see also* (27)-d.

C. The Agreed-Upon Sanction Is Justified and Not Unduly Lenient.

The third and most complicated factor the Hearing Committee must consider is whether the sanction agreed upon is justified. *See* D.C. Bar R. XI, § 12.1(c); Board Rule 17.5(a)(iii); *In re Johnson*, 984 A.2d 176, 181 (D.C. 2009) (per curiam) (providing that a negotiated sanction may not be "unduly lenient"). Based on the record as a whole, including the stipulated circumstances in mitigation, the Hearing Committee Chair's *in camera* review of Disciplinary Counsel's investigative file and *ex parte* discussion with Disciplinary Counsel, and our review of relevant precedent, we conclude that the agreed-upon sanction of a three-year suspension with a fitness requirement is justified and not unduly lenient, for the following reasons:

The agreed-upon sanction is justified based on the wrongdoing, including reckless misappropriation, to which Respondent has admitted. As described above, Respondent committed reckless misappropriation, failed to adequately keep records, repeatedly shifted client, professional, and personal funds around without any

apparent regard for the rules or his ethical obligations and subsequently failed to promptly comply with Disciplinary Counsel's document requests. Indeed, the records Respondent did provide to Disciplinary Counsel evidenced his inadequate record keeping practices.

The record, however, also demonstrates that Respondent's safekeeping failures were not intentional, and that Respondent has taken positive steps in light of Disciplinary Counsel's investigation. In particular, Disciplinary Counsel asserted that the evidence supports the conclusion that Respondent's misappropriations were not dishonest and did not involve improper gains; indeed, Disciplinary Counsel admits that it "could not show that Respondent retained or failed to return the funds owed to clients or third parties. . . . [and] clients and third parties ultimately received the settlement funds to which they were entitled." Amended Petition at 21. Further, no client or third party has ever complained to the Office of Disciplinary Counsel about Respondent's conduct, he does not have prior discipline, and he only came under investigation as a result of two overdraft notices. In response to Disciplinary Counsel's investigation, Respondent has taken remedial measures by attending a practice management class and by adopting accounting procedures to keep better track of funds in his trust account.

The parties agree that these "usual" mitigating circumstances in this matter are unlikely to overcome the presumption of disbarment for reckless misappropriation in a contested matter. Amended Petition at 22 (citing *In re Bach*, 966 A.2d 350, 366 (D.C. 2009) (appended Board Report)); *see also In re Addams*,

579 A.2d 190, 191 (D.C. 1990) (en banc). However, because this is a negotiated discipline case, the parties assert that the mitigating circumstances should be given "significant weight" given that the sanction in a negotiated case need not align with comparable cases. *See* Board Rule 17.5(a)(iii); Amended Petition at 22.

Here, the parties agree that a three-year suspension with a fitness requirement is justified and not unduly lenient for several reasons. In particular, the parties explain the following justifications in the Amended Petition:

> A three-year suspension with fitness is also justified and not unduly lenient because it provides the parties a certain outcome without the need for a prolonged and expensive adjudicative process. [The parties] acknowledge that a contested hearing could result in anything from a one-year suspension, if the misappropriations were found to be negligent, to disbarment. [The parties] are willing to forego the possibility of a more favorable outcome in order to expedite resolution of the matter. . . . [particularly because,] it is not unusual for the Court to issue its final order in . . . more than five years after the filing of charges. . . . [With this negotiated discipline,] the parties can expect Respondent's suspension to go into effect within a year. . . . [Finally,] **[t]he imposition of a fitness requirement ensures that Respondent will not be in the position of handling entrusted funds until he has demonstrated by clear and convincing evidence that he has reformed his practices and earned the trust of the disciplinary system**.

Amended Petition at 22-23 (emphasis added).

We agree that the negotiated sanction of a three-year suspension with a fitness requirement is justified and not unduly lenient. First, the record is clear—and Respondent admits—that Respondent failed to adequately maintain financial records and, as a possible consequence, mismanaged entrusted funds, including instances of drawing his trust account below the amount of the client's or third-

party's funds that should have been held in trust. Respondent's reckless misappropriation of funds, inadequate record keeping, and knowing failure to respond to Disciplinary Counsel's lawful demands certainly require a significant sanction.

Because the negotiated sanction is the next-most-stringent sanction available after disbarment, we find that it is not unduly lenient and, given the fitness requirement, might effectively be commensurate with disbarment (effectively a five-year suspension with a fitness requirement). *See, e.g*, *In re Ditton*, 954 A.2d 986, 992 n.7 (D.C. 2008) (except for the "opprobrium" associated with disbarment, a five-year suspension with fitness had the same effect as a disbarment). Because the suspended attorney would have the burden of establishing his fitness to practice law upon any application for reinstatement, a three-year suspension with fitness is a significant barrier to reentry to the practice of law. *See In re Cater*, 887 A.2d 1, 23 (D.C. 2005) ("The fitness requirement can be a tail that wags the disciplinary dog . . . [and it] 'may have the practical effect of greatly prolonging—even tripling or quadrupling—a respondent's period of suspension.'" (citation omitted)). Thus, even though the agreed-upon sanction imposes a shorter mandatory period of suspension than disbarment, the Hearing Committee views it as not "unduly lenient" because it is the most serious sanction other than disbarment, and the fitness requirement protects the public, the courts, and the integrity of the profession by ensuring that

Respondent will not resume the practice of law in the District of Columbia until the Court determines that he is fit to do so.[6]

IV. CONCLUSION AND RECOMMENDATION

For the reasons stated above, it is the recommendation of this Hearing Committee that the negotiated discipline be approved and that the Court sanction Respondent with a three-year suspension of his bar license and a requirement to establish his fitness to practice law upon any application for reinstatement.

AD HOC HEARING COMMITTEE

Seth I. Heller
Chair

LaVerne Fletcher
Public Member

Arlus J. Stephens
Attorney Member

[6] The issue presented here is similar to that in *In re Mensah*, Board Docket No. 19-ND-011 (HC Rpt. Sept. 17, 2020), where a different Hearing Committee recommended that the negotiated discipline be approved and that the Court impose a three-year suspension with a fitness requirement for reckless misappropriation. The Court recently referred *Mensah* to the Board for its views "as to the appropriateness of the recommended sanction in light of this court's precedent." Order, *In re Mensah*, D.C. App. No. 20-BG-560 (Dec. 16, 2020) (per curiam).