FILED
April 12, 2018
Board on Professional Responsibility

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

In the Matter of:	:	
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CLARISSA THOMAS EDWARDS,	:	
	:	**Board Docket No. 15-BD-030**
Respondent.	:	**Bar Docket Nos. 2013-D261**
	:	**and 2013-D463**
A Member of the Bar of the	:	
District of Columbia Court of Appeals	:	
(Bar Registration No. 434607)	:	

REPORT AND RECOMMENDATION OF
THE AD HOC HEARING COMMITTEE

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REPORT AND RECOMMENDATION OF THE AD HOC HEARING COMMITTEE[1]

INTRODUCTION AND OVERVIEW

Disciplinary Counsel charged Respondent, Clarissa Thomas Edwards ("Respondent") with violating the D.C. Rules of Professional Conduct (the "Rules" or "Rule") for failing to maintain her firm's financial records as mandated by the Rules, commingling her funds with those of her clients, and for falsely stating on a Virginia federal court *pro hac vice* form and on her D.C. federal court attorney admission renewal form that she had not been disciplined for violating the Rules

[1] Chairman Cassidy has filed a separate report. In that report, she recommends that Respondent be found to have violated Rule 1.15(a), D.C. Bar R. XI, § 19(f), and Rule 8.4(c). She concludes that Disciplinary Counsel failed to establish by clear and convincing evidence that Respondent violated Rules 3.3(a)(1), 8.1(a), 8.1(b), 8.4(b), and 8.4(d).

when, in fact, she was disciplined in 2009 for failing to properly maintain her financial records.

At its most basic, this is a simple case. Respondent admits to all of the essential facts but takes issue with Disciplinary Counsel's claim that she intended to make misrepresentations to the courts. Specifically, Respondent admitted to again failing to maintain her financial records as required by the Rules. She also admits that she commingled her funds with those of her clients. However, she claimed she did not intend to make misrepresentations to either the Virginia or D.C. Federal courts but, rather, that she was too harried and distracted by professional and personal matters to pay attention to what she was mandated to disclose on the applications. As a result, she argued, she should not be liable for the misrepresentations.

Although Disciplinary Counsel had charged Respondent with misappropriating a client's funds and failing to oversee non-lawyer assistants, at the close of the hearing, Disciplinary Counsel withdrew those charges. The Committee agrees with Disciplinary Counsel's decision to withdraw those charges. However, reviewing Disciplinary Counsel's decision to withdraw the misappropriation charge, as we must,[2] proved particularly frustrating and time consuming given Respondent's

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[2] Disciplinary Counsel does not have the authority to unilaterally elect not to pursue charges that have been approved by a Contact Member. *See In re Drew*, 693 A.2d 1127, 1132-33 (D.C. 1997) (per curiam) (appended Board Report) (suggesting that the Board should address charges not decided by a hearing committee); *In re Reilly*, Bar Docket No. 102-94 at 4 (BPR July 17, 2003) (concluding that Disciplinary Counsel did not have the authority to dismiss charges approved by a Contact Member).

complete failure to maintain financial records in any format that afforded review as required by the Rules.

The Committee also finds that Respondent's failure to maintain records consistent with the Rules *was* knowing and intentional, which, although not necessary to finding a violation of the Rules, educates our conclusions as to the appropriate sanction and dismisses as irrelevant to the violation Respondent's arguments that she was too harried or busy to properly maintain client records.

All Committee members agree that Disciplinary Counsel proved by clear and convincing evidence that Respondent violated Rule 1.15(a) and D.C. Bar R. XI, § 19(f), in that she commingled her funds with those of her clients and failed to maintain the records concerning her handling of client funds; and that Disciplinary Counsel did not establish misappropriation under Rule 1.15(a), commingling of Respondent's funds with those of her client A.M., or violations of Rules 1.15(d) (failing to segregate disputed funds), or 5.3(a) and (b) (failing to manage non-lawyer staff).

The full Committee finds that Respondent violated Rules 8.4(c) (dishonesty) when she failed to correct misinformation necessary to retain membership in the United States District Court for the District of Columbia (D.D.C.) Bar. A majority of the Committee finds that the same conduct violated Rules 3.3(a)(1) (knowing false statement of material fact to tribunal) and 8.1(b) (failure to correct

misapprehension in a Bar admissions statement).[3] The full committee agrees that there was not clear and convincing evidence that Respondent (i) committed perjury in violation of Rule 8.4(b) or (ii) knowingly included a misstatement in a bar application in violation of Rule 8.1(a). The Committee also unanimously agrees that the evidence failed to establish clearly and convincingly that her misconduct seriously interfered with the administration of justice in violation of Rule 8.4(d).

The Committee unanimously recommends that Respondent be suspended from the practice of law for three years and that she demonstrate fitness prior to re-admission.

I. PROCEDURAL HISTORY

Disciplinary Counsel filed the Specification of Charges in BDN 2013-D463 on April 7, 2015, and an amended Specification of Charges thereto on August 25, 2015, alleging Respondent failed to disclose her prior disciplinary history to the United States District Court for the Eastern District of Virginia (E.D. Va.) when she sought *pro hac vice* admission. DX A2 at 1, 11.[4] Disciplinary Counsel charged that this conduct violated Rules 3.3(a)(1) (candor to the tribunal); 8.4(b) (criminal act – perjury); 8.4(c) (dishonesty); 8.1(a) and (b) (false statement in Bar admission

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[3] The Committee members disagree as to Respondent's state of mind when making the false statement to the D.D.C. The majority concluded that Respondent acted knowingly when she failed to correct the false statement, while the Chair concludes that Respondent acted recklessly.

[4] "DX" refers to Disciplinary Counsel's exhibits. "RX" refers to Respondent's exhibits. "Tr." refers to the transcript of the hearing held on April 12-13 and 26-28, 2016. "Tr. LH" refers to the transcript of the limited hearing in Respondent's prior disciplinary matters. "D.C. Brief" refers to Disciplinary Counsel's Proposed Findings of Fact, Conclusions of Law, and Recommendation as to Sanction.

applications and failure to correct a misapprehension); and 8.4(d) (conduct that seriously interfered with the administration of justice). DX A2 at 14.

On August 25, 2015, Disciplinary Counsel filed another Specification of Charges at BDN 2013-D261. DX C1 at 1. In Count I, Disciplinary Counsel alleged that Respondent commingled client funds with those of her firm's and that she failed to keep adequate records of the entrusted funds. Disciplinary Counsel charged Respondent with violating Rules 1.15(a) (commingling); 1.15(a) and D.C. Bar Rule XI, § 19(f) (failure to maintain complete records)[5]; 1.15(d) (commingling disputed funds); and Rules 5.3(a) and (b) (responsibilities regarding non-lawyer assistants). DX C1 at 7. Disciplinary Counsel specifically identified transactions related to certain clients of Respondent: N.G., P.P. and G.Z.[6]

In Count II, Disciplinary Counsel charged Respondent with failing to safekeep client funds, to include misappropriating her client A.M.'s property, and, by doing so violated Rules 1.15(a) (commingling and misappropriation); 1.15(a) and D.C. Bar R. XI, § 19(f) (failure to maintain complete records); 1.15(d) (commingling disputed funds); 5.3(a) and (b) (failing to manage non-lawyer staff). DX C1 at 10-11. Disciplinary Counsel personally served Respondent on September 18, 2015. DX C3

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[5] The D.C. Court of Appeals deleted D.C. Bar Rule XI, § 19(f), effective March 1, 2016, as duplicative of Rule 1.15 of the Rules, but the Rule remained in effect at the time of Respondent's misconduct.

[6] We are identifying clients by their initials to preserve their privacy on the public record. Although their names can be found elsewhere in public documents related to this matter, the Committee does not believe specific identification is required in this report.

at 2. Respondent filed an Answer to Specification of Charges (BDN 2013-D261) in November 2015. (DX C2 at 1).[7]

A hearing was held on April 12-13 and 26-28, 2016, before an *Ad Hoc* Hearing Committee composed of Margaret M. Cassidy, Esquire, Chair; James A. Kidney, Esquire, and Carol Ido, public member. Tr. 4. Becky Neal, Assistant Disciplinary Counsel represented Disciplinary Counsel. Tr. 5. Respondent appeared and represented herself at the hearing. *Id.*[8]

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[7] Respondent filed a Motion to Dismiss all charges that was deferred pending completion of this report by order dated June 24, 2015. Because the Hearing Committee finds that Respondent violated at least one Rule, we recommend that her motion be denied.

[8] Disciplinary Counsel presented the testimony of the following witnesses:

- Deirdre Brou, Esquire, (opposing counsel in the District Court litigation) (Tr. 29);
- Leigh M. Manasevit, Esquire, (D.C. Bar practice monitor) (Tr. 101);
- Sherryl Horn (D.C. District Court clerk) (Tr. 168);
- Angelia Cheeseboro (SunTrust Custodian of Records) (Tr. 227, 338); and
- Charles Anderson (Senior Forensic Investigator at the Office of Disciplinary Counsel) (Tr. 389, 575).

The Committee received the following Disciplinary Counsel exhibits into evidence:

- DX A1-11 (Tr. 99, 229, 1084);
- DX B1-11 (Tr. 109, 1084, 1148);
- DX C1-37 (Tr. 578-79, 581, 660, 1357-58);
- DX D1-27 (Tr. 579, 660);
- DX E1-7 (Tr. 388-89);
- DX F1-6 (Tr. 388-89);
- DX G1-7 (Tr. 388-89); and
- DX H1-41 (Tr. 660).

Respondent testified on her own behalf, and also presented the testimony of the following witnesses:

- Sigmund Cohen (Tr. 326);
- Jody Smith (Retired D.C. Superior Court clerk) (Tr. 470);

In its post-hearing brief, Disciplinary Counsel stated that it would not pursue charges in BDN 2013-D261 related to Disciplinary Rules 1.15(d) (failing to segregate disputed funds) and 5.3(a) and (b) (failing to manage non-lawyer staff) in both counts, as well as Rule 1.15(a) (misappropriation and commingling) in Count II, because the evidence presented at the hearing did not establish by clear and convincing evidence that Respondent violated these Rules.[9]

As discussed more fully below, the Hearing Committee finds that the facts do not establish by clear and convincing evidence that Respondent misappropriated funds entrusted to her in violation of Rule 1.15(a), commingled funds in Count II of the 2013-D261 matter in violation of Rule 1.15(a), or that she violated Rules 1.15(d), 5.3(a), or 5.3(b).

Upon conclusion of the hearing, the Committee made a preliminary non-binding determination that Disciplinary Counsel had proved a Rule violation as set forth in the Specification of Charges. Tr. 1421-22. Disciplinary Counsel did not offer any additional evidence in aggravation (the Committee admitted evidence of

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- Keisha Scott (Sun Trust employee) (Tr. 662);
- Nicandra Brown (Representative of client A.M.) (Tr. 740);
- A.M. (Respondent's client, who was named at Count II BDN 2013-D261) (Tr. 778);
- Lemunuiel Edwards (Respondent's husband and office manager) (Tr. 887); and
- Bernard Gray, Esquire (Member of the D.C. Bar and Respondent's colleague) (Tr. 1434).

The Committee received Respondent's exhibits D1-D36.

[9] On June 15, 2016, Disciplinary Counsel filed an unopposed Motion to Exceed Page Limit. That motion is granted and Disciplinary Counsel's brief is accepted as of the date lodged with the Board.

the prior discipline in the violations phase of the hearing). Tr. 1422. Respondent offered evidence in mitigation, including RX D16 (Tr. 1456-57), RX D17 (Tr. 1457); RX D27 (Tr. 1428-30); RX D30 (Tr. 1430-31); RX D36 (Tr. 1455); and the testimony of Bernard A. Gray, Esquire (Tr. 1432-39).

II. FINDINGS OF FACT

A. Background

1. Respondent was admitted on motion on October 5, 1992 as a member of the D.C. Bar. DX A1 at 1, 6.

2. For most of her career, Respondent was a solo practitioner at the Law Office of C. Thomas, Chartered, in Washington, D.C. DX B11 at 2, 4; Tr. 1084. Her practice primarily involved litigation of family law, landlord-tenant, and civil suits filed in the District of Columbia Superior Court (Superior Court). DX B11 at 2-4; Tr. 115-16; Tr. 1055.

3. Lemunuiel Edwards, Respondent's husband, was the office manager and assisted Respondent in managing the firm's financial matters. Although not obtaining a college degree, Mr. Edwards had taken college courses in accounting and business management. DX B11 at 2, 8; Tr. 889, 116-17 (Manasevit: "He was in charge of opening bank accounts, managing them."); Tr. 891-92. At times, Respondent's firm used financial accounting software – Peachtree and QuickBooks. Mr. Edwards was certified to operate both of those programs. Tr. 888, 890, 1007-14.

4. Respondent hired other non-attorney staff and an associate to assist her with her cases. Tr. 116-17,1034-35.

5. Respondent maintained full oversight and responsibility for firm management and operations, including the financial transactions and record-keeping. Tr. 117-18.

B. Prior Discipline

6. In December 2008, Respondent resolved two docketed disciplinary matters through a negotiated disposition. (Bar Docket Nos. 2008-D098 & 2005-D019). DX B1 (Respondent's Affidavit); DX B2 at 1 (Petition for Negotiated Discipline) (commingling and failure to maintain complete records); DX B2 at 5.

7. Specifically, Respondent admitted that, from January 2003 through May 2008, she violated multiple disciplinary rules, including Rule 1.15(a), by depositing earned legal fees, funds from her operating account and cash from unidentified sources into her lawyer's trust account. DX B1 at 1, par. 4; DX B2 at 5, par. 17; DX B3 at 5, Tr. LH 12-13.

8. Respondent also admitted that during the same period, she failed to maintain complete records of client funds, including the following types of records:

(a) individual client ledgers;

(b) records and receipts of deposits into the trust account, including the date, source, and description of each transaction; and

(c) records and receipts of withdrawals from the trust account, including the date, payee, and purpose of each disbursement.

DX B1 at 1, par. 4; DX B2 at 5, par. 19; DX B4 at 3, par. 4; Tr. 1122-24, 1130.

9. On December 17, 2008, Respondent, represented by counsel, appeared and testified at a limited hearing to determine whether the negotiated discipline was appropriate. DX B3 at 3-4. Respondent took full responsibility for her Rule violations both at that hearing and through the negotiations leading up to the hearing where she entered her agreement to discipline. DX B4 at 3, 5, 7-8, 11. Respondent testified that her client files and financial records were "a mess." DX B3 at 9, Tr. LH 26; Tr. 1129, 1155-58. Respondent also testified that until the disciplinary investigation, she did not know or understand her ethical obligations relating to the handling of client funds or maintaining complete records:

> I didn't know everything with respect to the handling of the monies, and I should have known, so that is not an excuse . . . if this [Disciplinary Counsel's investigation] would have never happened I would have kept doing it wrong. I wouldn't have taken the classes that I needed, I wouldn't have gotten, went through all the client files and all the billing and make certain that everything was organized, I would have never done it, so this [Disciplinary Counsel's investigation] needed to happen.

DX B3 at 9, Tr. LH 26-27; *see also* DX B3 at 9, Tr. LH 29 (Respondent: clarifying that she did not know about escrow accounts and the prohibition of commingling); DX B4 at 6, par. 18 (Hearing Committee Report and Recommendation).

10. The hearing committee recommended that the District of Columbia Court of Appeals accept the negotiated discipline and impose a public censure with conditions of probation. DX B4 at 2, 4, 10-11. The hearing committee found it significant that Respondent's ethical misconduct "appears to have resulted" from practice management problems and "that Respondent failed to properly manage

client and personal funds because of her lack of understanding of her professional obligations." DX B4 at 10.

11. The hearing committee recommended a public censure "to ensure that Respondent understands that her violations are serious," with conditions of probation designed to "improve Respondent's service to her clients and to prevent Respondent from repeating past mistakes." DX B4 at 4-5, par. 13; DX B4 at 10-11.

12. On March 12, 2009, the Court accepted the recommendation of the hearing committee and imposed a public censure and probation with conditions. DX B5; *In re Thomas-Edwards*, 967 A.2d 178 (D.C. 2009) (per curiam). The Court took note of the committee's finding that "respondent did not understand her accounting responsibilities, but had taken steps to correct the errors." DX B5.

13. During her probationary period, Respondent received extensive training and education in the rules and requirements for segregating client funds and maintaining adequate records, including:

(a) On April 23, 2009, Respondent took a three-hour Continuing Legal Education Course (CLE) entitled "Ethics and Lawyer Trust Accounts," which included instruction on creating and maintaining adequate records. DX B6 at 4; DX B7 at 4-6, 15-17, 62-96; DX B11 at 68, par. 3; Tr. 1134;

(b) On May 1, 2009, she attended a Basic Training Session that covered *inter alia*, financial management. DX B6 at 1-2; DX B8 at 1, 3; DX B9 at 1; DX B11 at 2; 1127, 1133, 1139;

(c) In June 2009, Daniel Mills, Manager of the District of Columbia Bar Practice Management Advisory Service assessed Respondent's office management and operations. DX B11 at 2; *see also* DX B8 at 3-4;

(d) On August 24, 2009, Respondent attended a two-hour CLE entitled "Financial Accounting Basics for Lawyers." DX B6 at 6; Tr. 1134-35; and

(e) On August 25, 2009, she attended a three-hour CLE entitled "Zeal or No Zeal: The Exciting Game of Conflicting Legal Ethics." DX B6 at 5, 7; Tr. 110, 1125-27, 1134-35.

14. Respondent's husband, who also was her office manager, attended the CLEs and the Basic Training Course with her. He agreed to comply with the Rules and demonstrated an understanding of the ethical rules relating to client funds. DX B11 at 2, 24; DX H13 at 1 (Respondent: "Lee Edwards . . . has taken all of the ethic[s] classes regarding billing."); Tr. 118-19, 125-26, 139-40, 889-91, 1134-36.

15. The April 23, 2009 CLE, entitled "Ethics and Lawyer Trust Accounts" included comprehensive materials on Rules, the seriousness of Rule violations, potential sanctions, and suggestions on keeping complete records. DX B7 at 3-6, 15-17; Tr. 1136-39. The materials included specific recommendations on the types of records necessary to render a complete accounting:

(a) a register listing all deposit amounts, the date, source, and purpose (DX B7 at 62-64, 66, 87-88);

(b) a register listing all disbursement amounts, the date, source, and purpose (DX B7 at 62-64, 66, 87-88);

(c) subsidiary client ledgers showing the balance in the particular client's escrow account as well as the amount of escrow funds received and disbursed in the client's escrow account. (DX B7 at 63-64, 66-67, 81, 88, 98);

(d) monthly reconciliations of Respondent's records to bank records (DX B7 at 63-64, 67, 79-81, 89, 98); and

(e) a register or journal reflecting all cash fee receipts and disbursals, including the amount, date, source, and purpose (DX B7 at 62-64, 67 at par. 6, 79).

16. Mr. Mills, Manager of the District of Columbia Bar Practice Management Advisory Service, as part of Respondent's agreed probation, assigned Attorney Leigh Manasevit to work with Respondent from August 4, 2009 through September 13, 2010 to improve her firm's operations. DX B8 at 5; Tr. 101, 103, 105, 152. During that year, Mr. Manasevit met with Respondent and her husband at their office on nine different occasions for approximately an hour and-a-half to two hours each time. After each meeting, Mr. Manasevit provided a report of his work with Respondent and her husband to Disciplinary Counsel. DX B11 at 52-94; Tr. 111-15, 133, 143-45; Tr. 921-22.

17. Mr. Manasevit reviewed Respondent's operation systems, client files, sample letters and invoices, trust transactions and accounting records, and spoke with Respondent's accountant, Ms. Simmons. DX B11 at 42, 53; Tr. 123-24, 138, 140-41. During the probation period, Respondent used some type of record-keeping software, but she did not use Excel to track funds relating to client matters. Tr. 129. During the meetings, Mr. Manasevit specifically discussed the Rules relating to handling client funds, trust account deposits and disbursements, and maintaining records, including the treatment of advance fees, combined client funds and earned fees, settlements in landlord/tenant cases, and miscellaneous amounts for bank fees. DX B11 at 53-54; Tr. 161-62, 164-65.

18. By the end of the probation period, Mr. Mills and Mr. Manasevit were assured that Respondent understood her obligations under the Rules and had implemented significant changes to her practice to meet these obligations. DX B11 at 2 (Mills: "[Respondent] seems to have taken very seriously the [Disciplinary] Counsel action. She appears to have taken what she has learned from recent CLEs and Basic Training and improved her office systems."); DX B8 at 4 (Mills: "I have met with [Respondent] twice and have assessed her office systems. She has sounds [sic] systems in place."); DX B11 at 59 (Manasevit: "I am confident that Respondent thoroughly understands these Rules and the established procedures are in compliance."); DX B11 at 68, 88; Tr. 114-15, 147-49.

19. Respondent knew that even though she was no longer on probation, she could continue to seek advice or assistance from Mr. Manasevit, Mr. Mills, or the D.C. Bar. DX B11 at 94 (Manasevit: "[Respondent] will stay in touch with Dan Mills – and me if necessary. She spoke highly of the practice monitor and indicated that she viewed it in a very positive light."); *see also* DX B11 at 53, 59, 87; DX B9 at 13; Tr. 132-33, 153-54; Tr. 1143-44. Respondent testified:

> Well, I knew about the Bar – the Legal Ethics Hotline because my mom worked with the D.C. Bar for years, and whenever I would have legal questions, I would either call Mr. Mills or the Legal Ethics program.

Tr. 1143.

20. After her probation ended in September 2010, Respondent did not seek assistance from Mr. Manasevit, Mr. Mills, or the D.C. Bar Ethics Hotline. Tr. 153, 1145, 1386.

C. Respondent's Bank Accounts and Financial Record-Keeping (BDN 2013-D261)

21. Respondent was the sole signatory and had exclusive authority on two client trust accounts that she maintained at SunTrust Bank:

(a) IOLTA ending in 9124 (IOLTA 9124) which was used primarily for clients located in the District of Columbia,

(b) IOLTA ending in 9390 (IOLTA 9390) which was used primarily for clients located in in Maryland. DX B11 at 91; DX E1 at 1; DX F1 at 1; Tr. 233-34, 237-38, 392; *see also* DX B11 at 93; Tr. 1014-15, 1020.

22. Although Respondent was solely responsible for disbursements, Mr. Edwards and other non-attorney staff deposited funds into the trust accounts. Tr. 904-05.

23. Respondent maintained at least three operating accounts at SunTrust Bank.

(a) Account with numbers ending 2767 (2767 Operating Account) was maintained from at least May 1996 through the present. This account was used as the Respondent's primary business account for depositing earned fees, and paying firm expenses, employees' salaries, and personal expenses. DX G1 at 1-3, Tr. 392. Respondent was the sole signatory on the account until July 2012, when she added her husband, as office manager, as a signatory on the account. DX G1 at 2-3; Tr. 247-48, 971-73.

(b) Accounts with numbers ending 8661 (8661 account) and account number ending 8679 (8679 account) were opened as operating accounts in September or October 2010. Respondent and Mr. Edwards had signatory authority on both accounts. DX F5 at 2; DX F6 at 2; Tr. 238-39, 241-42, 392.

24. On December 17, 2013, Respondent and her attorney, George R. Clark, met with Disciplinary Counsel to discuss transactions in her 9124 IOLTA. DX C9

at 1-2; DX C10 at 1-2; DX C12 at 1; Tr. 393-96. At that meeting, Respondent provided Disciplinary Counsel with an Excel spreadsheet ("Spreadsheet") in response to Disciplinary Counsel's August 2013 subpoena for Respondent's financial records. The Spreadsheet purportedly identified transactions in both of her trust accounts for the period of time from January 15, 2010 through September 26, 2013. DX C12 at 1-4; Tr. 393-96, 1018-21, 1344.

25. On January 16, 2014, Respondent, through her attorney, provided an "expanded version of the IOLTA account spreadsheet."[10] DX C15 at 2, 5-9; Tr. 396-98.

26. On July 22, 2015, Disciplinary Counsel asked Respondent to provide her IOLTA financial records such as a check register, subsidiary client ledgers and monthly reconciliations as follows:

(a) For 9390 IOLTA records from February 1, 2011 through June 30, 2015; and

(b) For 9124 IOLTA records from September 1, 2013 through June 30, 2015. DX C26 at 1-2; Tr. 400-01.

27. Respondent never provided Disciplinary Counsel with complete records responsive to its July 22, 2015 request. Instead, Respondent provided some records from client files responsive to the subpoena, but she acknowledged that the files were incomplete and disorganized. Tr. 1050-51 (Respondent: "I gave her client

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[10] Disciplinary Counsel formatted the content of Respondent's spreadsheet in a larger font with clearly delineated and numbered columns. DX H1 at 6-12; Tr. 396.

files and [Assistant Disciplinary Counsel] wrote back that the stuff was just disorganized and sloppy. And it was . . . .").[11]

28. Despite knowing that as of September 2013 Disciplinary Counsel was investigating her management of her trust accounts, Respondent still failed to produce these records. DX C28 at 1-2; DX C29 at 1; DX C30 at 1; DX C31 at 1; Tr. 400-01, 613-20, 647, 1256.

D. Respondent's Lack of Complete Financial Records and Commingling (BDN 2013-D261)

29. Respondent conceded in her testimony, in her closing argument and in her brief that she understood she was obligated to maintain complete records, yet she did not maintain complete nor accurate records on the client or third-party funds she held in her trust accounts:

(a) Respondent testified that in 2011 she was entering less information, was not putting descriptive information, or was not including all information in the escrow records she was keeping. Specifically, she stated to the Committee: "With respect to the records, I'll concede it . . . I'll fall on my sword with that." "Sloppy records, I'll eat, it because it's true . . . ." Tr. 1344, 1415, 1420.

(b) Respondent stated that she did not keep a check register. Tr. 17, 402, 656, 1211.

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[11] Mr. Edwards testified that many electronic and paper records were lost in two floods that the firm suffered. One flood occurred sometime between 2010 and 2012 at their office on 8th Street NE, and the second flood occurred in 2013 at the firm's office on Minnesota Avenue, SE. Tr. 896-897. Backup records were destroyed in the 2013 flood since the server was located in the basement where the flood occurred. Tr. 898. However, as discussed herein, even if some records were destroyed in the floods, Respondent acknowledges that she did not maintain the required financial records prior to the floods. Thus, notwithstanding the floods, she was admittedly in violation of Rule 1.15(a).

(c) Respondent stated she did not maintain records that chronologically and accurately listed the amounts of all withdrawals, deposits, and/or electronic transfers deposited into or withdrawn from the trust accounts. Tr. 451-52, 1273, 1329-30, 1340, 1415, 1420.

(d) Respondent did not consistently record the dates of the transactions, the names of the recipients of disbursements, the related client matters, the purpose of the deposits and withdrawals, or the running balance of the trust accounts. DX H1 at 6-12; Tr. 402-03, 1211.

30. Respondent did not regularly review or reconcile her bank accounts. DX H1 at 6-12; Tr. 402-03.

31. Respondent did not maintain subsidiary ledgers for each client matter for whom she received entrusted funds that listed transaction dates, the payee, and check number (for disbursements), the purpose of the transactions, and the balance of funds remaining in the account relating to the client matter. DX H1 at 6-12; Tr. 402-03, 656.

32. As a result of the incomplete and inaccurate records, Disciplinary Counsel was unable to reconcile the transactions in Respondent's 9124 IOLTA and was unable to identify which funds held in trust belonged to clients, third parties, or Respondent. Tr. 403-04, 406, 581-83.

33. Respondent maintained an Excel spreadsheet designed to track the transactions in her bank accounts including a running balance of funds held in trust. However, the Spreadsheet Respondent provided in response to Disciplinary Counsel subpoenas failed to record all transactions with sufficient specificity and failed to record all transactions accurately. Specifically, the Spreadsheet did not:

(a) list all deposits into or withdrawals from the trust account;

(b) identify many or most cash deposits with any specificity in the trust or operating accounts;

(c) identify the purpose of each transaction;

(d) identify the client matter related to each transaction;

(e) identify funds Respondent put into the account for bank fees; or

(f) maintain a running balance of funds held in trust.

DX C2 at 1-2, par. 12-14 (Respondent's Answer); DX H1 at 6-12; Tr. 402-03, 491-94, 1327-38, 1340, 1343.

34. Respondent testified that she was unable to identify client funds in the firm trust accounts or funds that belonged to her or to other parties because she failed to accurately record the transactions in her trust accounts and instead relied on her memory for the amount of funds she deposited into the trust account. Tr. 1048, 1312-13, 1322-23.[12]

E. <u>Absence of Misappropriation Evidence</u>

35. Respondent called her client, A.M., whom Disciplinary Counsel identified at Count 2 of BDN 2013-D261 as the client whose funds Respondent had allegedly misappropriated. Testimony and records reveal that A.M. and Respondent entered a reduced fee agreement with a protracted payment schedule to enable Respondent to represent A.M. in her divorce. DX D12 at 2-4; Tr. 1042.

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[12] Appendix A is a compilation of misstatements and omissions in Respondent's accounting records and is incorporated herein by reference. These are only examples highlighted by Disciplinary Counsel in the hearing. As noted, the Respondent has admitted to violating the Rules for maintaining client and financial records, as well as commingling.

36. A.M. and Respondent entered a fixed fee agreement in the amount of $8,000 for Respondent to represent A.M. in her divorce. Tr. 780, 783. According to Respondent, this was far less than legal fees for divorces, which may be up to $20,000. Tr. 1042.

37. Since A.M. did not have the means to pay a retainer, Respondent agreed that her legal fees could be paid from a portion of the alimony payments and disability payments that A.M. was scheduled to receive on a regular basis. DX D12; E-4; Tr. 782.

38. Respondent provided A.M. a copy of the fee agreement and the two discussed the agreement, to include the fact that the payments would be the property of Respondent upon receipt. DX D16; DX D17; DX D18; DX D19; Tr. 778-79, 784, 786, 787, 842-43.

39. A.M. testified that she had kept her own records of what Respondent owed her, felt she received all she was due from Respondent, and was not unhappy in any way with Respondent's representation. Tr. 843-44.

F. Failure to Disclose Prior Sanction in Bar Applications

40. Disciplinary Counsel charged in BDN 2013-D463 filed on August 25, 2015, that Respondent filed petitions and forms in the federal courts for the E.D. Va. and the D.D.C. which required disclosure of her disciplinary history, but that she failed to disclose she had been sanctioned by the Court of Appeals. Disciplinary Counsel alleged Respondent's conduct violated the following Rules:

(a) Rule 3.3(a)(1) (knowingly making a false statement of material fact or law to tribunals);

(b) Rule 8.4(b) (criminal perjury under D.C. Code § 22-2402(a)(3), a criminal act which reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects);

(c) Rule 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation);

(d) Rules 8.1(a) and (b) (in connection with a Bar admission application Respondent knowingly made false statements of material fact and/or failed to disclose a fact necessary to correct a misapprehension known by the lawyer or applicant to have arisen in the matter); and

(e) Rule 8.4(d) (conduct that seriously interfered with the administration of justice).

1. E.D. Va. *Pro Hac Vice* Application

41. Respondent is not a member of the Virginia State Bar, and never has been eligible for admission to practice before the E.D. Va. DX A4 at 1, par. 2; DX A2 at 1, par. 2; DX A6 at 2; *see also* E.D. Va. Local Rule 83.1(A).

42. In October 2009, Respondent represented S.E. in an employment discrimination complaint against the Department of the Army. Respondent charged S.E. a fixed fee of $8,000 to represent her in the matter. Respondent filed suit in this matter in the D.D.C. *Ebron v. Department of the Army*, Case No. 1:09-cv-01961. DX A9 at 2, 5-10; Tr. 41. In March 2011, the D.D.C. transferred the case to the E.D. Va. DX A10 at 4.

43. On July 15, 2011, Respondent filed an Application to Qualify as a Foreign Attorney ("*pro hac vice* application") under Local Civil Rule 83.1(D) and

Local Criminal Rule 57.4. DX A10 at 105-06; Tr. 59. The form contained the following "personal statement" of Respondent:

> I have not been reprimanded in any court nor has there been any action in any court pertaining to my conduct or fitness as a member of the bar.

DX A10 at 105.

44. As described at Findings of Fact ("FOF") 6-20, *supra*, Respondent had been censured and placed on one year probation for violating the Rules in March 2009. Respondent did not disclose this information on her E.D. Va. *pro hac vice* application in July 2011. DX A10 at 105.

45. The E.D. Va. granted Respondent's *pro hac vice* motion the same day it was filed. DX A10 at 6, docket entry 41; DX A10 at 105; Tr. 61.

46. Shortly after Respondent filed her July 15, 2011 *pro hac vice* application in the E.D. Va., Respondent's opposing counsel, Deirdre Brou, an Assistant United States Attorney who was representing the Army in the matter, "googled" Respondent and discovered that Respondent had been publicly disciplined. Tr. 37-38, 68. On August 1, 2011, Brou sent a letter attached to an email to Respondent and to local Virginia counsel representing the plaintiff asking Respondent to "explain . . . the seeming disparity . . . or to promptly correct the statement with the Court." DX A7 at 2-3, 10-11; DX A11 at 7-8; Tr. 38-39, 63-65, 94.

47. Respondent filed a supplemental motion to the E.D. Va. on August 5, 2011 and completed a new *pro hac vice* application correctly identifying the fact that she had been disciplined. Her explanation for failing to disclose the action in

her original application was that she "misread the form to reflect any concerns within the last year, much like the D.C. renewal form states." DX A7 at 16-20; Tr. 1099-1100; DX A10 at 171-72. The E.D. Va., without comment, allowed Respondent to remain as counsel. Tr. 78-79.

48. Respondent testified that she did not knowingly make a false statement on the E.D. Va. *pro hac vice* application; rather, her mistake was inadvertent, caused by her habit of acting in "haste." DX A4 at 1, par. 4; DX A4 at 3, par. 10; DX A2 at 2, par. 4; DX A6 at 1 ("I misread the form to be like what I thought the Federal District Court renewal form in D.C. read."); DX A6 at 2; DX A6 at 11 ("I misread the form[,] as the renewal in federal district court indicated within the last year."); DX A7 at 18; DX A8 at 21; *see also* Tr. 472, 666-67, 748, 903, 1073-74; Tr. 1074-75 (Respondent: "When I read the form[s], I read [them] in haste, and I was like, [o]h, you don't have to do it if it's within a year. I don't recall exactly what I understood."); Tr. 1109-11, 1115.

49. Opposing counsel in *Ebron* testified that she did not refer Respondent's conduct to any disciplinary authorities because Respondent had explained the omission and "corrected and dealt with [it] appropriately." Tr. 90-91.

2. Renewal Application Filed in the D.D.C.

50. Each member of the Bar of the D.D.C. must file a renewal certification form on or about July 1st of every third year. *See* D.D.C. Local Rule 83.9; Tr. 170-71, 1107.

51. Only three days before opposing counsel in the *Ebron* matter contacted Respondent about the erroneous *pro hac vice* filing in the E.D. Va., on July 28, 2011, Respondent signed and filed a renewal application in the D.D.C. She again failed to disclose her prior disciplinary history in response to a direct question on the form that called for its disclosure. The form she signed and filed included the following:

> **NOTE:** All occasions, if any, on which you have been held in contempt of Court, convicted of a crime, censured, suspended, disciplined or disbarred by any Court since your last renewal date are set forth as follows: (**If none, so state**.) (State the facts and circumstances connected therewith. Attach additional sheets if necessary.)

DX A8 at 16-17 (emphasis in original).

52. Respondent hand-wrote "none" in response on the renewal application even though she knew that she had been publicly censured in March 2009. DX A8 at 16. She then signed the renewal application "under penalty of perjury that the foregoing is true and correct." DX A8 at 16-17.

53. On Feb. 4, 2014 – nearly three years after the false filing, and after Disciplinary Counsel's inquiry – Respondent filed an "amended" renewal application with the D.D.C. disclosing that she was censured in 2009. She told the court that she had "inadvertently misread the language in the form." DX A8 at 5, 19-21; Tr. 189-90.

54. Respondent denied that she knowingly made a false statement on the D.D.C. renewal application and instead explained that she made an inadvertent mistake caused by her habit of acting in "haste." DX A7 at 18; DX A8 at 21; *see also* Tr. 472, 666-67, 748, 903, 1073-74; Tr. 1074-75 (Respondent: "When I read the form[s], I read [them] in haste, and I was like, [o]h, you don't have to do it if it's within a year. I don't recall exactly what I understood."); Tr. 1109-11, 1115.

55. Specific to the renewal application filed in the D.D.C., Respondent asserted that she misread the form to ask whether the attorney had received any discipline within the last year. In her response to Disciplinary Counsel, Respondent wrote:

> I misread the form to be like what I thought the Federal District Court renewal form in D.C. read. While there is no time limit for the Federal District renewal form, when I completed the renewal form in 2011 I misread it to say: Have you been reprimanded, censured, and suspended at the time of your last renewal. [My] last renewal was one year before I filed [sic] out the form. At the time of my last renewal in 2008, I had no public censure. Thus, I did not include it.

DX A6 at 1; *see also* Tr. 1080-81, 1118-19.

At the hearing, Respondent's attempted to explain her written response:

> [W]hat I was trying to say is, my reading of the form, when I looked at the form, is that they were asking about any public censure or whatever within the last – a year before your last renewal. And what I was trying to explain to him is that at the time of my last renewal, I had no public

> censure. So, when I read the form . . . I thought that the form was saying, within a year – within one year of your renewal.

Tr. 1119.

56. Respondent knew that the D.D.C. renewal happened every three years. Tr. 1107.

57. The D.D.C. accepted Respondent's corrected filing without further action.

58. A majority of the Committee finds Respondent's testimony not credible that she misread the D.D.C. renewal form and was merely negligent or forgetful in not revisiting the form after she was informed of her misstatement in the E.D. Va. The close proximity of these events and the unpersuasive explanation for her misrepresentation constitutes, for the majority, clear and convincing evidence that Respondent was aware she misrepresented her disciplinary history to the D.D.C. and chose not to correct it in a timely fashion.

G. Respondent Admits to Record Keeping Violations But Defends All Charges Based on Financial and Family Pressures and Her Habit of Acting in Haste.

59. Respondent's defense to her failure to insure accurate and reliable financial record keeping and to properly segregate client funds for safekeeping is that her personal life was in a shamble and that she had the habit of acting hastily even in matters for which she should have paid more attention.

60. Respondent and her husband both testified that they always have struggled financially and have had trouble making rent payments since 2002. Tr. 750, 752, 926, 930, 933-34, 1037.

61. From 2005-2009, Respondent was unable to work regularly because she was exceptionally ill, receiving radiation and having to be quarantined for a period of time. Tr. 748-49, 770, 1043.

62. Respondent's mother suffered a series of strokes, starting in 2009 and continuing until her death in late 2015. Respondent was the principal caretaker for her mother; and according to Respondent, this caregiving interfered with her legal practice. Tr. 748, 955, 958, 1043-44. At times in 2014 and 2015, Respondent also cared for other seriously ill family members, some of them living outside the Washington area, requiring her to travel. Tr. 959-60, 964-65.

63. Respondent and her husband testified that Respondent was constantly "rushing" and made mistakes. ". . . [E]verything was just like a mess, like trying to everything, take – wear every hat, take on everything," Respondent testified. Tr. 1385.

64. Keisha Scott, a SunTrust bank branch manager, has known the Respondent and her husband for about nine years as a SunTrust client. Tr. 664. Ms. Scott testified to Respondent's habit of rushing and as a result she observed errors in Respondent's bank records. Ms. Scott explained that Respondent was always in a hurry, and that Respondent made mistakes when depositing funds. Tr. 666-67.

65. Ms. Jody Smith, a witness for Respondent and a former D.C. Superior Court clerk who spent 30 years in family and landlord tenant court, has observed Respondent's practice for 20 years. Ms. Smith explained that, repeatedly over the years, both the court and court staff advised Respondent to slow down and to correct errors that she made in documents. Tr. 470-72, 474.

66. Ms. Nicandra Brown, who worked for Respondent as an administrative and legal assistant from 2005 to 2009 and has remained close with her through the years, testified that Respondent was always in a rush. Tr. 748-51, 757.

67. Respondent's husband and office manager testified that Respondent did "things in haste or in a rush." Tr. 903, 905-06 (Mr. Edwards: "You rush a lot. Even I got on – have got on you about rushing, taking your time with things, fully grasping, saying I got it, I got it, I got it, and then having to explain it again, and then you truly get it; rushing; filling out your name as 'Ms. Thomas,' instead of 'Thomas-Edwards.'").

68. From at least March 2011 through December 2013, Respondent was unable timely to pay her law firm's operating expenses, including office rent, some vendors and staff salaries. Tr. 749-50, 926, 929-30, 1027, 1041; DX H13 at 1.

69. Beginning in 2002, Respondent and her husband had difficulty paying the rent for their home. They were sued in landlord-tenant court for rent payments at least four times up to the year of the hearing. Judgments were entered in favor of landlords which Respondent never paid. The couple never was evicted, however. Tr. 926-36, 1038.

70. Respondent filed a petition for bankruptcy on March 12, 2013, but never perfected the proceeding by filing required schedules disclosing her debtors, income and financial condition. DX C37 at 4-5 and 12; Tr. 1346-47, 1352.

71. On May 14, 2003, Respondent deposited roughly $230,000 into her 9124 Trust Account. These were the proceeds of a settlement on behalf of client H.B. On May 17, 2013, Respondent collected $130,000 in attorney's fees from the settlement. Respondent testified that she did not pursue her bankruptcy filing because of the receipt of these fees. DX C35 at 10, lines 134 and 136; Tr. 1347-53.

72. Respondent used the attorney fees resulting from the H.B. settlement to pay current debts, including office rent, but did not use them to pay down the $50,000 to $100,000 in debts identified in her bankruptcy petition. DX 37 at 5, Tr. 1347-48, 1354.

73. Asked if she used the attorney fees received as a result of the H.B. settlement to pay debts identified in her bankruptcy filing, Respondent testified:

> No, I did not. I absolutely did not. Because at the same time I had to have money to live with. I paid off – I had like seven people, contractors that did work for me that I paid off. I paid off all the money I had borrowed from my family. I paid off the current landlord. There are still several people that I owe.

Tr. 1348-49, 1354.

H. Respondent's Evidence of Character

74. Disciplinary Counsel introduced no evidence of Respondent gaining financially from the actions alleged against her. Witnesses for both Disciplinary

Counsel and Respondent testified that Respondent had a reputation for truth and honesty and that she was of help to her community.

75. A.M., who retained Respondent as her divorce counsel and whose funds Disciplinary Counsel initially alleged Respondent misappropriated, testified that Respondent accepted a reduced fee and a protracted payment schedule so that A.M. would be able to have an attorney represent her in the divorce. Tr. 782-83; DX D12; DX E4. A.M. further testified that she kept her own records of what Respondent owed her and based on those records A.M. received all that she was due. She further testified that she was happy with Respondent's representation. Tr. 843-44.

76. Disciplinary Counsel withdrew the claim of misappropriation of A.M.'s funds after the hearing was completed. D.C. Brief at 3 n.2.

77. Mr. Manasevit, the D.C. Bar practice monitor assigned to Respondent as a result of her 2009 discipline and probation, testified that in his interactions with Respondent, he found her to be truthful, honest, and earnestly trying to improve her practices. Tr. 114, 131, 163-64.

78. Mr. Bernard Gray, a D.C. attorney practicing since 1978, in the areas of family law, landlord tenant, and probate, has known the Respondent in her professional capacity since about 1993. Tr. 1435. Mr. Gray testified that Respondent had a reputation in the legal community for being truthful and honest in her practices. He also knew Respondent to take no fee or low fee cases for clients. Tr. 1439-40.

79. Ms. Smith, the clerk in landlord-tenant court, testified that Respondent had always been truthful with her and Ms. Smith had never known the court to question Respondent's truthfulness. Tr. 479-80.

80. Ms. Brown, Respondent's former assistant and long-time friend, testified that Respondent is a person of integrity and that she is honest. Tr. 755-56.

81. Respondent admitted to being a poor record-keeper, commingling client funds with personal and firm money, and incorrectly answering questions posed in court forms about disciplinary history. She testified:

> [E]verything that was going on with me at the time had me all over the place. It did. To say otherwise would be a lie. It's exactly what happened. And since my mom passing and my husband getting a little bit better, I can breathe. Before I couldn't breathe. I was trying to do everything by myself. Did I drop the ball? Yeah, I did. But in addition to that, let's be clear. I want the record to be crystal clear. In addition to taking care of them, I had people dying that are still with – I was taking care of them, because no one else would. That's who I am. I give everything away. Everything! Every ounce of me to everyone. I don't take anybody's money. I don't take anything that doesn't belong to me. That's not who I am. Sloppy records, I'll eat it, because it's true . . . .

Tr. 1419-20.

III. CONCLUSIONS OF LAW

A. Standard of Review and Summary of Conclusions

Disciplinary Counsel must prove by clear and convincing evidence that Respondent violated the Rules of Professional Conduct. *See In re Anderson*, 778 A.2d 330, 335 (D.C. 2001) ("*Anderson I*"); Board Rule 11.6. 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 omitted).

Based on the facts in this case, the Hearing Committee finds that Disciplinary Counsel proved by clear and convincing evidence that Respondent violated Rule 1.15(a) by failing to keep adequate records and commingling her funds with those of her clients. The Committee also concludes that Respondent violated Rule 8.4(c) when she failed to correct misrepresentations on the D.D.C. attorney renewal application after being informed of a similar error in the E.D. Va. A majority finds that she also violated Rules 3.3(a)(1) and 8.1(b).

The dissent finds no violation of Rules 3.3(a)(1), 8.1(a), or 8.1(b).

The Hearing Committee also finds that Disciplinary Counsel failed to prove by clear and convincing evidence that Respondent:

- Misappropriated the funds of A.M. or commingled her own funds with A.M.'s funds in violation of Rule 1.15(a);
- Failed to segregate disputed funds from that of her own in violation of Rule 1.15(d);
- Failed to oversee her non-lawyer employees or failed to establish internal controls to assure compliance with her ethical obligations in violation of Rules 5.3(a) and (b);
- Committed the crime of perjury (D.C. Code § 22-2402(a)(3)) in violation of Rule 8.4(b);
- Knowingly made a false statement of fact in a Bar application at the time the statement was made in violation of Rule 8.1(a); or

- Engaged in conduct that seriously interfered with the administration of justice in violation of Rule 8.4(d).[13]

B. Respondent Failed to Properly Keep Safe Client Property in Violation of Rule 1.15(a).

The Rules mandate that a lawyer keep safe the property of clients and third parties by separating their property from the lawyer's property. Rule 1.15(a). To do so, lawyers must retain entrusted funds in a trust account, segregated from the lawyer's funds, *and must maintain complete records of all entrusted funds and other property*. *Id.*; D.C. Bar R. XI, § 19(f); *In re Moore*, 704 A.2d 1187, 1192 (D.C. 1997) (per curiam) (appended Board Report).

To fulfill her ethical obligations to maintain adequate financial records, Respondent's financial records must portray "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" and "any audit of the attorney's handling of client funds by [Disciplinary] Counsel can be completed even if the attorney or the client, or both, are not available." *In re Clower*, 831 A.2d 1030, 1034 (D.C. 2003) (per curiam).

The evidence described at FOF 29-34 and Appendix A thereto proves by clear and convincing evidence, and Respondent generally admits, that Respondent failed

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[13] In its post-hearing brief, Disciplinary Counsel indicates that, in both Counts I and II of Bar Docket No. 2013-D261, it is not pursuing violations of Rules 1.15(d), 5.3(a), or 5.3(b). In Count II of Bar Docket No. 2013-D261, it is not pursuing violations of 1.15(a) (misappropriation and commingling). D.C. Brief at 3 n.2. Based on our review of the record, we find that Disciplinary Counsel failed to establish violations of these Rules.

properly to record and track client funds as required by the Rules. Among other things, she:

- Consistently failed to track or record client funds;
- Disregarded the status of client account balances;
- Disregarded the balance in her IOLTA and checking accounts; and
- Made random and unexplained deposits to, withdrawals from, and transfers between her IOLTA and operating account.

Respondent herself readily admitted, consistent with the evidence, that she had failed in her record-keeping obligations and that she commingled entrusted and firm funds. FOF 29-32, 34. Although she opened separate IOLTA accounts and operating accounts, Respondent frequently ignored the distinctions between those accounts when making deposits and withdrawals. As a result, client funds, firm operating funds and even earned fees were commingled such that it was difficult or impossible to identify which deposits and withdrawals were for what purpose. FOF 31-34; Appendix A. Such poor bookkeeping defeats both the letter of Rule 1.15(a) and its intent. *See In re Rivlin*, 856 A.2d 1086, 1095 (D.C. 2004) (per curiam) (appended Board Report); *In re Malalah*, Board Docket No. 12-BD-038 (BPR Dec. 31, 2013), appended HC Rpt. at 12 (Sept. 27, 2013) (quoting *In re Hessler*, 549 A.2d 700, 707 (D.C. 1988) (appended Board Report)), *recommendation adopted*, 102 A.3d 293 (D.C. 2014) (per curiam); *see also Moore*, 704 A.2d at 1192.

Respondent's incomplete and inaccurate record-keeping stymied Disciplinary Counsel's efforts to reconcile or reconstruct the funds in Respondent's 9124 IOLTA, which prevented Disciplinary Counsel from determining whether Respondent

misappropriated entrusted funds. FOF 33. Respondent ignored the record-keeping requirements with respect to both her office operating accounts and her Maryland and D.C. IOLTA accounts. This demonstrated an "unacceptable disregard for the safety and welfare of entrusted funds" and exhibiting a "'state of mind in which [the attorney] does not care about the consequences of his or her action.'" *Anderson*, 778 A.2d at 338-339 (quoting BLACK'S LAW DICTIONARY 1277 (7th ed. 1999)). Her conduct was not merely negligent, as was the case in *Anderson*, 778 A.2d 330 (in which, unlike here, misappropriation was found), but demonstrated an admitted intent to ignore the rules because she was engaged by other matters in her life.

The Committee finds no evidence that Respondent intended to deceive any client or otherwise engage in self-dealing with her sloppy record-keeping. Her offenses were in the nature of *malum prohibitum*, rather than *malum in se*. However, it is no excuse that Respondent was too frazzled or too busy with personal family issues, or that she had to address both firm and personal financial setbacks, or that she was a person who acts hastily when greater care is required. The Committee finds no authority, and would expect to find none, for the proposition that the Court's disciplinary rules may be ignored simply because other matters are more pressing or because a licensed attorney's habits make compliance difficult.

C. Respondent Did Not Misappropriate or Commingle Funds of Client A.M. as Alleged by Disciplinary Counsel.

In its post-hearing brief, Disciplinary Counsel states that "[t]he evidence did not establish by clear and convincing evidence that Respondent engaged in the unauthorized use of client funds or that she commingled her funds with funds

belonging to [A.M.]." D.C. Brief at 3 n.2. The Committee's independent review of the evidence supports the withdrawal of these charges.

Client A.M. and Respondent agreed to a flat fee for representing the client in a divorce proceeding, with some of the proceeds being paid from the divorce settlement on a monthly basis. FOF 35-37. The record establishes that the engagement letter with A.M. established, as required by *In re Mance*, 980 A.2d 1196 (D.C. 2009), that any fees, to include unearned fees, were Respondent's upon receipt. Further, A.M. testified that she understood that the fees she paid Respondent were Respondent's fees upon receipt. Accordingly, the Committee finds that Respondent did not misappropriate A.M.'s advance fees but rather, had reached an agreement with A.M. that the fees were Respondent's upon receipt. The terms of the fee agreement were fully explained to the client and were treated accordingly. FOF 38. A.M. testified at the hearing that she understood terms of the engagement letter and had received all payments from Respondent out of the monthly alimony payments that she expected to receive. *Id.* at 37-38.

Accordingly, since the evidence shows that Respondent did "expressly communicate to the client verbally and in writing that [she would] treat the advance fee as the attorney's property upon receipt," and that A.M. was fully informed of the arrangement, the evidence fails to support a misappropriation charge as alleged in Count II of BDN 2013-D261. *See Mance*, 980 A.2d at 1206. Because there were no fees in dispute, Respondent also did not fail to segregate *disputed* funds from her

own, or commingle any client funds with her own, in violation of Rules 1.15(a) or (d).

D. <u>Respondent Knowingly Failed to Correct a Misrepresentation in a Court Filing.</u>

A majority of the Committee finds that clear and convincing evidence establishes Respondent knowingly failed to correct misrepresentations about her prior disciplinary history in renewing her membership in the bar of the D.D.C. after being alerted to a similar error in a *pro hac vice* filing in the E.D. Va. FOF 42-57. Her knowing failure to correct the record in the D.D.C. violated Rules 3.3(a)(1), 8.1(b) and 8.4(c).[14]

There is no dispute that Respondent was required to disclose her prior disciplinary action on a *pro hac vice* form she filed with the E.D. Va. and on the attorney renewal form required every three years from members of the D.D.C. Bar. Nor is there any dispute that she failed to do so. In the case of the D.D.C. filing,

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[14] The dissent is of the opinion that the Virginia misrepresentation should not be considered here because Disciplinary Counsel did not allege a violation of the Virginia disciplinary rules, citing D.C. Rule 8.5(b) which provides that "[f]or conduct in connection with a matter pending before a tribunal, the rules to be applied shall be the rules of the jurisdiction in which the tribunal sits, unless the rules of the tribunal provide otherwise." The majority believes this states nothing except that whether professional misconduct occurred should be assessed under the rules in place where the alleged misconduct occurred. But if a D.C. licensed attorney appearing in California violates the rules of the California court, as determined by that jurisdiction, nothing obliges the D.C. Court of Appeals and the D.C. Bar to ignore that conduct in assessing if the same counsel engaged in sanctionable conduct while in the District. It would be anomalous indeed if a member of the D.C. Bar could violate court rules in other jurisdictions with impunity, claiming a jurisdictional shield from D.C. Court of Appeals' sanctions applying D.C. Rules of Professional Conduct. In any event, Respondent's conduct in Virginia in this case is treated by the Committee majority only as evidence with respect to her violation in the District of Columbia, mooting the issue.

Respondent waited two years to correct her filing after being on notice that the original form had been filed incorrectly. FOF 51-52, 57. Respondent clearly violated Rule 8.1(b) in that, in connection with a Bar renewal application, she failed "to disclose a fact necessary to correct a misapprehension known by the lawyer or applicant to have arisen in the matter."

The Committee also finds that, with respect to the D.D.C. application, Respondent's misrepresentation by omission and failure to correct it was knowing, in violation of Rule 3.3(a)(1), which provides in relevant part that: "a lawyer shall not knowingly (1) [m]ake a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer . . . ." *Id.* Omitting information may offend the rule just as an affirmative misrepresentation does. Rule 3.3, cmt. [2].[15]

Rule 8.4(c) prohibits a lawyer from engaging "in conduct involving dishonesty, fraud, deceit, or misrepresentation." *Id.* "Rule 8.4(c) is not to be accorded a hyper-technical or unduly restrictive construction." *In re Ukwu*, 926 A.2d 1106, 1113 (D.C. 2007); *see also In re Hager*, 812 A.2d 904, 916 (D.C. 2002); *In re Cleaver-Bascombe*, 892 A.2d 396, 404 (D.C. 2006) ("*Cleaver-Bascombe I*"). Dishonesty under Rule 8.4(c) is broader than "what may not legally be characterized

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[15] Respondent arguably violated Rule 3.3(a) with her original filings in the D.D.C. and E.D. Va. because she failed to exercise the due diligence required by the rule in answering the Bar admission forms in the first place. "An assertion purported to be made by the lawyer, as in an affidavit by the lawyer or in a statement in open court, may properly be made only when the lawyer knows the assertion is true or believes it to be true *on the basis of a reasonably diligent inquiry*." Rule 3.3, cmt. [2] (emphasis supplied).

as an act of fraud, deceit or misrepresentation . . . ." *In re Slattery*, 767 A.2d 203, 213 (D.C. 2001) (quoting *In re Shorter*, 570 A.2d 760, 768 (D.C. 1990)). "Virtually any conduct . . . that relies on or otherwise uses information the inquirer knows to be false would constitute dishonesty, deceit, or misrepresentation, even if the conduct is not legally fraudulent." D.C. Bar Legal Ethics Op. 336 (Sept. 2006). We reject Respondent's claim of "innocent oversight" or "excusable neglect or inadvertence." *See In re Uchendu*, 812 A.2d 933 (D.C. 2002) (affirming Board recommendation for violations of 8.4(c) and 3.3(a)). At the least, after Respondent was alerted to her error in Virginia, allowing her misrepresentation in the D.D.C. to continue uncorrected was knowing. *Id.*

In addition to acts of fraud, deceit, or misrepresentation, dishonesty may also involve '"conduct evincing a lack of honesty, probity or integrity in principle; [that is] a lack of fairness and straightforwardness."' *In re Mitrano*, 952 A.2d 901, 925 (D.C. 2008) (quoting *Cleaver-Bascombe I*, 892 A.2d at 404). Dishonesty also includes concealing or suppressing material facts when there is a duty to disclose. *In re Reback*, 487 A.2d 235, 239-40 (D.C. 1985) (per curiam), *vacated on grant of pet'n for reh'g en banc*, 492 A.2d 267 (D.C. 1985), *adopted in relevant part*, 513 A.2d 226, 229 (D.C. 1986) (en banc); *see also In re Carlson*, 745 A.2d 257, 258 (D.C. 2000) (per curiam).

Respondent in this case clearly misrepresented her disciplinary status to the federal courts in Virginia and D.C. Although the misstatement was promptly corrected in Virginia, it was not in D.C., where Respondent was licensed. The

Committee majority does not find credible Respondent's explanation that, even after correcting her answer in Virginia, she believed that the question by the D.D.C. was limited to the last year of disciplinary history. The D.D.C. application clearly asks for "*All occasions*, if any, on which you have been . . . suspended, disciplined or disbarred by any Court since your last renewal date . . . ." FOF 51 (emphasis added). The disciplinary action, including the subsequent remedial activities, should have been fresh in Respondent's mind. It is not credible that she simply forgot about the proceedings.

A simple chronology is clear and convincing evidence that Respondent's testimony is not credible as to why she failed to correct her D.D.C. misstatement in a timely fashion. The chronology is as follows:

- D.C. censure imposed on March 12, 2009 (FOF 12)
- Probation ended in September 2010 (FOF 20)
- *Pro hac vice* application filed with EDVA July 15, 2011 (FOF 43, 45)
- Respondent files D.D.C. Bar membership update July 28, 2011 (FOF 51)
- Respondent is informed by opposing counsel of error August 1, 2011 (FOF 46)
- Respondent files supplemental memorandum with E.D. Va. correcting application on August 5, 2011 (FOF 47)
- Respondent amends D.D.C. application on February 4, 2014, after inquiry by Disciplinary Counsel (FOF 52)

It is clear that (1) Respondent was on probation in September 2010, well within one year before she filed her *pro hac vice* application in July 2011, thus proving that her answer was incorrect even if her own alleged understanding of what

was requested was accurate; (2) she was on notice that her understanding of the E.D. Va. form was in error as of August 1, 2011, only three days after filing the D.D.C. form, but (3) she did not correct her D.D.C. form until two-and-a-half years later, and only after being questioned by Disciplinary Counsel.

In determining whether an attorney acted "knowingly" for purposes of evaluating her violations of the Rules, Rule 1.0(f) defines "'knowingly,' 'known,' or 'knows'" as "having actual knowledge of the fact in question." *Id.* There is no doubt that Respondent knew she had been censured and knew she had been required to undertake remedial training, all within about two years of her applications to the Virginia and D.C. courts. She knew she had been released from probation the previous September. Given this history, it is fair to assume that issues of prior discipline before the Bar were, or should have been, paramount in considering applications before courts which specifically inquired about such discipline. Respondent's explanation of her reading of the questions – that they only asked for disciplinary actions in the previous year – is of no help to her since her probation period did not expire until only 10 months before her applications were completed.

A respondent or defendant rarely admits to having violated rules or statutes, so knowledge and intent must be divined from "the entire mosaic" of evidence and circumstances. *Ukwu*, 926 A.2d at 1116. Circumstantial evidence is sufficient to prove a respondent's intent. *In re Starnes*, 829 A.2d 488, 500 (D.C. 2003) (per curiam) (appended Board Report); *In re Berkowitz*, 801 A.2d 51, 57 (D.C. 2002) (per curiam) (appended Board Report). A majority of the Committee concludes that,

even accepting her self-serving explanation about what she understood when initially filling out the subject forms, the direct and circumstantial evidence fully supports the conclusion that Respondent acted knowingly in failing to correct her inaccurate answer to the D.D.C. about her recently completed disciplinary actions.[16]

The dissent also concludes Respondent violated Rule 8.4(c), but by recklessly misrepresenting that she had not been disciplined rather than knowing conduct as found by the majority. Recklessness is sufficient to find a violation of Rule 8.4(c), so the Committee is unanimous in finding the violation. *See In re Romansky*, 825 A.2d 311, 317 (D.C. 2003) ("In order to find a violation of the Rule in this case, the Board must find that Romansky acted knowingly or recklessly when he adjusted the client bills.").

The Committee further finds that Respondent did not, "in connection with a Bar admission application[,] [k]nowingly make a false statement of fact" in violation of Rule 8.1(a). In the majority's view, she *should have known* that her statements on the E.D. Va and D.D.C. forms concerning her disciplinary history were false. That finding is insufficient to constitute clear and convincing evidence that she had actual knowledge of the falsity of her statements *at the times they were made*. Thus, Disciplinary Counsel did not meet its burden with respect to this Rule violation.

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[16] One committee member gives weight to the opinions of opposing counsel and local counsel in Virginia who opined the Respondent merely made a mistake. A majority of the Committee finds these uninformed opinions of little weight and, in any event, these individuals had no knowledge of Respondent's failure to reexamine and amend her D.D.C. response after she was alerted to her "mistake." The evidence is strong, if not clear and convincing (a matter we need not conclude upon), that the E.D. Va. misstatement was not a "mistake." Even if it were, the failure to take responsibility thereafter to correct the D.D.C. form was clearly knowing.

E. The Evidence is Insufficient to Find Respondent Perjured Herself in Violation of Rule 8.4(b).

Rule 8.4(b) prohibits a lawyer from "[c]ommitt[ing] a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects." *Id.* A lawyer does not need to be charged or convicted of a crime for the rule to apply. *Slattery*, 767 A.2d at 207 (citing *In re Gil*, 656 A.2d 303, 305 (D.C. 1995); *In re Pierson*, 690 A.2d 941, 947 (D.C. 1997)). However, to establish a Rule 8.4(b) violation, Disciplinary Counsel must establish the elements of the alleged crime, in this case perjury. *See Slattery*, 767 A.2d at 212-13.

In support of the 8.4(b) violation, Disciplinary Counsel asserted that Respondent perjured herself when she failed to disclose her prior discipline. In the District of Columbia, to prove perjury, the following elements must be established: (1) a person must make an oath or affirmation that they will testify truthfully; (2) the oath or affirmation must be before a competent person or tribunal; (3) the statement made for the oath or affirmation must be false; (4) the statement must be material; (5) the declarant must know the statement was false. D.C. Code § 22-2402(a). *Boney v. United States*, 396 A.2d 984, 986 (D.C. 1979); *see also Hsu v. United States*, 392 A.2d 972, 978 (D.C. 1978). In other words, the crime of perjury occurs when an individual falsely testifies and at the time of the testimony did not believe their statement to be true. *Boney*, 392 A.2d at 986.

In perjury cases, "a belief as to the falsity of the testimony is generally inferred from proof of the falsity itself." *Id.* at 986 n.1; *see also Smith v. United States*, 68 A.3d 729, 742 (D.C. 2013) (citing *Boney*, 396 A.2d at 987); *Hsu*, 392 A.2d at 978.

Generally, the only evidence available to prove perjury is the circumstantial evidence in existence when the statement was made. *See* Criminal Jury Instructions for the District of Columbia, No. 6.110 (5th ed. Rev. 2013).

There is evidence that Respondent knowingly misrepresented her prior history of disciplinary actions to the D.D.C. and did so under oath. The information she failed to disclose – that she was disciplined by the Court of Appeals for violating the Rules of Professional Conduct – clearly is material information which a court may wish to consider in determining even *pro hac vice* Bar admission.

But the Committee errs on the side of caution, given that a majority finds Respondent violated the rules by failing to correct her D.C. filing once on notice that it was erroneous. Though a close case, we unanimously conclude that the evidence is insufficient to be clear and convincing that Respondent *intentionally* failed to disclose her disciplinary history at the time she filed her E.D. Va. and D.D.C. forms and that, therefore, the fifth element of the offense of perjury is not adequately proven.

F. Respondent's Misrepresentations Did Not Violate Rule 8.4(d) by Seriously Interfering in the Administration of Justice.

Rule 8.4(d) states: "It is professional misconduct for a lawyer to engage in conduct that seriously interferes with the administration of justice." The elements of a Rule 8.4(d) violation are: (1) improper conduct, (2) that bears directly upon the judicial process with respect to an identifiable case or tribunal, and (3) taints the judicial process in more than a *de minimis* way, that is it must have potentially had an impact upon the process to a serious and adverse degree. *In re Hopkins*, 677 A.2d

55, 60-61 (D.C. 1996). Rule 8.4(d) is violated if the attorney's conduct causes the unnecessary expenditure of time and resources in a judicial proceeding. *See In re Cole*, 967 A.2d 1264, 1266 (D.C. 2009).

The Committee concludes that Respondent's misrepresentations to the courts about her prior discipline did not potentially impact upon the judicial process to a serious and adverse degree sufficient to constitute serious interference with the administration of justice. There was no showing by Disciplinary Counsel that either the judiciary or attorneys unnecessarily expended resources as a result of Respondent's conduct. *See, e.g.*, *Hopkins,* 677 A.2d at 60-61. In fact, both courts accepted corrections to Respondent's filings without comment, even, in the case of D.C., years after the misrepresentation. FOF 47, 56. Although the Committee declines to describe failing to disclose a disciplinary action when asked to do so by a court as *de minimus*, the potential impact on the specific proceedings or on the judicial process of the misrepresentations *in this case* did not meet the *Hopkins* test. Thus, the misrepresentations fell short of interfering with the administration of justice as prohibited by Rule 8.4(d).

IV. MITIGATION AND RECOMMENDED SANCTIONS

In determining the appropriate sanction, the Court considers numerous factors, including: (1) the attorney's acceptance of responsibility; (2) prior disciplinary violations; (3) any prejudice to the client; (4) mitigating circumstances; (5) the attorney's integrity; (6) the nature and seriousness of the offenses. *See In re Vohra*, 68 A.3d 766, 784 (D.C. 2013) (appended Board Report); *In re Omwenga*, 49

A.3d 1235, 1238-39 (D.C. 2012) (per curiam); *In re Thyden*, 877 A.2d 129, 144 (D.C. 2005); *In re Jackson*, 650 A.2d 675, 678-79 (D.C. 1994) (per curiam) (appended Board Report); *In re Hill*, 619 A.2d 936, 939 (D.C. 1993) (per curiam) (appended Board Report); *In re Peek*, 565 A.2d 627, 632 (D.C. 1989).

The Court has stated that the discipline imposed, although not intended to punish the lawyer, should serve to maintain the integrity of the legal profession, protect the public and courts, and deter future or similar misconduct by the respondent-lawyer and other lawyers. *In re Hutchinson*, 534 A.2d 919, 924 (D.C. 1987) (en banc); *In re Martin*, 67 A.3d 1032, 1053 (D.C. 2013); *In re Kanu*, 5 A.3d 1, 13-16 (D.C. 2010) (citing *Cleaver-Bascombe*, 986 A.2d 1191, 1195 (2010)). Further, the sanction imposed must not "foster a tendency toward inconsistent dispositions for comparable conduct or [] otherwise be unwarranted." D.C. Bar R. XI, § 9(h)(1).

Given these factors and considering the facts in this case, the full Hearing Committee recommends a suspension of three years with a requirement that Respondent establish her fitness to practice before she is readmitted. The majority suggests that the Court consider that Respondent be readmitted, if at all, only if her practice is limited to a multi-member firm or other institution of sufficient size to insure her billings and other record-keeping chores will be performed without sole reliance on her. One panel member dissents from suggesting such a condition if readmission is ever granted.

A. Respondent's Acceptance of Responsibility

Disciplinary Counsel argues that since Respondent characterized her misconduct as unintentional and describes it a "mistake," a "misunderstanding," an "error," or "inadvertent," she has failed to accept responsibility or to appreciate her violations of the professional rules.[17] Respondent acknowledges, as the evidence plainly requires that she must, that she failed in her record-keeping duties and commingled her funds with those of her clients. But she argues that this was a result of addressing pressing personal and business duties and not simply dereliction.

A majority of the committee finds that Respondent has not fully accepted responsibility for her actions, but has only recognized what she failed to do. She argues, in effect, that her other obligations should excuse her failure to abide in nearly any respect with the rules intended to safeguard client funds and accurately bill clients for work performed. Her arguments come close to stating, "I didn't do what I was supposed to do, but it really isn't my fault because I was very pressed by other things."

We differ with the member of our panel who concludes that Respondent was not "rationalizing" her behavior. The majority concludes that was exactly what she did. At a minimum, she gave insufficient weight and concern to her obligations as a member of the Bar, and did so beginning immediately after coming off a probationary period for essentially the same misconduct. As with any other

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[17] D.C. Brief at 53-54.

profession imposing responsibilities on the practitioner to protect the client, patient or customer, if personal circumstances dictate that the professional cannot properly perform his or her tasks within the bounds of the profession, the solution is to suspend the business to address the problems, not to continue in operation outside the proper bounds of professional conduct.

Respondent here rationalized her misconduct and continued with it rather than making the difficult choice of suspending her practice or doing it correctly. As the dissent notes, Respondent did not accept responsibility for being knowingly dishonest in making the misrepresentation to the court in her renewal application, but rather mounted a defense to the charges by asserting a lack of specific intent. For the reasons noted above, a majority of the panel concludes that, at a minimum, Respondent's failure to correct her D.D.C. form was knowing. Respondent again finds excuses, including claiming a personal defect – that she acts hastily. The clear purpose of these excuses is to deny actual and meaningful responsibility.

B. <u>Prior Discipline</u>

In March 2009, Respondent was publicly censured for commingling and failure to maintain records. FOF 12. Within months, Respondent resumed her old ways of operating her practice, and continued to do so at least through the conclusion of this evidentiary record in 2013. Respondent claimed in 2009 that she was ignorant of how records were to be kept and maintained in a solo practice. Having undergone successful supervision and instruction in record-keeping while on probation, Respondent no longer can claim ignorance as an excuse. This second round of

offenses is worse: it is knowing, even if we accept that her earlier sanction was a result of ignorance.

C. Prejudice to Clients

No client came forward to claim prejudice or injury from any actions by Respondent. As we noted at the outset, Respondent's poor record-keeping is an obstacle to determining if Respondent misappropriated client funds, either negligently or with intent. Thus, the panel has no clear and convincing evidence – or any evidence at all – of injury or prejudice to a client. That is why we feel unable, under the relevant precedents, to impose the sanction of disbarment. In that sense, the mitigation has been recognized in the sanction we recommend.

D. Attorney's Integrity

The most difficult aspect of assessing this case has been the presentation by Respondent as an essentially honest attorney who works hard for an underserved community in difficult circumstances. We recognize that had Respondent been employed by a large or even medium size firm, many of her record-keeping and billing difficulties would be efficiently handled by an administrative staff, allowing Respondent to practice law to the best of her ability. Nor are we unaware that solo practitioners and small firms that serve the less affluent clients in the District are pressed for time and money, much as their clients, or that compliance with the Rules of Professional Conduct can be more difficult for such practitioners acting in the best of faith. The conundrum for this Committee, as for many others, is how to encourage

service to the least among us while also insuring that the least among us are protected by the Rules to the same extent as the more affluent.[18]

In evaluating sanctions for the misrepresentation, the Committee considered, first, that in cases involving single instances of misrepresentation, including misrepresentations to courts or other tribunals, the Court has imposed sanctions ranging from public censure to a 60-day suspension. *See In re Hawn*, 917 A.2d 693, 693-94 (D.C. 2007) (per curiam) (30-day suspension for falsifying resume and altering law school transcripts in an attempt to obtain legal employment); *In re Owens*, 806 A.2d 1230, 1231 (D.C. 2002) (per curiam) (30-day suspension for false statements, including one made under oath, to Administrative Law Judge to cover up eavesdropping in violation of judge's sequestration order); *In re Phillips*, 705 A.2d 690, 691 (D.C. 1998) (per curiam) (60-day suspension for filing a false and misleading petition in federal court in Virginia); Order, *In re Molovinsky*, No. M-31-79 (D.C. Aug. 27, 1979) (per curiam) (public censure for "lying" to Superior Court judge about reason for being late to court).

Second, the Committee also considered that instances of misconduct involving the courts imperil the public's confidence in the integrity of the legal profession more than misconduct that occurs within the firm and thus, merits more significant sanctions. *See In re Guberman*, Bar Docket No. 311-06, at 9 (BPR Nov.

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[18] The dissent properly notes that all lawyers are expected to comply with the same standards. The majority is not suggesting otherwise. But just as it is the obligation of all parents properly to care for their children, circumstances and talents make it much easier for some than for others. Recognizing such circumstances is important, not irrelevant.

6, 2007) ("Intra-firm misconduct does not imperil public confidence in the integrity of the profession in the same way as dishonesty directed at clients, third parties or the courts.") (citing *In re Scanio*, 919 A.2d 1137, 1144 (D.C. 2007) and *In re Kennedy*, 542 A.2d 1225 1230-31 (D.C. 1998)), *recommendation adopted*, 978 A.2d 200 (D.C. 2009).

The Committee considered that Respondent has violated not only 8.4(c) but also has violated her obligations for keeping her financial records in a manner consistent with her professional obligations; and, this is the second time she has violated these rules. Additionally, her lack of record keeping was so egregious that the records were insufficient to establish conclusively that all client funds were protected. *See In re Daniel*, 11 A.3d 291, 300-02 (D.C. 2011) (three-year suspension plus fitness for commingling, engaging in dishonesty by making a "calculated effort to conceal funds from the IRS and to do so exploited his position as an attorney," "completely failed to acknowledge his wrongdoing"); *In re Arneja*, 790 A.2d 552, 556-58 (D.C. 2002) (one-year suspension for commingling, failure to turn over a client file, falsely naming himself as counsel in his filing of a suit and misrepresentation to Disciplinary Counsel that he had turned over the entire file, where conduct "would be misappropriation 'but for' the operation of an ethical rule" that provided a "technical defense" to at least reckless misappropriation); *In re Moore*, Bar Docket No. 94-93 (BPR June 19, 1996) (three-year suspension and fitness for attorney who testified falsely at his divorce proceeding; was convicted of a misdemeanor for willful failure to file a federal tax return; engaged in conduct that

was prejudicial to the administration of justice), *recommendation adopted*, 691 A.2d 1151 (D.C. 1997) (per curiam). Respondent's failures of record keeping are extreme in view of the fact that she had been disciplined for failing to keep records, was counseled how to do so properly, but within months was again failing even minimal standards. Such misconduct reflects a failure to appreciate the gravity of the record-keeping rules and requires a three-year suspension.

E. Nature and Seriousness of the Offenses

The Rule violations in this matter are serious. It is vital that attorneys keep safe entrusted funds by maintaining complete and accurate records, as well as by segregating entrusted funds. *In re McGann*, 666 A.2d 489, 492 (D.C. 1995) (per curiam) (appended Board Report). Commingling client funds with firm funds or personal funds is a serious offense because it exposes entrusted funds to the danger of misappropriation. *Id.* (citing *Hessler*, 549 A.2d at 702).

Despite extended counsel from the D.C. Bar practice monitor, education through a number of ethics classes, and advice and support from her husband and even from her bank, Respondent, as she described it, engaged in sloppy record-keeping that, for the most part, went well beyond sloppy and into what could be characterized as notations rather than record-keeping. FOF 30-34; Appendix A. As a result, client funds, firm funds and personal funds were intertwined in a manner barred by the Rules, placing client funds in jeopardy.

In determining sanctions for a commingling violation, the Court has identified several factors that must be considered: whether the commingling was (1)

inadvertent or knowing, (2) an isolated instance or protracted, (3) with or without injury to the client, (4) negligent or unintentional misappropriation, (5) with or without adequate record keeping, or (6) by experienced or inexperienced counsel. *In re Osbourne*, 713 A.2d 312, 313 n.2 (D.C. 1998) (per curiam).

First, Respondent, although an experienced attorney, knowingly and pervasively commingled funds and failed to keep records. Respondent herself testified and records supported that she did not properly identify transactions in her accounts, that she failed to deposit or withdraw funds as required by the Rules, that she did not have all her records, and that these practices were long-standing and pervasive. FOF 24-28, 29-34. Finally, although there was no evidence that any clients were injured, the lack of record keeping stymied any effort to reconstitute Respondent's records or to determine whether Respondent engaged in authorized use of client funds in any particular instance. *See In re Abbey*, 169 A.3d 865, 875 (D.C. 2017) (respondent disbarred where she engaged in unauthorized use of client funds and exhibited an "'unacceptable level of disregard for the safety and welfare of entrusted funds'") (citations omitted).

Additionally, it is the cavalier attitude portrayed by Respondent to her record-keeping obligations, as described in Section A, above, which further aggravates the seriousness of the Rule violations. After her purported ignorance of legal record-keeping was rectified by training and supervision on the subject, Respondent almost immediately jettisoned the practices she was taught and returned to her past practices. The Committee finds the fact that she was previously sanctioned for

record-keeping violations and that she was then extensively educated on her responsibilities, but yet again violated this same Rule, as particularly egregious and therefore finds the recidivism to be a significant factor in recommending a three-year suspension.

F. The Fitness of the Attorney

In light of Respondent's record of prior disciplinary action and failure to adhere to the practices she learned during her disciplinary probation, along with her demonstrated inability to effectively manage the stress involved with caring for her family and running an ethically compliant practice, the Hearing Committee unanimously recommends that Respondent demonstrate fitness as a condition of reinstatement.

Respondent has effectively demonstrated her inability to conform her conduct to even minimal ethical standards in managing entrusted funds. *In re Edwards*, 870 A.2d 90, 97 (D.C. 2005) ("[W]here a respondent manifestly has difficulty implementing necessary reforms, some effective means of protecting the public must be instituted."); *see also In re Fair*, 780 A.2d 1106, 1116 n.25 (D.C. 2001) ("We impose [the fitness] requirement principally to allow respondent to demonstrate the adequacy of her procedures that will be followed to prevent a repetition of mishandling of client funds."). Without such a showing, there is no reasonable assurance that Respondent is fit to engage in the practice of law, or that she will not harm clients in the future. *Cater*, 887 A.2d at 21, which applied the factors set forth in *In re Roundtree*, 503 A.2d 1215, 1217 (D.C. 1985) for imposing a fitness

requirement for readmission to the Bar. *See In re Haseltine*, Board Docket No. 14-BD-053, at 10 (BPR Oct. 12, 2017), *pending before the Court*, D.C. App. No. 17-BG-1134.

Citing to *Cater*, Disciplinary Counsel argues that "based on the way she conducted [herself] in these proceedings, there is no reason to believe that Respondent possesses the requisite character to practice law nor that she is competent to do so." D.C. Brief at 53; *Cater*, 887 A.2d at 21. However, the full Committee agrees that Respondent is not charged with any instance of incompetency. Nor, from the record before this Hearing Committee, is there any suggestion that she failed to provide competent counsel to her clients.

It is true that the proceedings are replete with remarks and rulings from the Hearing Committee advising Respondent to talk more slowly and to comply with the rules of evidence, to the extent evidentiary rules apply in these proceedings. An emotional and nervous attorney defending herself in a disciplinary case does not amount to a lack of character or incompetency. Likewise, failure to comply with the rules of evidence similarly does not amount to a lack of character or incompetency for it is the rare attorney who manages a perfect command of evidentiary rules through the course of litigation, let alone when defending their license to practice law.

But there is evidence to establish that, before Respondent is permitted to practice law again, she should prove her fitness to practice as a condition of reinstatement. The record before the Committee, most notably Respondent's own

statements, her husband's statements, and witness statements, demonstrate by clear and convincing evidence "a serious doubt upon [her] continuing fitness to practice law." *Cater*, 887 A.2d at 6; *Guberman*, 978 A.2d at 213. A predictive evaluation of Respondent's future ability to practice law engenders "real skepticism" that given her hasty, reckless and disorganized approach to her practice, she has the ability to execute or deliver on her ethical obligations to maintain accurate and complete books and records as well as to complete legal forms with accuracy and completion. *See Cater*, 887 A.2d at 22, 24.

Specifically, Respondent had previously failed in her record-keeping obligations, was sanctioned for doing so, and received extensive training and counsel to remedy her practices and procedures. Yet, she once again found herself unable to manage her law practice within the bounds established by the Rules of Professional Conduct. Respondent offered to the Committee that her most recent failures were a result of the personal challenges she was facing in caring for ill family members.

Respondent explained to the Committee, as did witnesses, that her long-standing and pervasive "habit" of acting impetuously impacted not only her banking and financial record keeping but also the accuracy of legal documents that she filed with the courts. FOF 48, 53, 58, 62-65 (Respondent's own testimony about her habit of rushing; D.C. Superior Court clerk's testimony that Respondent's filings often had to be corrected; Mr. Thomas' testimony that his wife moved too quickly and had too many obligations; SunTrust bank employee's testimony that Respondent often erred in managing her banking).

In addition to this testimony, the Committee observed Respondent struggling to present her own case as a result of her "habit" to act precipitously. She often spoke in a somewhat disorganized manner; she did not appear to listen to Disciplinary Counsel's arguments before responding to them; she often had to be reminded by the Committee to comply with the rules of evidence; and she did not appear to have her exhibits and materials organized.

Although Respondent welcomed the Committee's direction to address these topics, they did demonstrate to the full Committee that her rash practices in presenting her case, handling her firm's finances, and filing records with the courts establishes by clear and convincing evidence that without a fitness requirement, Respondent may once again in the future run afoul of her ethical obligations.

The Committee is constrained by precedents to sanction Respondent, who has prior discipline for record-keeping violations, with only a lengthy suspension from practice. Precedent strongly suggests that absent a finding of intentional or reckless misappropriation or other conduct evidencing more dishonesty than we have found here, disbarment is not appropriate. *See Daniel*, 11 A.3d 291 for similar sanction on similar facts, including prior disciplinary history. *Cf. Haseltine*, Board Docket No. 14-BD-053, in which the Board recommended a lesser sanction of 18 months suspension, despite similarities to *Daniel*, but adhering to Disciplinary Counsel's recommendations and citing *Cleaver-Bascombe I*, 892 A.2d at 412 n.14 ("[A]lthough the court is not precluded from imposing a more severe sanction than that proposed by the prosecuting authority, that is and surely should be the exception,

not the norm, in a jurisdiction, like ours, in which [Disciplinary] Counsel conscientiously and vigorously enforces the Rules of Professional Conduct.").[19] But although disbarment seems unwarranted under relevant precedents, the recommended suspension period is an indication that the Hearing Committee is not persuaded that the Respondent will ever be suitable to practice law.

The committee majority adds a suggestion that Respondent not be readmitted, if at all, except if she agrees to avoid a solo or small practice for a period of time and works only under the supervision of a larger firm which can insure Respondent's billing practices will comply with the Rules. *See In re Mance*, 171 A.3d 1133, 1144 (D.C. 2017).[20] Two of our number also suggest to the Board that precedents be revisited and that, as in this case, even in the absence of financial injury to clients or others, a willful and near-total refusal to maintain records as required to insure client funds are protected and that billing and expenditures can be replicated by Disciplinary Counsel, especially on the part of a repeat offender, be grounds for disbarment.

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[19] *In re Gilbert*, 538 A.2d 743 (DC 1988) (per curiam), cited by Disciplinary Counsel in its brief, involves a serious omission on a questionnaire for applicants to the Maryland Bar. We do not believe that the omissions by Respondent on the E.D. Va. and D.D.C. Bar questionnaires, which we have concluded do not arise to an interference with the administration of justice, arise to the level of the bar applicant in *Gilbert*.

[20] It has been suggested that it is not the role of the Hearing Committee to recommend conditions for reinstatement. The dissent agrees. However, having heard the evidence and had an opportunity to view the Respondent, including her demeanor and credibility, the majority of our Committee believes we are well-positioned to make such a recommendation. Both the Board and the Court are, of course, free to disregard the recommendation, as with all other aspects of this report. If weight is given to the recommendation at all, it would nevertheless be assessed in light of the full record of Respondent's application for reinstatement years from now.

V. CONCLUSION

The committee unanimously recommends that Respondent be suspended from the practice of law for three years with a requirement for fitness for readmission to the practice of law.

Respectfully submitted,

__/JAK/_____
James A. Kidney, Esq.
Attorney Member

__/CI/_____
Carol Ido
Public Member

Concurring in part and dissenting in part,

__/MMC/_____
Margaret M. Cassidy, Esq.
Committee Chair

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

In the Matter of:	:	
	:	
CLARISSA THOMAS EDWARDS,	:	
	:	**Board Docket No. 15-BD-030**
Respondent.	:	**Bar Docket Nos. 2013-D261**
	:	**and 2013-D463**
A Member of the Bar of the	:	
District of Columbia Court of Appeals	:	
(Bar Registration No. 434607)	:	

APPENDIX A TO THE REPORT AND RECOMMENDATION OF THE AD HOC HEARING COMMITTEE

82. Appendix A is a compilation of misstatements and omissions in Respondent's accounting records and is incorporated herein by reference to the Hearing Committee's findings of fact. These are only examples highlighted by Disciplinary Counsel in the hearing. As noted, the Respondent has admitted to violating the Rules for maintaining client and financial records.

83. Respondent acknowledged, and records demonstrated, that she failed to maintain information necessary to identify banking transactions, including transactions in her trust account. Tr. 405, 1048. For example:

(a) Respondent's Excel Spreadsheet ("Spreadsheet) accurately reflected a $300 withdrawal into the 9124 IOLTA, but did not note the correct date, did not identify the client matter, and did not identify the purpose of the withdrawal. DX E4 at 28, 35-36; DX H1 at 10, line 86.

(b) 9124 IOLTA bank records showed a November 5, 2012, deposit of $500 check from H. Real Estate Investments made payable to "Law Office C. Thomas." Although Respondent's Spreadsheet listed the

transaction, it did not identify a client matter. DX C35 at 7, line 95; DX E4 at 39-41; DX H1 at 10, line 90; Tr. 1314.

(c) 9124 IOLTA bank records showed a March 22, 2013 cash withdrawal for $1,957. Although Respondent's Spreadsheet included the transaction, neither the client matter(s) nor the purpose of the withdrawal is listed. DX C35 at 8, line 112; DX E5 at 3, 11-12; Tr. 352-53; DX H1 at 10, line 95.

(d) 9124 IOLTA records showed an April 15, 2013, check for $60 payable to "cash," but, although Respondent's Spreadsheet included the transaction, it was described as "ours *[sic]* fee" without identifying the client matter. Respondent testified that she did not know purpose of the withdrawal. DX E5 at 13, 34-35; DX C35 at 9, line 124; DX H1 at 11, line 106; Tr. 355-57, 1340.

(e) IOLTA 9124 bank records showed an April 15, 2013, check for $200 made payable to "cash," but, although Respondent's Spreadsheet included the transaction, it was described as "ours fee" without identifying the client matter. DX C35 at 9, line 125; DX E5 at 13, 32-33; DX H1 at 11, line 105; Tr. 353-54, 1340-41.

84. Respondent acknowledged, and records supported, that she recorded inaccurate and erroneous information on the Spreadsheet. Tr. 404, 1049. For example:

(a) 9124 IOLTA bank records establish a January 7, 2011 deposit of $1,500 into the 9124 IOLTA, relating to the S.P. matter, but Respondent's Spreadsheet incorrectly listed the date of the transaction as February 2, 2011. DX E3 at 1-3; DX H1 at 7, line 31.

(b) The Spreadsheet incorrectly listed a July 11, 2001 withdrawal of $15,073.80 by check #328 from the 9124 IOLTA relating to the W. matter, but the 9124 IOLTA bank records revealed that check #328 was never processed, and there was no $15,073.80 withdrawal. DX H1 at 8, line 50; DX E3 at 38; DX C35 at 3, line 34; Tr. 430-32, 1296-97.

(c) 9124 IOLTA bank records established a January 6, 2012 deposit of a $200 money order made payable to "Law Office of C. Thomas,

Chartered" relating to client F.M., but the Spreadsheet listed the transaction as "bank fees," and did not explain why funds relating to F.M. were deposited into the 9124 IOLTA as "bank fees." DX E4 at 1, 4-5; DX H1 at 9, line 69; Tr. 1301-02.

(d) On August 21, 2012, Respondent deposited $300 into the 9124 IOLTA relating to the A.M. matter but Respondent's Spreadsheet incorrectly identified the client matter as "[B.C.]" and did not list the purpose of the deposit. DX E4 at 28, 31-32; DX H1 at 10, line 87; Tr. 439-41, 447.

(e) Respondent acknowledged that on March 21, 2013, she "inadvertently" deposited three checks totaling $1,957.51 for earned attorney fees into her 9124 IOLTA instead of her operating account. The Spreadsheet she maintained incorrectly identified the deposits:

Respondent's Spreadsheet	9124 IOLTA Bank Records
H. deposit $1100	F. deposit $350
B. deposit $607.51	B. deposit $607.51
Y. deposit $250	F. deposit $1000

DX E5 at 3-7; DX H1 at 10, line 94; DX C35 at 8, line 111; Tr. 441-43, 1316-17.

(f) 9124 IOLTA bank records showed an April 4, 2013 deposit of $450 relating to two clients. Respondent incorrectly recorded the transactions on her Spreadsheet:

Respondent's Spreadsheet	9124 IOLTA Bank Records
S.R. deposit $200	C.H. deposit $150
G.Y. deposit $250	M.P. deposit $300

Despite bank records and Respondent's Spreadsheets reflecting deposits from R, Y, H and P, after the April 4, 2013 deposit, Respondent's records did not reflect disbursements from the trust account relating to R,Y, H or P. DX C35 at 9-17; DX H1 at 10-12, lines 97, 101-134; DX E5 at 13, 15-17; Tr. 444-45.

(g) 9124 IOLTA bank records showed an April 5, 2013 deposit of $2,750 relating to two clients. Respondent also incorrectly recorded the transactions on her Spreadsheet:

Respondent's Spreadsheet	9124 IOLTA Bank Records
J.F.	W.G. deposit $2500
G.Y.	G.Y. deposit $250

DX C35 at 9, line 120; DX E5 at 13, 18-20; DX H1 at 10, line 98; Tr. 445-47.

85. As a result of failing to maintain individual client trust account ledgers and to accurately maintain trust account records, Respondent testified, and records supported, that it was unclear whether, in paying expenses for her client E.J., she used E.J.'s funds, funds of another client, or her own commingled funds. On March 28, 2012, Respondent signed 9124 IOLTA check number 339 made payable to Precise Reporting Services for $362.56 and noted on the memo line that it related to "[E.J.] Inv. #9164." DX E4 at 15. However, neither the 9124 IOLTA bank records nor Respondent's records reflected any deposits into the 9124 IOLTA relating to E.J. DX C35 at 1-6; Tr. 1304-05. At the hearing, Respondent could not explain whose funds were used to pay costs relating to E.J.'s matter. Tr. 1306-11. Since Respondent failed to create and maintain complete records, Disciplinary Counsel was unable to determine whose funds in the 9124 IOLTA – client, third party, or Respondent's – were used to pay Precise Reporting Services. Tr. 1306-08.

86. As a result of failing to maintain individual client trust account ledgers and to accurately maintain trust account records, Respondent testified and records

supported, that it was unclear whether, in refunding entrusted funds to her client N.G., she used N.G.'s funds, funds of another client, or her own commingled funds:

(a) In early October 2012, N.G. paid Respondent $5,000 as an advance fee which, consistent with the written fee agreement, Respondent deposited in her operating account. DX H13 at 5-10; DX C34 at 1; Tr. 413-14.

(b) Neither bank records nor Respondent's records reflected that Respondent deposited any funds belonging to N.G. into her 9124 IOLTA. DX C34 at 1; Tr. 414-15.

(c) In December 2012, N.G. terminated Respondent's representation yet, in January 5, 2013, almost thirty days after the termination, Respondent had not refunded N.G.'s funds and the former client asked about her funds. DX H13 at 13, 17.

(d) It was not until April 9, 2013 that Respondent signed a check made payable to N.G. in the amount of $1,333.33 drawn on the 9124 IOLTA and noted in the memo line of the check – "refund minus fee earned invoice 210077." DX C34 at 1; DX H13 at 23; DX H1 at 11, line 107 (Spreadsheet: "refund"); Tr. 415.

(e) Since Respondent failed to create and maintain complete records, Disciplinary Counsel was unable to determine whose funds in the 9124 Trust Account – client, third party, or Respondent's – were used to pay N.G. Tr. 415-16.

87. As a result of failing to maintain individual client trust account ledgers and to accurately maintain trust account records, Respondent testified, and records supported, that it was unclear whether, in paying expenses for her client P.P., she used P.P.'s funds, funds of another client, or her own commingled funds:

(a) Neither 9124 IOLTA bank records nor Respondent's records reflected that any funds belonging to P.P. were deposited into the 9124 IOLTA. DX C34 at 3; Tr. 421.

(b) On April 1, 2013, Respondent wrote a $550 check, from the 9124 IOLTA, made payable to "cash" that contained a note in the memo line

that was indecipherable. DX E5 at 23; DX C34 at 3; DX H1 at 10, line 101; Tr. 421.

(c) Respondent's Spreadsheet identified the matter as "[P.P.] Writ/Motion" and described the disbursement as "ours fee." DX H1 at 10, line 101.

(d) On April 4, 2013, Respondent wrote a $260 check made payable to "cash" from the 9124 IOLTA with a note on the check that it was for "motions/writ pane". DX C34 at 3; DX C35 at 9, line 119; DX H1 at 11, line 102; DX E5 at 25; Tr. 421.

(e) Respondent's Spreadsheet identified the same transaction as "[P.P.] Motion" and described the disbursement as "ours fees". DX H1 at 11, line 102.

(f) Respondent's failure to create and maintain complete records left Disciplinary Counsel unable to determine whose funds in the 9124 IOLTA – client, third party, or Respondent's – were used to disburse funds relating to the [P.P.] client matter. Tr. 422-24.

88. As a result of failing to maintain individual client trust account ledgers and to accurately maintain trust account records, Respondent testified, and records supported, that it was unclear whether, in paying expenses for her client G.Z., she used G.Z.'s funds, funds of another client, or her own commingled funds:

(a) On July 5, 2013, G.Z. paid Respondent $1,000 as an advanced, unearned fee, which Respondent deposited into her 9124 IOLTA. DX C34 at 4; DX C35 at 12, line 152; DX H41 at 1-4; DX H1 at 12, line 124; Tr. 425.

(b) On July 25, 2013, Respondent transferred $700 belonging to G.Z. from her 9124 IOLTA into her 9390 IOLTA, leaving $300 of G.Z.'s entrusted funds in the 9124 IOLTA. DX C34 at 4; DX H1 at 12, line 128; DX H41 at 12-15; Tr. 425.

(c) The same day, Respondent transferred $300 of earned fees relating to the G.Z. matter from her 9124 IOLTA into her 2767 Operating Account. DX C34 at 4; DX H1 at 12, line 129; DX H41 at 1, 11; DX G5 at 67, 73-76; Tr. 425.

(d) As a result of these two transfers which totaled $1,000, the amount G.Z. had entrusted to Respondent, after July 25, 2013, there were no funds relating to the G.Z. matter in the 9124 IOLTA.

(e) Respondent did not deposit any additional funds into the 9124 IOLTA relating to the G.Z. matter. DX C34 at 4; Tr. 427.

(f) On August 2, 2013, Respondent wrote 9390 IOLTA check number 1004 made payable to "cash" for $700 and described the payment as attorney's fees for "[G.Z.] #210155." DX C34 at 4; DX F4 at 14-15; DX H41 at 16, 20-22; Tr. 427.

(g) As a result, after August 2, 2013, there were no funds relating to the G.Z. matter in the 9390 IOLTA.

(h) Respondent did not deposit any additional funds into the 9390 IOLTA relating to the G.Z. matter. DX C34 at 4.

(i) Despite having no funds in either of her trust accounts that belonged to G.Z., on October 18, 2013, Respondent wrote 9390 IOLTA check number 83 in the amount of $400 made payable to "cash," noting on the memo line: "210177 – [G.Z.]" DX C34 at 4; DX F4 at 30-32; DX H41 at 25; Tr. 427-28.

(j) Since Respondent failed to create and maintain complete records, Disciplinary Counsel was unable to determine whose funds in the 9124 Trust Account – client, third party, or Respondent's – were used to pay fees relating to the G.Z. matter. Tr. 428.

89. In April 2013, as a result of failing to maintain individual client trust account ledgers and to accurately maintain trust account records, Respondent testified and records supported that she deposited funds into her 9124 IOLTA, which she identified as earned fees:

(a) On April 5, 2013, Respondent deposited two checks totaling $2,750 from her clients, W.G. ($2,500) and G.Y. into the 9124 IOLTA. DX C35 at 9, line 120; DX E5 at 13, 18-20; *see also* DX H11 at 19; Tr. 1334.

- Mr. W.G.'s funds belonged to his tenant, D.M. pursuant to the "tenant vacate agreement." DX E5 at 19; Tr. 1337-38.
- The $250 payment from Mr. G.Y. was Respondent's earned attorney fees. Tr. 1332-33.
- As of April 5, 2013, Respondent held $5,000 relating to the W.G. matter in her 9124 IOLTA. DX C35 at 8, line 113; DX C35 at 9, line 120; Tr. 1337-39.
- On April 29, 2013, Respondent issued a cashier's check for $2,500 made payable to D.M. DX C35 at 10, line 128; DX E5 at 13, 37-39; DX H1 at 11, line 109 (Spreadsheet: "2500 for [W.G.] cert check and cash to [B.O.]"); Tr. 357-58.

(b) On April 3, 2013, Respondent deposited earned attorney fees from her client G.B.G. Enterprises in 9124 IOLTA in the amount of $1,500, via a credit card payment, yet her Spreadsheet identified the transaction as "straight fee LT ours," which Respondent said meant that the client was a "straight-fee client" so the payment was Respondent's upon receipt. DX C35 at 8, line 117; DX E5 at 13; DX H1 at 10, line 99; Tr. 1324-26.

(c) On April 4, 2013, Respondent deposited two checks totaling $450 from her clients, C.H. and M.P., into her 9124 IOLTA which Respondent admitted should have been deposited into her operating account as earned attorney's fees. DX C35 at 9, line 118; DX H1 at 10, line 97; Tr. 1332-33 (Respondent: "[The $450] actually shouldn't have [] been in [the escrow account] – They should have been in the escrow account – I mean in the operating account, but with everything that was going on, I was making all kinds of mistakes.").

(d) On April 5, 2013, Respondent deposited $50, via a credit card, relating to the A.S. client matter into her 9124 IOLTA yet indicated on her Spreadsheet that the deposit was "ours fee." DX C35 at 9, line 121; DX E5 at 13; DX H1 at 10, line 100.

(e) On April 26, 2013, at a time when Respondent held earned fees in her 9124 IOLTA, Respondent deposited a $14,000 settlement check relating to her client, B.O. DX C35 at 10, line 126; DX E5 at 13, 21-22; DX H1 at 11, line 108; Tr. 1342-43.

(f) Respondent testified and records supported that she deposited and transferred funds relating to the S.L. client matter between three different accounts and failed to maintain complete records that accounted for the multiple transactions; as a result it was unclear whether, in paying expenses for her client S.L., she used S.L.'s funds, funds of another client, or her own commingled funds when she improperly disbursed client funds of another client for matters related to her client S.L.

(g) On February 2, 2012, S.L., via a merchant credit card transaction, deposited $1,500 into Respondent's 9124 IOLTA. DX C34 at 2; DX H22 at 1; DX H1 at 9, line 73; Tr. 416.

(h) On February 10, 2012, Respondent transferred the $1,500 payment relating to S.L. from her 9124 IOLTA into her 9390 IOLTA. DX C34 at 2; DX H1 at 9, line 74; DX H22 at 3-6; Tr. 416-17.

(i) Both the bank records and Respondent's Spreadsheet accurately reflect the $1,500 deposit into and the $1,500 withdrawal from Respondent's 9124 IOLTA. DX H1 at 9, lines 73-74.

(j) As a result of this transfer, after February 10, 2012, there were no funds relating to the S.L. matter in the 9124 IOLTA. Tr. 416-17.

(k) Respondent did not deposit any other funds into the 9124 IOLTA relating to S.L. DX C34 at 2; Tr. 417.

(l) Three months later, on May 2, 2012, Respondent wrote a 9124 IOLTA check made payable to "cash" for $200, with a notation on the check that the disbursement related to "[S.L.]." DX C34 at 2; DX H22 at 16-19; DX H1 at 9, line 77; Tr. 417.

(m) When Respondent wrote the $200 check drawn on the 9124 IOLTA, there were no funds relating to S.L. in the 9124 Trust Account – the remaining $200 in advance fees had been deposited in the 9390 Trust Account. DX C34 at 2; Tr. 417-18.

(n) Since Respondent failed to create and maintain complete records, Disciplinary Counsel was unable to determine whose funds – client, third party, or Respondent's – from the 9124 Trust Account Respondent used to pay S.L. Tr. 416-17.

(o) Also on February 10, 2012, after Respondent had deposited $1,500 relating to S.L. into the 9390 IOLTA, Respondent wrote a 9390 IOLTA check made payable to "Law Office of C. Thomas, Chartered" for $1,300 and deposited the check into her 2767 Operating Account. The memo line on the check stated: "for [L.] invoice #210029." DX H22 at 3, 7; DX C34 at 2; Tr. 418.

(p) Respondent's spreadsheet did not include the February 10, 2012 check from the 9390 IOLTA for $1,300. DX H1 at 9, lines 73-76; Tr. 419-21.

(q) After the February 10, 2012 $1,300 withdrawal, Respondent held $200 belonging to S.L. in the 9390 IOLTA. DX C34 at 2; DX H22 at 3, 7-11.

(r) There were no records showing that Respondent disbursed the $200 relating to S.L. Tr. 418

(s) On October 18, 2013, Respondent wrote a 9390 IOLTA check for $400 payable to "cash" with a note on the check stating "210177-[G.Z.]" This check resulted in a balance of $16.06 in the 9390 IOLTA. DX F4 at 30-32; Tr. 427-28.

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

In the Matter of:	:	
	:	
CLARISSA THOMAS EDWARDS,	:	
	:	**Board Docket No. 15-BD-030**
Respondent.	:	**Bar Docket Nos. 2013-D261**
	:	**and 2013-D463**
A Member of the Bar of the	:	
District of Columbia Court of Appeals	:	
(Bar Registration No. 434607)	:	

SEPARATE REPORT AND RECOMMENDATION OF *AD HOC* HEARING COMMITTEE CHAIRPERSON

I agree generally with the Findings of Fact set forth in the Report and Recommendation of the Ad Hoc Hearing Committee (the "Report"), except that I disagree with the Report's conclusion that Respondent was knowingly dishonest for purposes of D.C. Rules of Professional Conduct (the "Rule" or "Rules") 3.3(a)(1), 8.1(b), and 8.4(c) based on her failure to correct her false statement in her D.D.C. application for admission. Instead, I find that clear and convincing evidence establishes that Respondent violated Rule 8.4(c) by recklessly misrepresenting her discipline history on both the E.D. Va. and D.D.C. applications.

Finally, while I join the Hearing Committee's recommendation that Respondent receive a sanction of a three year suspension with a fitness requirement, I do not believe that it is within the scope of this Hearing Committee's authority to make recommendations as to the type of practice to which Respondent should be limited.

PROCEDURAL HISTORY[21]

Beyond the procedural history detailed by the majority, I include the following additional procedural matter. Before the hearing, Disciplinary Counsel served a subpoena for Mr. Daniel Mills, Assistant Director of the D.C. Practice Management Advisory Service (PMAS), to appear and testify as a witness and a subpoena *duces tecum* to produce records. Disciplinary Counsel sought the testimony and the records in connection with Respondent's prior discipline to include the counsel she received on managing her firm, its financials, and particularly entrusted funds. The D.C. Bar and Mr. Mills filed a motion to quash the subpoena *duces tecum* and Mr. Mills filed a motion to quash the subpoena for his appearance. The Committee granted in part the motion to quash the subpoena *duces tecum*, and denied the motion to quash the subpoena for Mr. Mills' appearance. *See* Order dated December 23, 2015.

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[21] I think it is important to note that in presenting the documentary evidence, Disciplinary Counsel presented the information electronically and collaborated with Respondent so that she could also present information electronically. This allowed for an efficient and understandable method to present vast amounts of documents. The parties and the Hearing Committee were all able to review the records at the same time rather than undertaking the logistically cumbersome and time-consuming task of paging through multiple large binders to access a referenced document. Additionally, the technology allowed the party presenting the document to electronically highlight or otherwise mark the document to effectively direct the Hearing Committee to particularly important materials on a given document.

I. FINDINGS OF FACT[22]

A. Respondent's IOLTA Account Was Erroneously Reported as Overdrawn.

1. In June 2013, Disciplinary Counsel notified Respondent that it received an overdraft notice from SunTrust Bank for Respondent's IOLTA ending -9124. DX C4 at 1-3. However, according to Ms. Keisha Scott, a SunTrust Bank manager, and supporting bank records, the insufficient funds notification was an error because the bank had placed an improper hold on a deposit into Respondent's IOLTA causing the account to appear to be overdrawn when it was not.[23] Ms. Scott explained this situation to Disciplinary Counsel during its investigation. Tr. 669-70.

B. Respondent Filed Two Different Applications for Admission in United States District Courts and Mistakenly Failed to Disclose Her Prior Discipline on the Applications.

2. Attorney John O. Iweanoge, a member of the E.D. Va. Bar, sponsored Respondent's July 15, 2011 *pro hac vice* application to that court in connection with a pending litigation matter. DX A10 at 105; Tr. 36.

3. Attorney Deirdre Brou served as opposing counsel in the E.D. Va. matter. After developing questions about Respondent's competence following initial interactions with Respondent, Brou performed a Google search of Respondent and learned of Respondent's prior discipline. Brou then drafted and emailed a letter

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[22] Except as noted herein, the findings of fact detailed in the Report are hereby incorporated by reference.

[23] Ms. Scott counseled Respondent to open some of the accounts Respondent had opened in an effort to enable Respondent to have better control over her finances. Tr. 716-17.

to Respondent concerning her failure to disclose her prior discipline in her *pro hac vice* application, copying Attorney Iweanoge. Brou stated that, as a result of this misstatement: "I am, therefore, duty bound to report any misrepresentation concerning your disciplinary action history" and that "I must report such knowledge to the appropriate authority." Brou directed Respondent to either explain the confusion or correct the misstatement by the end of the week. DX A7 at 2-3, 10-11; DX A11 at 7-8; Tr. 37-39, 63-65.

4. That same day, Attorney Brou and Respondent had a conversation about depositions in the case and Respondent advised Brou that she could not open the letter that had been attached to the email. Attorney Brou read the letter to Respondent over the phone. Respondent did not immediately provide a substantive response to Attorney Brou's claim that she had made a misrepresentation on the *pro hac vice* application. Instead, Respondent told Brou that she would read over the letter and get back to her. Tr. 39-40, 67.[24]

5. Later that day, at 3:50 p.m., Respondent emailed Brou and stated, *inter alia*, "In regards to the motion *pro hac vice*, there was no misrepresentation. I was referring to federal district court." Respondent also stated that she would review and modify the E.D. Va. *pro hac vice* form if necessary. Finally, Respondent pointed out the public censure is a matter of public record. DX A11 at 16.

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[24] As a matter of practice, Attorney Brou was assiduous in documenting her conversations and interactions with opposing counsel on her cases. Tr. 68.

6. Brou replied to Respondent's email, and asking Respondent to review and correct the E.D. Va. *pro hac vice* form, if necessary, and to notify Brou if no correction was needed. DX A11 at 15.

7. That evening, Attorney Iweanoge also emailed Respondent and instructed her to address Attorney Brou's concerns immediately. RX 5. Respondent promptly replied to Attorney Iweanoge's email, stating that she had spoken with Attorney Brou and that she would correct the E.D. Va. *pro hac vice* form. Respondent told him that she "misread" the form and took it to be similar to the "federal court" renewal form which Respondent believed only required disclosure of discipline within the last year. *Id*.[25]

8. The next day, Attorney Iweanoge emailed Attorney Brou and stated that Respondent's E.D. Va. *pro hac vice* form will be supplemented and that the court would be advised of Respondent's error. Attorney Iweanoge also stated that Respondent made the mistake in good faith, noting that the discipline is a public record and that Respondent was not attempting to mislead the court. He further indicated that the public censure does not disqualify an attorney from practicing. He concluded his email by thanking Attorney Brou and stating that he was: "sure that this satisfies you, as well as my, and Clarissa's duty under the Rules." DX A7 at 14,

[25] It is not clear to what Respondent was referring to when she said the form was like the "federal court" renewal form. Nonethless, the evidence demonstrated to me that she lacked a knowing intent to be dishonest or to intentionally mislead the courts on these forms.

16-20; Tr. 1099-1100. Attorney Brou never responded to Attorney Iweanoge's email.

9. Attorney Brou accepted Attorney Iweanoge's proffered explanation without further inquiry. She never informed either the "tribunal" (E.D. Va.) or Disciplinary Counsel about Respondent's misrepresentation because Respondent "dealt with [it] appropriately," corrected the form quickly, and gave "what appeared to be an explanation" for the misrepresentation. Tr. 90-92.

10. Had Attorney Brou believed Respondent to have made an intentional misrepresentation to the E.D. Va., as a licensed attorney, Brou believed she would have been obligated to inform the tribunal about Respondent's misrepresentation. Tr. 90.[26]

11. As Respondent consistently explained, she did not knowingly make a false statement on the E.D. Va. *pro hac vice* application and her mistake was inadvertent, caused by her habit of acting in "haste." DX A4 at 1, par. 4; DX A2 at 2, par. 4; DX A4 at 3 (Respondent's Answer par. 10); DX A6 at 1 ("I misread the form to be like what I thought the Federal District Court renewal form in D.C. read."); DX A6 at 2; DX A6 at 11 ("I misread the form[,] [a]s the renewal in federal district court indicated within the last year."); DX A7 at 18; DX A8 at 21; *see also* Tr. 472, 666-67, 748, 903, 1073-74; Tr. 1074-75 (Respondent: "When I read the

[26] Attorney Brou also testified that the omission and resulting need to file a corrected *pro hac vice* motion did not cause any delay in the proceedings. Tr. 91-92.

form[s], I read [them] in haste, and I was like, [o]h, you don't have to do it if it's within a year. I don't recall exactly what I understood."); Tr. 1109-11, 1115.

12. The same is true for her misrepresentation on the United States District Court for the District of Columbia (D.D.C.) attorney renewal form. There is no clear and convincing evidence that would indicate that she knowingly omitted her prior discipline on that form. There is no evidence in the record that the D.D.C. or any person ever notified Respondent that her understanding of the D.D.C. renewal application form was incorrect or that the form contained a misrepresentation. Nor is there any evidence that Respondent's application was rejected before or after her February 4, 2014 amendment to the application.

13. In her response to Disciplinary Counsel's inquiry, Respondent represented that she had made a mistake on the application, confusing the time frame for disclosure and stated that she corrected the D.D.C. renewal application. Tr. 1081; DX A6.

14. After receiving Disciplinary Counsel's inquiry, Respondent corrected it within two months, albeit two and half years after she had filed the renewal form. DX A8 at 5, 19-20; Tr. 189-90, 1081. Respondent attached a typed statement to the amended form, as the D.D.C.'s clerk's office had directed her to do, in which she disclosed that she had received a public censure in 2009 and explained that she had "inadvertently misread the language in the form" and that the matter "was recently brought to my attention." DX A8 at 21; Tr. 189-92; DX A7.

C. Respondent's Character for Honesty and Truthfulness and Her Habit to Act in Haste

15. Both Disciplinary Counsel's and Respondent's witnesses testified that Respondent has the reputation for being truthful and honest. Respondent herself presented to the Hearing Committee as a credible witness who neither sought to take advantage of clients or the court system for personal gain despite her lack of financial stability, but instead was overwhelmed with work and family obligations resulting in her lack of focus and lack of attention to detail.

16. Respondent and her husband both explained that she was constantly "rushing" and, as a result, she made mistakes. Respondent testified that: "[T]he only time I put earned fees into my trust account is when it was done inadvertently . . . . The only reason why I put those fees into my trust account is because at that time I was all over the place." Tr. 1357; *see also* Tr. 1385 ("So I was – everything was just like a mess, like trying to do everything, take – wear every hat, take on everything.").

17. Respondent's former client, Ms. Morse, testified on Respondent's behalf. Ms. Morse presented as a credible witness throughout her testimony and explained that she felt she received all she was due and that she was not unhappy in way with Respondent's representation. Tr. 843-44.[27]

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[27] Although Ms. Morse never specifically shared her opinion of Respondent's character for truthfulness, given Ms. Morse's testimony that she was satisfied with the representation, I find that it is unlikely, in this type of representation, that Ms. Morse would have been satisfied with Respondent's service if Ms. Morse held a contrary opinion. Further, the lack of this character testimony appeared to be a result of Respondent's trial strategy and not because Ms. Morse held the opinion that Respondent did not have a character for truthfulness.

18. Ms. Jody Smith, a former D.C. Superior Court clerk, who had observed Respondent practice in court for about 20 years, credibly testified both to Respondent's reputation for truthfulness and honesty, and to her habit to act in haste. According to Ms. Smith, over the years, both the court and court staff had advised Respondent to slow down and to correct errors that she made in documents. Tr. 472-74. Respondent always took responsibility for not only the errors she made, but also when her clients failed to follow the court's direction. She had always been honest with Ms. Smith, and she had never known the court to question Respondent's truthfulness. Tr. 478-80.

19. Mr. Lee Manasevit, the D.C. Bar practice monitor assigned to Respondent as a result of her 2009 discipline and probation, testified credibly that, in his interactions with Respondent, he found her to be truthful, honest, and earnestly trying to improve her practices. *See* Tr. 114, 163-64.

20. Mr. Bernard Gray, who presented as a credible witness, is a D.C. attorney practicing since 1978 in the areas of family law, landlord tenant, and probate, and has known Respondent in her professional capacity since about 1993. Tr. 1435. Mr. Gray testified that Respondent had a reputation in the legal community for being truthful and honest in her practices. He also knew Respondent to take no fee or low fee cases for clients. Tr. 1439-40.

21. Ms. Nicandra Brown, a former employee of Respondent, also credibly testified to Respondent's reputation for truthfulness and honesty, her habit of always rushing, and her generosity. *See* Tr. 748, 754-56. Respondent gave Ms. Brown

money when she faced financial challenges and, at times, took cases for no fee. Tr. 754-55.

22. Ms. Keisha Scott has known Respondent and her husband for about nine years as SunTrust clients and credibly testified that Respondent habitually rushed and, as a result, erred in her bank records. Tr. 664, 666-67.

23. Respondent's husband and office manager credibly testified that Respondent did "things in haste or in a rush." Tr. 903, 905-06 (Mr. Edwards: "[Y]ou rush a lot. Even I got on – have got on you about rushing, taking your time with things, fully grasping, saying I got it, I got it, I got it, and then having to explain it again, and then you truly get it; rushing; filling out your name as 'Ms. Thomas,' instead of 'Thomas-Edwards.'").

24. Contrary to Disciplinary Counsel's position that she misrepresented her disciplinary history to protect her financial interests[28] and because she was

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[28] Disciplinary Counsel alleged that Respondent was motivated to misrepresent her disciplinary history on the E.D. Va. and D.D.C. forms because, among other things, Respondent was in dire financial straits and needed to be able to practice in those courts to earn a living. The record is replete with evidence that Respondent and her husband endured significant financial struggles from 2002 through 2016. They had difficulties in paying not only their office rent but the rent for their home as well. They were repeatedly sued in landlord-tenant court between 2002 and 2015, but were never evicted and made payments when finances allowed. Tr. 926-38, 1038. In 2013, Respondent's landlord obtained a judgement against her for nonpayment of rent. Tr. 1345, 1349. Respondent's financial difficulties were exacerbated by her and her husband's periods of prolonged illness, which prevented Respondent from working regularly between 2005 and 2009; and her husband was unable to assist in the office between 2011 and 2015. Tr. 748-50, 770, 948-51, 1043. Respondent also spent considerable time caring for her husband and her mother, until her death in 2016. Tr. 748, 955, 958, 1043-46. During this time, Respondent had trouble paying her personal and law firm expenses, including salaries for her staff. While it is clear on the record that Respondent suffered significant financial hardship, the evidence does not support the finding that her false statements were motivated by potential financial gain. Similarly, her hardships do not serve as an excuse, or even an explanation, for Respondent's reckless false

embarrassed by her disciplinary history, Respondent credibly explained her own motivations and challenges during that period:

> I've been sued every year since 2002, in [l]andlord [t]enant court, in front of my colleagues, that I practice in front of, every day. Doing that is embarrassing. But I did it. It doesn't take anything away from the public censure, but that's embarrassing . . . . I went on the radio and told the whole world about my child molestation. That's embarrassing. So, I didn't hide any public – how could you hide something that's a matter of public record? . . . It's not about embarrassment or wanting to hide a public censure for benefit of money.

Tr. 1417-19.

> [E]verything that was going on with me at the time had me all over the place. It did. To say otherwise would be a lie. It is. It's exactly what happened. And since my mom passing and my husband getting a little better, I can breathe. Before, I couldn't breathe. I was trying to do everything myself. Did I drop the ball? Yeah I did. But in addition to that, lets be clear. I want the record to be crystal clear. In addition to taking care of them, I had people dying that are still with – I was taking care of them because no one else would. That's who I am. I give everything away. Everything! Every ounce of me to everyone. I don't take anyone's money. I don't take anything that doesn't belong to me. That's not who I am. Sloppy records, I'll eat it, because it's true. But lying for nothing? Just because I want to practice in Virginia for a client that doesn't pay me, so I'm going to lie so I can get waived in. That doesn't make any sense.[29]

Tr. 1419-20.

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statements on simple court forms. Difficult life circumstances do not absolve attorneys of the obligation to comply with the Rules.

[29] Respondent did get paid for this work, when she initially filed the matter in D.C. Here she references the fact that she did not receive additional payment for her work on the matter in Virginia. Tr. 1071-73.

II. PROPOSED CONCLUSIONS OF LAW

The majority found that Disciplinary Counsel proved, by clear and convincing evidence, that Respondent knowingly failed to correct her inaccurate statement to the D.D.C. about her disciplinary history in violation of Rules 3.3(a)(1), 8.1(b) and 8.4(c).[30] Because I disagree with the majority's conclusion that Respondent acted knowingly, I do not conclude that she violated Rules 3.3(a)(1) or 8.1(b). I agree with the majority that Respondent engaged in dishonesty (in violation of Rule 8.4(c)), but did not perjure herself (in violation of Rule 8.4(b)), but on different grounds.

A. A Reckless Mispresentation May Not Serve as the Basis for a Violation of Rules 3.3(a)(1), 8.1(a), 8.1(b), or 8.4(b).

To establish that Respondent violated Rule 3.3(a)(1), Disciplinary Counsel must prove by clear and convincing evidence that Respondent *knowingly* made a

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[30] Since D.C. Rule 8.5(b)(1) provides that "[f]or conduct in connection with a matter pending before a tribunal, the rules to be applied shall be the rules of the jurisdiction in which the tribunal sits, unless the rules of the tribunal provide otherwise," Disciplinary Counsel should have charged Respondent with violating the Virginia Rules of Professional Conduct for failing to disclose her prior discipline on the E.D. Va. *pro hac vice* application. The Hearing Committee raised this issue with Disciplinary Counsel during the hearing and she declined to amend the Specification of Charges. Tr. 5-6; *see* Disciplinary Counsel's Proposed Findings of Fact, Conclusions of Law, and Recommendation as to Sanction ("D.C. Brief") at 42-49. Respondent has raised no challenge concerning Disciplinary Counsel's failure to charge the appropriate set of state disciplinary rules. Thus, I have analyzed Respondent's actions before the E.D. Va. under the D.C. Rules since there does not appear to be a conflict between the rules of the two jurisdictions and Respondent has not objected. *See In re Slaughter*, 929 A.2d 433, 441 n.3 (D.C. 2007) (determining that the Court did not need to address the respondent's Rule 8.5(b) argument where the Court perceived no substantive difference between the D.C. and Arkansas rules); *In re Bernstein*, 707 A.2d 371, 375 (D.C. 1998) (ruling that respondent's argument that West Virginia rules applied to his misconduct instead of D.C. rules was moot because the respondent had not demonstrated that the result would be different if West Virginia rules applied).

false statement of fact or law to the court; or that she knowingly failed to correct a material false statement of fact or law that she had previously made to the court. *Id.*

A violation of Rule 8.1(a) requires clear and convincing evidence that Respondent knowingly made a false statement of fact to a tribunal, and a violation of Rule 8.1(b) requires clear and convincing evidence that Respondent failed to disclose a fact in order to correct a misapprehension that Respondent knew to have arisen in the course of seeking admission. *Id.*

Although Respondent need not be charged with or convicted of perjury to have violated Rule 8.4(b), Disciplinary Counsel must establish the elements of the alleged criminal perjury offense by clear and convincing evidence to sustain a Rule 8.4(b) violation. *In re Slattery*, 767 A.2d 203, 207, 212-213 (D.C. 2001) (citing *In re Gil*, 656 A.2d 303, 305 (D.C. 1995); *In re Pierson*, 690 A.2d 941, 947 (D.C. 1997)). Therefore, Disciplinary Counsel had to prove that Respondent falsely affirmed a material fact to the court, knowing that the statement was false. D.C. Code § 22-2402(a)(3); *Boney v. United States*, 396 A.2d 984, 986 (D.C. 1979); *see also In re Hsu*, 392 A.2d 972, 978 (D.C. 2009).

A review of "the entire mosaic" of the evidence presented in this case, to include circumstantial evidence, in my opinion, fails to establish by clear and convincing evidence that Respondent "knew" the statements on her forms were false at the time she made them or that she knowingly failed to correct the forms. That is, the evidence presented at the hearing did not create "a firm belief or conviction as to the facts sought to be established." *See In re Cater*, 887 A.2d 1, 24 (D.C. 2005)

(citation omitted). Accordingly, I do not find she violated Rules 3.3(a)(1), 8.1(a), 8.1(b), or 8.4(b). *See In re Ukwu*, 926 A.2d 1106, 1116 (D.C. 2007); *accord In re Anderson*, 979 A.2d 1206, 1209, 1222 (D.C. 2009) (per curiam) (appended Board report).[31]

1. Neither Attorney Brou Nor Attorney Iweanoge Believed Respondent was Intentionally Dishonest.

Attorney Brou's testimony, along with Attorney Iweanoge's and Respondent's emails (created contemporaneous to when Respondent made the misrepresentation on the E.D. Va. form and, near the time she made the misrepresentation on the D.D.C. form), provide circumstantial evidence that Respondent did not act knowingly when she misrepresented her disciplinary history on the D.D.C. attorney renewal application and in not correcting the D.D.C. form until well after she had completed it.

First, Attorney Brou, who interacted with Respondent contemporaneous to her filing the false statement on the E.D. Va. *pro hac vice* application, testified consistent with an inference that she did not believe Respondent intentionally included the misrepresentation on the form. Tr. 90-91. As Attorney Brou pointed out in her letter to Respondent and Attorney Iweanoge alerting them to the

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[31] Disciplinary Counsel, although arguing that Respondent acted with "intent" when completing the Virginia and District of Columbia forms, also acknowledged in its brief that Respondent may have actually acted recklessly and not intentionally. Specifically, Disciplinary Counsel stated in its brief: "Even if Respondent's conduct was not "intentional," given Respondent's defense that she had a long-standing habit and practice of acting in "haste," Respondent's failure to take steps to confirm the accuracy of her statements on both applications was reckless and not "inadvertent."' D.C. Brief at 45.

misrepresentation on the E.D. Va. *pro hac vice* form, when an attorney "receives information clearly establishing that a person other than the client has perpetrated a fraud upon the tribunal" the attorney is obligated to report the misconduct to the appropriate authority. DX A7 at 10. Ultimately, Attorney Brou did not inform the E.D. Va. that Respondent had "perpetrated a fraud upon the tribunal." Tr. 91.

Second, although Attorney Iweanoge did not testify at the disciplinary hearing, his email exchange with Attorney Brou and Respondent is circumstantial evidence that he believed that Respondent acted mistakenly and not with a knowing intent to make a false or dishonest statement. Cassidy, FOF 2, 7.[32] Specifically, contemporaneous to the events, in response to Attorney Brou's letter about the misrepresentation, Attorney Iweanoge informs Attorney Brou in an email that Respondent made an error in reading the form and left out her discipline. He states further that it was a good-faith mistake, and points out that since the information is public, there is no intent to mislead. He notes that a public censure does not disqualify an attorney from practice. He concludes by saying that Respondent's correction of the form satisfies not only his duties to disclose attorney misconduct but also Attorney Brou's. DX A7 at 14, 16-20. Further, he continued to support Respondent's *pro hac* admission. *Id.* at 18-20; Cassidy, FOF 7-8.

Had either Attorney Brou or Attorney Iweanoge believed that Respondent acted knowingly, intentionally, or purposefully in making the misrepresentation, as

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[32] "Cassidy, FOF" herein refers to the Findings of Fact in this Separate Report. "Maj. FOF" herein refers to the Findings of Fact in the Majority Report.

both Attorney Brou or Attorney Iweanoge note, their ethical obligations would have compelled reporting that Respondent had engaged in behavior which violates her ethical obligations. Accordingly, from my perspective, Attorney Brou's and Attorney Iweanoge's contemporaneous observations about Respondent's actions demonstrate a lack of clear and convincing evidence that Respondent acted knowingly when she made the misrepresentations on the E.D. Va. *pro hac vice* form.

Disciplinary Counsel argues that Respondent, upon learning from Attorney Brou that she had misrepresented her disciplinary history on the E.D. Va. *pro hac vice* form, should have known that she also made the same misrepresentation on her D.D.C. attorney renewal application; and, therefore she should have immediately corrected the D.D.C. form. Since she did not, she violated the Rules. My review of the facts and the law lead me to a different conclusion.

First, although Attorney Brou advised Respondent about the misrepresentation on her E.D. Va. *pro hac vice* form, Attorney Brou made no remarks to Respondent about her D.D.C. attorney renewal application.

Second, there is no indication from either documentary or testimonial evidence that Attorney Iweanoge, or anyone else, advised Respondent that the D.D.C. attorney renewal application was incorrect.

Third, as demonstrated by Respondent's email to Attorney Brou, contemporaneous to when she filed both the E.D. Va. *pro hac vice* form and the D.D.C. attorney renewal application, before she ever faced disciplinary charges for making these misrepresentations (and therefore before she would be arguably

pressed to create a fabrication to defend herself), Respondent thought the E.D. Va. form was similar to the federal court form which Respondent believed at the time required disclosure of misconduct that occurred in the previous year. FOF 5, 7, 8. Finally, once Disciplinary Counsel informed Respondent about her error on the D.D.C. form, Respondent corrected the form. DX A8 at 19-21.

2. Respondent's Testimony Was Consistent with Her Presentation.

As discussed above, Respondent credibly explained that the misrepresentations on both the E.D. Va. *pro hac vice* application and on the D.D.C. attorney renewal form were a product of her habit to act in haste and to not take the time to read the forms. The record evidence demonstrates that she did not knowingly make a false statement. DX A4 at 1, par. 4; DX A2 at 2, par. 4; DX A4 at 3 (Respondent's Answer par. 10); DX A6 at 1 ("I misread the form to be like what I thought the Federal District Court renewal form in D.C. read."); DX A6 at 2; DX A6 at 11 ("I misread the form[,] [a]s the renewal in federal district court indicated within the last year."); DX A7 at 18; DX A8 at 21; *see also* Tr. 472, 666-67, 748, 903, 1073-74; Tr. 1074-75 (Respondent: "When I read the form[s], I read [them] in haste, and I was like, [o]h, you don't have to do it if it's within a year. I don't recall exactly what I understood."); Tr. 1109-11, 1115.

Respondent's forthright, direct and emotional recounting of her experiences, along with the testimony of other witnesses about Respondent's honesty, established her to be a credible witness and an honest attorney and not of the character to knowingly make false statements or refuse to correct false statements to the courts.

First, I observed Respondent to be an exhausted, emotionally challenged witness who just lost her mother and had spent time in the recent years caring for her mother, husband, and other gravely ill family members while trying to run a solo law practice, serving clients in need of an attorney who often did not have the means to pay. As a result, she credibly explained she did not have the time or energy to pay attention to the vital details of her practice, despite the previous education she received on managing her firm as required by the rules of ethics. Cassidy, FOF 24; Tr. 962, 964-65; 1059-60; 1385-86.

Second, Respondent's non-verbal presentation, in addition to how she answered questions, also established her credibility. When asked questions, she looked at either the Hearing Committee member who asked the question or at Disciplinary Counsel and she responded directly and earnestly attempted to answer the question posed. If she was not clear on a question, she asked for clarification and then directly answered. *E.g.*, Tr. 1096, 1156, 1251-52. Her answers were generally detailed and complete; in fact, she often provided more than enough details when responding. When she did not know an answer, she directly testified that she did not know. *E.g.*, Tr. 1088, 1093-94, 1106, 1110, 1137-39, 1215, 1307. Significantly, Respondent admitted to her wrongdoings, directly agreeing with both Disciplinary Counsel and with the Committee members when she was asked about her poor record-keeping or inability to identify funds.

Respondent exhibited appropriate emotions consistent with demonstrating credibility. She passionately and indignantly insisted she was not dishonest and

instead admitted that she was a "mess" during the years when these violations occurred. Tr. 1385, 1416-20. Similarly, when owning up to her wrongdoings, she demonstrated a remorseful and sad demeanor, breaking down with tears over her out-of-control practice and her family challenges. Respondent explained it as follows: "I don't take anybody's money. I don't take anything that doesn't belong to me. That's not who I am . . . lying for nothing[] [j]ust because I want to practice in Virginia for a client that does not pay me, so I'm going to lie . . . that does not make any sense." Tr. 1044, 1047-48 (Respondent explained records were not accurate and that they contained incorrect names, no interest, no bank fees recorded); Tr. 1419-20; *see* Cassidy, FOF 24.

3. Character Evidence Supported Respondent's General Honesty.

Both Respondent's and Disciplinary Counsel's witnesses attested to Respondent's character and reputation for truth and honesty which should be considered when assessing Respondent's honesty. Cassidy, FOF 15, 18-21; *see, e.g.*, *Michelson v. United States*, 335 U.S. 469 (1948) (holding that character evidence for truthfulness is relevant in determining guilt in a criminal case); *Curry v. United States*, 498 A.2d 534, 544 (D.C. 1985); *Cooper v. United States*, 353 A.2d 696, 703 (D.C. 1976). I also found Respondent's husband to be credible as well when he portrayed Respondent's habit to act with haste and their united efforts to meet their financial obligations. *See, e.g.*, Tr. 903, 905-06, 922, 926, 937-40. Mr. Thomas looked directly at the Hearing Committee members or at Disciplinary Counsel when asked a question. He did not fumble with papers or with his responses in an effort

to avoid a question or to confuse this Committee or Disciplinary Counsel. Mr. Thomas too presented appropriate emotions given the nature of the testimony. For example, he demonstrated intense and appropriate emotion as he accused Respondent of moving in haste or without thought. He also demonstrated genuine and appropriate emotion when explaining how the couple sold sentimental items in order to pay their bills. As a result, I found him to be credible and genuinely wanting to give the Committee honest and complete answers to the questions. *See, e.g.*, Tr. 890-91 (response to question was detailed and thorough), 895 (acknowledged only kept some records), 938-40 (emotionally testified to pawning items, needed a moment to gather emotions), 978 (admitted that he and Respondent stopped depositing money in the cost account, despite being advised to do so), 996-98, 1008-10.

Applying this principle to the facts in this case, particularly in light of Respondent's lack of motivation to lie on either the E.D. Va. or the D.D.C. forms, and given that Respondent faces disciplinary violations involving misrepresentations or dishonesty, the fact that the witnesses (to include ones with no particular allegiance to Respondent), like Mr. Manasevit and Ms. Smith, consistently testified to Respondent's character for truthfulness, in my opinion, is enough to negate a finding of clear and convincing evidence that Respondent intended to present a falsehood when she completed the forms or that she acted with anything other than reckless intent when she failed to correct the D.C. form until after Disciplinary Counsel told her of the error.

B. Respondent Was Recklessly, Not Knowingly, Dishonest in Violation of Rule 8.4(c).

Rule 8.4(c) not only prohibits an intentional or knowing, act but contemplates a violation when an attorney recklessly disregards the truth even without fraudulent or deceptive intent. *Ukwu*, 926 A.2d at 1113-14; *see also In re Cleaver-Bascombe*, 892 A.2d 396, 404 (D.C. 2006); *Romansky*, 825 A.2d at 317; *In re Rosen*, 570 A.2d 728, 729-30 (D.C. 1989) (per curiam) (Disciplinary Counsel does not need to establish that a respondent acted with "deliberateness" in making a misrepresentation to prove a violation of Rule 8.4(c)); *In re Schneider*, 553 A.2d 206, 209 (D.C. 1989). To prove recklessness, Disciplinary Counsel must prove by clear and convincing evidence that the respondent "consciously disregarded the risk" created by their actions. *Cleaver-Bascombe*, 892 A.2d at 404.

However, as the evidence detailed below demonstrates, Disciplinary Counsel proved by clear and convincing evidence that Respondent violated Rule 8.4(c) by recklessly misrepresenting her disciplinary history on the D.D.C. and E.D. Va. forms. Evidence is clear and convincing that Respondent failed to exercise any care on assuring that the statements she made were not false and therefore, Respondent recklessly provided false information to the D.C. court in violation of Rule 8.4(c). *See Ukwu*, 926 A.2d at 1113-14.

Clear and convincing evidence proves that Respondent "acted in reckless disregard of the truth" when she mispresented her past discipline on the E.D. Va. and D.D.C. forms. She made no efforts to ensure that her understanding of the E.D. Va. or the D.D.C. forms was correct or that the information placed on the forms was

accurate. Respondent had completed her disciplinary probation not long before she filed the forms. She had an obligation to be "reasonably diligent" to confirm the accuracy of her responses before completing those forms. *See* Rule 3.3, cmt. [2] ("An assertion purported to be made by the lawyer . . . may properly be made only when the lawyer knows the assertion is true or believes it to be true on the basis of a reasonably diligent inquiry."). With respect to the D.D.C. form, in particular, the D.D.C. has a three-year renewal period. Tr. 169-70. Respondent had been a practicing attorney in the D.D.C. for over 15 years, and during that time she had renewed her license every three years. Maj. FOF 55; Tr. 1107. She should have been sufficiently familiar with that form to provide accurate and truthful responses to the questions therein.

Respondent stated that she relied on her memory of the "federal court" renewal form to determine whether she had to disclose the prior discipline. Cassidy, FOF 7; Tr. 77-78; RX 5. She failed to conduct any due diligence when completing the form. She did not consult with D.C. Bar Ethics attorneys or court clerks before answering that she had nothing to disclose.

Finally, Respondent's habit of moving with haste, and being at a time in her life where she faced great personal challenges, fails to excuse her behavior for recklessly disregarding her obligations. Regardless of her personal habits or life challenges, as a licensed attorney, she is still obligated to comply with her ethical obligations. Respondent violated 8.4(c) in recklessly making a false statement on the D.D.C. renewal application.

For these reasons, I find she acted recklessly, rather than knowingly or intentionally, in completing the E.D. Va. and D.D.C. forms in violation of Rule 8.4(c).[33]

III. RECOMMENDED SANCTION

I join the majority in recommending that Respondent be suspended for three years with a fitness requirement for readmission. I disagree with the majority's conclusion that Respondent has not fully accepted responsibility for her actions and that she be ordered to undertake practice in a larger law firm in the event she is determined to be fit in the future.

Disciplinary Counsel argues that since Respondent attempted to explain her lack of record-keeping and her commingling as occurring because she was overwhelmed by her practice and personal obligations, she failed to accept responsibility for these charges. This is not the case. Respondent and her husband admitted both the underlying facts, and Respondent admitted the charged violations in her opening statement, throughout her testimony, in her closing statement and in her brief. Tr. 26, 1048-49, 1068, 1070-71 (Mr. Kidney: But you knew at the time that you were doing this that the recordkeeping was not as compliant with the ethical obligations as it should be? Respondent: Yes, I agree, I agree a hundred percent. I

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[33] I do not find her failure to correct the D.D.C. form until after Disciplinary Counsel notified her of the misrepresentation to carry any additional liability for failing to correct the form sooner because there was no clear and convincing evidence that she knew any earlier about the misrepresentation, nor is there clear and convincing evidence that, having knowledge of the misrepresentation, she knowingly did not correct the form.

agree that because of everything that was going on and I was all over the place, you're absolutely right.), 1122-23.

Respondent's own words demonstrate an honest and emotional self-realization that she failed in her ethical responsibilities rather than a disregard of her ethical obligations. She neither demonstrated a failure to acknowledge she violated the rules nor did she demonstrate a callous disregard of the disciplinary process. *Cf. In re Daniel*, 11 A.3d 291, 300-01 (D.C. 2011) (The respondent, at one point acknowledged wrongdoing in a brief but later withdrew the acknowledgment, demonstrating to the Court a disregard for the disciplinary process.). As she described it, she was taking care of her mother, her husband, and her sick aunts, and running a practice. With the improvement of her husband's health and the passing of her mother, she can now "breathe." Respondent presented as not excusing her conduct or seeking to be exculpated for the Rule 1.15(a) violations but rather informing the Committee on the circumstances that resulted in her loss of control, despite the guidance from Mr. Manasevit. *See In re Choroszej*, 624 A.2d 434 (D.C. 1992) (per curiam).

Additional evidence on her acceptance of responsibility came through Mr. Manasevit who noted that when he met with Respondent originally, she and her husband presented as engaged and committed to ethically managing firm finances. Cassidy, FOF 19. There was no evidence presented that she had a change of attitude thereafter about wanting to ethically manage her practice. Rather, the evidence depicted an attorney trying to run her practice, yet overwhelmed by the pressure of

a solo law practice and family obligations. Respondent has consistently admitted violating Rule 1.15(a), but she also offered the Hearing Committee reasons *why* it happened. I find this distinct from arguing that she did not violate the Rules.

Similarly, while Respondent did not accept responsibility for being intentionally dishonest in her E.D. Va. and D.D.C. applications, this was due to her attempt to mount a defense to the charges by asserting a lack of specific intent to make misrepresentations to the court. For this, she may not be faulted.

I agree with the majority, and Disciplinary Counsel, that there are no mitigating circumstances in this case, but I disagree that there are aggravating factors here aside from Respondent's prior discipline.[34] For example, Disciplinary Counsel implies that Respondent engaged in the misconduct at issue to avoid her financial obligations to her landlord and possibly other creditors. As evidence thereof, they point out that she deposited multiple checks from clients that constituted earned attorney's fees into her IOLTA during the time that she had filed for bankruptcy,

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[34] Disciplinary Counsel argues that Respondent's purported mitigation evidence that she was involved in community charitable activities and gave financial and legal support to those in need merely demonstrates "her cavalier and irresponsible attitude toward paying her financial obligations, and a lack of integrity and good judgment in managing money." D.C. Brief at 55. Disciplinary Counsel also avers that "[r]espondent was giving away money that did not belong to her – it belonged to individual creditors she chose not to pay." D.C. Brief at 54. On the one hand, I do not find that these circumstances serve as mitigating factors because, as the majority addresses, even after much of Respondent's financial difficulties had subsided and after she was on notice of Disciplinary Counsel's investigation, she persisted in violating the Rules. On the other hand, I do not otherwise agree with Disciplinary Counsel's position. Respondent seemed to understand that she has fiduciary obligations to her clients when handling client funds, and presented as a person of integrity generally but, at the same time, seems unable to comply with the Rules even with assistance.

when at least one creditor (her landlord) was attaching judgments to her personal accounts.

There is no evidence that Respondent acted with such nefarious intent. First, Respondent and her husband presented as a simple couple, struggling to make a living and continuing to support those around them to the extent they could. When they were struggling financially, they remediated the financial stress by pawning their belongings and moving in with family members. Additionally, they would use the funds from any such earned fees from large settlement checks received to pay off their creditors. Finally, as discussed earlier, clear and convincing evidence establishes Respondent to have a character for truthfulness.

Fitness

I adopt my colleagues' recommendation on fitness but am compelled to write to clarify my position on what this should entail. That is, Respondent has demonstrated an inability to conform her conduct to even minimal ethical standards in managing entrusted funds, even with extensive training on how to do so; thus, fitness is mandated. *In re Fair*, 780 A.2d 1106, 1116 n. 25 (D.C. 2001); *In re Cater*, 887 A.2d 1, 20-21 (D.C. 2005).

I do not however adopt the recommendation that Respondent be required to work in a larger firm. First, *In re Mance* does not apply to a sanctions analysis. *Mance* addresses an attorney's assessment for fitness in a restatement case. 171 A.3d 1133, 1136 (D.C. 2017). Further, in *Mance*, the attorney agreed to work in a larger firm. *Id.* at 1144. There is no such agreement here.

Second, there are no facts in the record that establish an attorney who works in a larger firm has less time pressure, more administrative support, is more compliant with the Rules, or that the Bar fails to protect less affluent clients to the degree it protects affluent clients. Third, I do not believe that Hearing Committees considering disciplinary charges against a respondent should be recommending the type of practice an attorney should have on reinstatement.

Respectfully Submitted,

/MMC/
Margaret M. Cassidy