THIS REPORT IS NOT A FINAL ORDER OF DISCIPLINE*

DISTRICT OF COLUMBIA COURT OF APPEALS
BOARD ON PROFESSIONAL RESPONSIBILITY
HEARING COMMITTEE NUMBER TWO



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| In the Matter of: | : | |
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| JAMES A. MOODY, | : | |
| | : | |
| Respondent. | : | Board Docket No. 23-BD-022 |
| | : | Disc. Docket No. 2022-D222 |
| An Administratively Suspended | : | |
| Member of the Bar of the | : | |
| District of Columbia Court of Appeals | : | |
| (Bar Registration No. 294504) | : | |

REPORT AND RECOMMENDATION OF
HEARING COMMITTEE NUMBER TWO

Respondent, James A. Moody, is charged with violating Rules 1.5(b), 1.15(a), (c), and (d), 8.1(b), and 8.4(c) and (d) of the District of Columbia Rules of Professional Conduct (the "Rules"), as well as D.C. Bar Rule XI, § 2(b)(3), arising from Respondent's representation of Lion Farms, LLC., a raisin producer, in an action against the government to receive compensation for the unlawful taking of a portion of its raisins for the national reserve pool. Disciplinary Counsel contends that Respondent committed each charged violation and should be disbarred as a sanction for his misconduct. Respondent has chosen not to participate in these proceedings.

As set forth below, the Hearing Committee finds clear and convincing evidence that Respondent violated Rules 1.5(b), 1.15(a), (c), and (d), 8.1(b), and

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

8.4(c) and (d), as well as D.C. Bar Rule XI, § 2(b)(3), and recommends that Respondent be disbarred.

## I. PROCEDURAL HISTORY

On May 18, 2023, Disciplinary Counsel served Respondent with a Specification of Charges ("Specification") by mail and email, pursuant to an order of the D.C. Court of Appeals permitting service by alternative means. Respondent, who did not cooperate in Disciplinary Counsel's investigation, did not file an Answer.

A hearing was held on October 3, 2023, before this Hearing Committee. Disciplinary Counsel was represented at the hearing by Deputy Disciplinary Counsel Juila Porter. Respondent did not appear at the hearing. During the hearing, Disciplinary Counsel submitted DCX[1] 1 through 3 and 5 through 30, all of which were admitted into evidence. Following the hearing, Disciplinary Counsel moved to enter DCX 4 into evidence. *See* Disciplinary Counsel's Proposed Findings of Fact, Conclusions of Law, and Sanction Recommendation at 3 n.3. That motion is hereby granted.

Upon conclusion of the hearing, the Hearing Committee made a preliminary non-binding determination that Disciplinary Counsel had proven at least one of the

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[1] "DCX" refers to Disciplinary Counsel's exhibits. "PX" refers to exhibits submitted by Lion Farms in the fee arbitration proceeding. "Tr." refers to the transcript of the hearing held on October 3, 2023. "FF" refers to the Hearing Committee's Findings of Fact.

charged Rule violations set forth in the Specification of Charges. Tr. 125; *see* Board Rule 11.11. Disciplinary Counsel did not offer additional evidence in aggravation of sanction. Disciplinary Counsel submitted its Proposed Findings of Fact, Conclusions of Law, and Recommendation as to Sanction on October 27, 2023. Respondent did not file a post-hearing brief.

## II. FINDINGS OF FACT

The following findings of fact are based on the testimony and documentary evidence admitted at the hearing, and these findings of fact are established by clear and convincing evidence. *See* Board Rule 11.6; *In re Cater*, 887 A.2d 1, 24 (D.C. 2005) ("[C]lear 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 fact sought to be established.").

1. Respondent is an administratively suspended member of the Bar of the District of Columbia Court of Appeals, having been admitted on December 7, 1979, and assigned Bar number 294504. DCX 1. According to the Bar's membership department, he was administratively suspended in October 2022 for failure to pay dues.

2. Respondent lives and maintains a law office in Washington, D.C. *See* Tr. 24-25 (Schumack); Tr. 74, 78 (Thornton); DCX 28 at 002 (address on personal account).

3. In the 1990's, Respondent was involved in lawsuits challenging the government's marketing orders for agriculture products. DCX 30 ¶ 4 (Kaufmann).

Respondent was personally committed to pursuing the government for unlawful takings. *Id.*

4. Up to and including 2022, Respondent was affiliated with Advocates for a Competitive Economy and provided that entity's address to the D.C. Bar's membership office as his preferred address. Tr. 74 (Thornton); *see* DCX 15 at 002.

Respondent's Representation of Lion Farms, LLC

5. Lion Farms, LLC, is a California limited liability company that produces raisins in Fresno and Madera Counties in the San Joaquin Valley, California. DCX 30 ¶ 3 (Kaufmann).

6. Beginning in approximately 2000, Respondent provided legal consultation with Lion Farms on occasion. *Id.* ¶ 5 (Kaufmann); *see* Tr. 69-70 (Schumack). In 2004 and 2005, Respondent served as lead counsel for Lion Farms in litigation against the federal government before the U.S. Court of Federal Claims and the U.S. Court of Appeals for the Federal Circuit. DCX 30 ¶ 5 (Kaufmann).The courts dismissed Lion Farms's claims, finding some failed to allege cognizable takings claims under the Fifth Amendment, and others could not be brought against the government because the statute provided for an administrative remedy. DCX 4 (*Lion Raisins, Inc. v. United States*, 416 F.3d 1356 (Fed. Cir. 2005)).

7. Respondent did not charge Lion Farms legal fees in connection with the 2004-05 litigation or his consultations, and he declined the client's offers of payment other than agreeing on some occasions to be reimbursed for his out-of-pocket expenses. DCX 30 ¶ 5 (Kaufmann); *see* Tr. 45-46, 64 (Schumack).

8. In 2015, the Supreme Court decided *Horne v. Department of Agriculture*, 576 U.S. 350 (2015), ruling that the reserve requirement imposed by the Raisin Administrative Committee, which was established and overseen by the Department of Agriculture, constituted a taking under the Fifth Amendment's Takings Clause, requiring the government to pay just compensation. *See* DCX 30 ¶ 6 (Kaufmann). The Supreme Court ruling dealt with the same taking issues that Respondent had litigated on behalf of Lion Farms in 2004 and 2005. *Id.*

9. On the day of the ruling, Respondent contacted Lion Farms and informed it of the Court's decision. *Id.* ¶ 7 (Kaufmann). Respondent spoke with Bertram Kaufmann, who had been serving as General Counsel for Lion Farms for a year. *Id.* ¶¶ 2, 8 (Kaufmann).

10. Lion Farms asked Respondent about renewing the claims that he had litigated on its behalf in 2004 and 2005. *Id.* ¶ 7 (Kaufmann). Respondent told Lion Farms it should file a new lawsuit in the Court of Claims to seek just compensation based on the government's requirement that Lion Farms turn over a portion of its raisins to the Raisin Administrative Committee as part of the reserve pool. *Id.* Lion Farms agreed and authorized Respondent to file a lawsuit against the government. *Id.* ¶¶ 7-8 (Kaufmann).

11. Kaufmann provided Respondent information about Lion Farms that Respondent would need to pursue a claim and provided him the relevant documents before and during the litigation. *Id.* ¶ 8 (Kaufmann). Lion Farms also worked with

other outside counsel, and they may have also provided information and documents to Respondent. *Id.*

12. Respondent never told Lion Farms that he intended to charge the company legal fees in the litigation, or the amount or terms of any such fee. *Id.* ¶ 9 (Kaufmann). Respondent did not provide Lion Farms a fee agreement or any written description of legal fees, the basis or rate of such fees, the scope of his representation, or the expenses that Lion Farms would be responsible for paying. *Id.*

13. On August 21, 2015, Respondent filed a new Fifth Amendment takings case against the government on behalf of Lion Farms in the U.S. Court of Federal Claims: *Lion Farms, LLC v. United States*, Case No. 1:15-cv-00915. DCX 5 at 023 (PX-02); *id.* at 032 (PX-03). Although the company was working with other outside counsel in the litigation, Respondent was Lion Farms's only D.C. lawyer. DCX 30 ¶ 10 (Kaufmann).

14. Lion Farms knew that other raisin growers had filed similar claims, and that one of those cases had proceeded as a class action in which the plaintiffs were represented by nationally prominent law firms. *Id.* ¶ 11 (Kaufmann). The class action matter and the suits of other similarly situated producers were eventually transferred to the judge overseeing Lion Farms's lawsuit and treated as related cases. *Id.*; DCX 6 (docket sheet for class action matter, *Ciapessoni v. United States*, Case No. 1:15-cv-00938-LAS; Tr. 48-49 (Schumack).

15. Lion Farms's case was pending before the court for more than four years. Lion Farms was never asked to respond to discovery, and Respondent did not

file many pleadings on behalf of the company. DCX 30 ¶ 12 (Kaufmann). Respondent provided copies of pleadings and updates on the status of the litigation to Lion Farms. *Id.* The pleadings that Respondent provided to Lion Farms reflected that Respondent was relying on the pleadings and arguments of counsel for the class action plaintiffs. *Id.*; DCX 5 at 023 (PX-02 (docket sheet)), 032-068 (PX-03 through PX-07 (pleadings and orders)), 109-114 (PX-26 (report of Lion Farms's expert)).

16. In May 2018, the raisin producers and government began settlement negotiations. DCX 30 ¶ 13 (Kaufmann). Respondent told Lion Farms that the amount it would receive would be based on the percentage of its equity in the reserve pool. *Id.* Lion Farms eventually agreed to accept a settlement recommended by Respondent. *Id.*

17. In October or November 2019, Respondent advised Lion Farms that the government had agreed to pay approximately $7.5 million as Lion Farms's share of the settlement with the raisin growers. *Id.* ¶ 14. This amount was far less than Lion Farms had hoped to receive. *Id.* Lion Farms's damages were approximately $20 million. *Id.*

18. When Respondent told Lion Farms the amount it would receive, Respondent did not ask for a fee. *Id.* ¶ 16 (Kaufmann). He had never billed Lion Farms or indicated that he would charge Lion Farms a fee or what the fee would be for the work that he (as opposed to class counsel) was doing. *Id.*

19. Lion Farms internally discussed the possibility of paying Respondent $1 million for his efforts, but those discussions were not communicated to

Respondent prior to the settlement. *Id.* ¶ 15 (Kaufmann). The $1 million fee was based on the understanding that Lion Farms would receive much more than the $7.6 million that the company ultimately received from the government. *Id.*

Respondent's Receipt of Lion Farms's Funds and Initial Misappropriations

20. In October 2019, Respondent opened a trust account at SunTrust Bank (now Truist) in anticipation of receiving Lion Farms's settlement funds. DCX 26 at 002. The account, no. 4461, was labeled "Moody-Lion Trust Account." *Id.*

21. On November 22, 2019, the government transferred $7,633,273.79 to the 4461 trust account. *Id.* at 003; *see also* DCX 5 at 072 (PX-10).

22. Respondent did not tell Lion Farms that he had received the settlement funds. DCX 30 ¶ 17-18 (Kaufmann). Instead, on November 26, 2019, Respondent emailed a representative of Lion Farms asking for wiring instructions for Lion Farms's bank account to provide to the government. DCX 5 at 069 (PX-8) ("[C]an you send me [information] for wire transfer so I can send to Treasury[?]"). Lion Farms provided the wiring instructions that same day. DCX 30 ¶ 18 (Kaufmann); DCX 5 at 069 (PX-8).

23. Based on Respondent's November 26, 2019 email, Lion Farms believed that the government would send the company's share of the settlement directly to Lion Farms's account. DCX 30 ¶ 18 (Kaufmann). Lion Farms did not know that Respondent already had its funds. *Id.*

24. On November 27, 2019, Respondent sent Lion Farms a second email about the settlement, again stating that the government would send the entire

settlement amount directly to Lion Farms. DCX 5 at 070 (P-09, p. 1) ("I filed these [wiring instructions] with Treasury and they advised wire will arrive in your account approx. end of next week, but could be later."). The email also asked Lion Farms to send him one-third of the settlement funds to his account (the 4461 account) as "the contingency fee of 1/3," once it received the funds. *Id.*; *see* DCX 30 ¶ 19 (Kaufmann). Respondent attached an invoice that listed an "unbilled" charge of $2.5 million, described as "1/3 Contingency Fee from settlement." DCX 5 at 071 (PX-09, p. 2). Respondent's email was the first time Lion Farms received any indication that he was seeking a fee. DCX 30 ¶ 19 (Kaufmann).

25. Lion Farms decided not to immediately respond, but instead to wait until the government sent it the settlement funds and then negotiate with Respondent. *Id.* ¶ 20 (Kaufmann). Lion Farms still did not know that the government already had sent Respondent its settlement funds. *Id.*; Tr. 48 (Schumack).

26. On December 6, 2019, Respondent opened another account at SunTrust, no. 5962, labeled "James A. Moody Attorney Trust Account for Lion Farms." DCX 27 at 001-002. On December 9, 2019, Respondent transferred the settlement funds and the interest that had accrued in the 4461 account to the newly opened 5962 account – the Lion Farms trust account. DCX 26 at 004-005; DCX 27 at 002.

27. In December 2019, without the knowledge or consent of Lion Farms, Respondent took $150,000 of the Lion Farms settlement funds for himself. DCX 27 at 002; DCX 30 ¶¶ 28-30 (Kaufmann). Respondent transferred $100,000 from the

Lion Farms trust account to his personal account on December 18, 2019, and transferred another $50,000 on December 30, 2019. DCX 29 at 001, 005 (summary exhibit). *Compare* DCX 27 at 002 (trust account statements), *with* DCX 28 at 011, 013 (Respondent's personal account statements).

28. Respondent used the funds in his personal account to pay his personal expenses. *See* DCX 28 at 011-016. On January 10, 2020, the balance in Respondent's personal account was $46,810.87. *Id.* at 016.

29. During the first half of 2020, Lion Farms repeatedly asked Respondent about the settlement funds. DCX 30 ¶ 21 (Kaufmann). Respondent did not respond to the company's inquiries. *Id.*; *see also* Tr. 36-39 (Schumack).

30. However, Respondent continued to take funds from the settlement for himself. On June 5, 2020, without Lion Farms's knowledge or consent, Respondent transferred another $50,000 from Lion Farms trust account to his personal account. DCX 29 at 001, 005; DCX 30 ¶¶ 28-30 (Kaufmann).

31. In July 2020, Lion Farms learned that other raisin producers had received their settlement funds. Kaufmann contacted the government to ask about the status of Lion Farms's settlement funds and was told that the funds had already been sent to Respondent's account. DCX 30 ¶ 22 (Kaufmann).

32. On July 13, 2020, Kaufmann emailed Respondent stating that Lion Farms had learned that he had the settlement funds and asked him, "What happens next?" *Id.* ¶ 23 (Kaufmann); *see* DCX 5 at 076 (PX-12).

33. When Respondent did not respond, Kaufmann sent him another email on July 14, 2020, with his earlier email and noting "SECOND TIME SENT." DCX 30 ¶ 24 (Kaufmann); *see* DCX 5 at 077 (PX-13).

34. Respondent did not respond to Lion Farms's emails or communicate with anyone at Lion Farms in response to the emails. DCX 30 ¶ 25 (Kaufmann).

35. On July 20, 2020, Lion Farms received a check from Respondent for $5,039,821.47. *Id.* ¶ 26 (Kaufmann); DCX 5 at 078 (PX-14). Respondent did not send any information with the check regarding the settlement amount the government had paid or how he had calculated the amount of the check. DCX 30 ¶ 26 (Kaufmann); *see* Tr. 41 (Schumack).

36. After receiving the check, Bruce Lion, a principal of Lion Farms, repeatedly asked Respondent about the settlement funds by emails sent on July 20, July 22, July 28, August 4, and August 14, 2020. DCX 5 at 081-082 (PX-15.NR); DCX 30 ¶ 27 (Kaufmann). Bruce Lion also tried to call Respondent, but he could not get through to him. DCX 30 ¶ 27 (Kaufmann).

37. In the August 4, 2020 email, Lion Farms offered to pay Respondent $1,000,000 if he would send it the rest of its settlement funds. DCX 5 at 081 (PX-15.NR); DCX 30 ¶ 27 (Kaufmann). Respondent never responded to this offer. DCX 5 at 081 (PX-15.NR); DCX 30 ¶ 27 (Kaufmann).

38. Prior to Lion Farms's August 2020 offer to pay Respondent $1 million, Lion Farms had never agreed that he could take any portion of the settlement funds. DCX 30 ¶ 28 (Kaufmann). That offer was contingent on Respondent giving Lion

Farms the remainder of its settlement funds. *Id.* ¶ 29 (Kaufmann). The company never agreed to pay Respondent this amount if he did not turn over the remainder of its funds. *Id.*

39. Lion Farms also did not agree to pay Respondent any other amount between 2019 and 2021, and it was unaware that Respondent was taking funds from Lion Farms's settlement for himself. *Id.* ¶ 30 (Kaufmann).

40. In June 2021, Lion Farms again asked Respondent to turn over the balance of the settlement funds, this time offering to pay Respondent 20 percent of the settlement amount (approximately $1.5 million) if he did. *Id.* ¶ 31 (Kaufmann); DCX 5 at 084 (PX-16.NR). Respondent never responded. DCX 30 ¶ 31 (Kaufmann).

41. After July 2020, Respondent had continued to take Lion Farms's settlement funds without informing the company and without its consent. *Id.* ¶¶ 28-30 (Kaufmann); Tr. 29-30 (Schumack). Respondent made the following transfers from the Lion Farms trust account to his personal account between October 2020 and December 2021:

a. $10,000 on October 8, 2020;

b. $10,000 on November 9, 2020;

c. $90,000 on November 19, 2020;

d. $10,000 on January 19, 2021;

e. $10,000 on February 16, 2021;

f. $10,000 on March 31, 2021;

g. $10,000 on April 29, 2021;

h. $10,000 on May 10, 2021;

i. $10,000 on June 30, 2021;

j. $10,000 on July 6, 2021;

k. $10,000 on August 4, 2021;

l. $10,000 on September 9, 2021;

m. $10,000 on October 18, 2021;

n. $10,000 on November 17, 2021; and

o. $10,000 on December 9, 2021.

DCX 27 at 015-029; DCX 29 at 002-003, 005. In total, Respondent transferred $430,000 from the Lion Farms trust account to his personal account between December 2019 and December 2021. DCX 29 at 005. He helped himself to more in 2022 and 2023. *See infra* FF 53, 57, 66, 75.

42. Respondent used Lion Farms's funds to pay his personal expenses and debts. For example, prior to the $90,000 transfer on November 19, 2020, the balance in Respondent's personal account was $11,051.45. DCX 28 at 084. Within days, Respondent made two payments to his condominium association (2301 M Cooperative) – one for $2,104.82 and another for $80,874.23. *Id.* at 085. After those payments and payments for other personal expenses, the balance in Respondent's personal account was $17,315.40 on November 23, 2020 (*id.*), and two and a half weeks later dropped to less than $7,500. *Id.* at 088.

43. In late November 2021, Lion Farms retained Daniel Schumack, Esquire, to attempt to recover the balance of its settlement funds. DCX 30 ¶ 32 (Kaufmann); Tr. 21-22, 24 (Schumack).

44. On December 3, 2021, Schumack sent Respondent a letter describing Lion Farms's dealings with Respondent from November 2019, and telling Respondent that if he returned $1,600,000 to Lion Farms before the end of 2021, Lion Farms would agree to a mutual release. DCX 5 at 095-096 (PX-18.NR); DCX 30 ¶ 33 (Kaufmann); Tr. 24-25 (Schumack). The offer, which would have allowed Respondent to keep approximately $1 million of the remaining balance, was contingent on Respondent's returning the balance of the settlement funds to Lion Farms. Tr. 29-30 (Schumack). Schumack sent the December 3, 2021 letter to Respondent by overnight delivery to both his office address and his residence. Tr. 25-26, 28 (Schumack); DCX 5 at 093-094 (PX-18, pp. 2-3).

45. Respondent did not respond. Tr. 29 (Schumack). At Schumack's request, Kaufmann sent Respondent an email on December 14, 2021, notifying him of Schumack's letter, providing him another copy of the letter, and asking him to respond so that they could resolve the matter. DCX 5 at 088-090 (PX-17.NR); DCX 30 ¶ 33 (Kaufmann); Tr. 30-31 (Schumack).

46. Again, Respondent never responded. DCX 30 ¶ 34 (Kaufmann); Tr. 32 (Schumack).

The ACAB Proceedings and Respondent's Continued Misappropriations

47. On January 3, 2022, Schumack filed a petition for arbitration and a statement of claim on behalf of Lion Farms with the D.C. Bar's Attorney/Client Arbitration Board (ACAB). DCX 5 at 004 (PX-01). In the petition, Lion Farms outlined the "relatively little work" that Respondent had done in the takings case and said it would agree to pay Respondent $250,000 as "the fair and reasonable (quantum meruit) value" of his services. *Id.* at 007-009 (PX-01)). Lion Farms demanded that Respondent turn over or refund the balance of the settlement funds, less the $250,000 it agreed he could keep as his fee. *Id.* at 009 (PX-01); DCX 30 ¶ 35 (Kaufmann); Tr. 33-34, 62-64 (Schumack).

48. On February 18, 2022, ACAB sent Respondent the notice of arbitration by email and Federal Express and requested his response. Tr. 34-35 (Schumack); DCX 5 at 097-098 (PX-19). ACAB later sent Respondent other emails about the panel appointment and the ACAB hearing date, and another package of documents by Federal Express. Tr. 34-35 (Schumack); DCX 5 at 103-105 (PX-22; PX-23).

49. Schumack made additional efforts to ensure that Respondent had notice of and received all the documents relating to the ACAB proceedings, including arranging for a process server to personally serve Respondent with the ACAB fee petition and other documents. Tr. 34, 42 (Schumack); DCX 5 at 099-102, 106 (PX-20; PX-21; PX-24).

50. On July 5, 2022, the process server personally served Respondent with the ACAB petition and other documents at his home. DCX 5 at 106 (PX-24); Tr. 42-43 (Schumack).

51. On July 15, 2022, Schumack emailed Respondent the witness list, exhibit list, and proposed exhibits for the ACAB hearing. Tr. 44 (Schumack); DCX 5 at 003.

52. Respondent never filed a response to Lion Farms's petition and did not attend the ACAB hearing on July 27, 2022. Tr. 43-44 (Schumack).

53. Yet, knowing that Lion Farms was unwilling to pay him anything more than $250,000, Respondent continued to help himself to Lion Farms's settlement funds. On March 8 and June 17, 2022, Respondent made two more transfers of $10,000 each from the Lion Farms trust account to his personal account. DCX 29 at 003, 005; *see also* DCX 27 at 034, 040.

54. On July 27, 2022, ACAB held a hearing at which it heard testimony from Bruce Lion and Kaufmann. DCX 30 ¶ 36 (Kaufmann). Richard Driscoll, Esquire, an expert retained by Lion Farms, also testified about what a reasonable fee would be for the work Respondent had performed in the litigation. DCX 5 at 109 (PX-26). Driscoll opined that because Respondent did little original work, the value of his services was between $60,000 to $90,000. *Id.* at 109-114; Tr. 46-47, 61-63 (Schumack). Lion Farms also offered numerous documents in support of its claims. DCX 5.

55. At the conclusion of the hearing, ACAB issued a decision and award in favor of Lion Farms in the amount of $2,343,452.32, plus pre-award interest of $351,751, and directed Respondent to reimburse Lion Farms the $1,000 ACAB filing fee. DCX 7; DCX 30 ¶ 37 (Kaufmann). ACAB directed Respondent to pay Lion Farms these amounts by August 26, 2022. DCX 7; Tr. 49-51 (Schumack).

56. Both ACAB and Schumack sent Respondent the ACAB award. Tr. 50-51 (Schumack). Respondent made no payment to Lion Farms, and he did not respond to Schumack's email. DCX 30 ¶ 38 (Kaufmann); Tr. 51 (Schumack).

57. Even after the ACAB decision, Respondent continued to help himself to Lion Farms's settlement funds. He transferred $10,000 from the Lion Farms trust account to his personal account on seven additional occasions in 2022: August 9, August 29, September 7, September 12, October 13, November 1, and December 8. DCX 29 at 004-005. Again, Respondent did not tell Lion Farms or its counsel that he was taking additional funds, and Lion Farms had never consented to Respondent's doing so. Tr. 58, 63-64 (Schumack); DCX 30 ¶ 39 (Kaufmann).

58. Because Respondent did not pay the award, Lion Farms authorized Schumack to file a court action to enforce it. Tr. 51-52 (Schumack); DCX 30 ¶ 40 (Kaufmann).

59. On August 30, 2022, Lion Farms filed a civil action against Respondent in the D.C. Superior Court. *Lion Farms, LLC v. Moody*, Case No. 2022-CA-003936-B. Tr. 52 (Schumack); DCX 8; DCX 9.

60. On September 12, 2022, a process server personally served Respondent with the summons, the motion to confirm the ACAB award with exhibits, the proposed order, and the court's standard scheduling order. DCX 10; Tr. 52-54 (Schumack). That same day, Respondent made yet another $10,000 transfer from the Lion Farms trust account to his personal account (which was in addition to the $10,000 he had transferred five days earlier). DCX 27 at 046; DCX 29 at 004-005; *see* DCX 30 ¶ 39 (Kaufmann).

61. Respondent did not file an answer or otherwise respond to the Superior Court action. Tr. 54 (Schumack); DCX 8.

62. On November 22, 2022, Lion Farms filed a Motion for Entry of Judgment by Default. Respondent did not respond to the motion. DCX 11; Tr. 54 (Schumack).

63. On December 12, 2022, the court entered an order confirming the ACAB award, and entered a judgment in favor of Lion Farms and against Respondent for $2,696,203.32 (the ACAB award of $2,343,452.32, interest of $351,751, and arbitration costs of $1,000). DCX 12. The court also awarded interest at 9% from the date of the judgment and ordered Respondent to pay the court's filing fee of $120. *Id.*; *see* DCX 30 ¶ 41 (Kaufmann); Tr. 55 (Schumack).

64. On December 19, 2022, the court issued a judgment order against Respondent consistent with its December 12, 2022 order. DCX 13; Tr. 55-56 (Schumack).

65. Respondent did not pay Lion Farms anything to satisfy the judgment. DCX 30 ¶ 42 (Kaufmann). Schumack arranged for the judgment to be filed with the Recorder of Deeds to act as a lien on Respondent's real properties. Tr. 55-57, 60-61 (Schumack).

66. After the court judgment was entered against him, Respondent continued to take Lion Farms's settlement funds for his own use. He did so without the knowledge or consent of Lion Farms. DCX 30 ¶¶ 39, 44 (Kaufmann); Tr. 57-58 (Schumack). Respondent made the following additional transfers from the Lions Farms trust account to his personal account:

a. $10,000 on February 1, 2023;

b. $10,000 on April 18, 2023;

c. $10,000 on May 8, 2023;

d. $10,000 on May 16, 2023;

e. $10,000 on June 7, 2023; and

f. $10,000 on July 7, 2023.

DCX 27 at 056, 060, 062, 064, 066; DCX 29 at 004-005.

67. Respondent also withdrew $5,000 in cash from the Lion Farms trust account on July 17, 2023. DCX 27 at 066; DCX 29 at 004-005.

68. As of July 31, 2023, Respondent had taken $585,000 from Lion Farms's settlement and the balance in the Lion Farms trust account was $2,049,343.16, which included the bank interest paid during the more than three

years that Respondent held the settlement funds. DCX 27 at 066; DCX 29 at 004-005.

Disciplinary Counsel's Investigation of Respondent

69. On December 28, 2022, Lion Farms, through Schumack, filed a complaint against Respondent with Disciplinary Counsel. DCX 14; DCX 30 ¶ 43 (Kaufmann); Tr. 57 (Schumack).

70. On December 29, 2022, Disciplinary Counsel sent Respondent a letter enclosing a copy of the complaint with enclosures and asked him to respond to the allegations by January 13, 2023. DCX 15. Disciplinary Counsel sent its letter and the enclosures to Respondent at the email address that he lists with the D.C. Bar, which was the same email address that Respondent used in correspondence with Lion Farms and in court filings in the underlying litigation, and there was no bounce back. Tr. 73-74 (Thornton); *see also* Tr. 68 (Schumack: Respondent had used the account for some time).

71. Respondent did not provide a response or seek additional time to do so. Tr. 74, 76-77 (Thornton).

72. On January 19, 2023, Disciplinary Counsel sent a second letter to Respondent, enclosing the first letter, the complaint, and a subpoena duces tecum. DCX 16; Tr. 77 (Thornton). Disciplinary Counsel sent the January 19, 2023 letter and enclosures to Respondent by email and by regular and certified mail to the home and office addresses he listed with the D.C. Bar. DCX 16 at 001; Tr. 78 (Thornton). The letters sent by regular mail were not returned, and Respondent did not claim the

letter with enclosures sent by certified mail to his home address. Tr. 78 (Thornton). Someone signed for the letter with enclosures sent to Respondent at his business address. Tr. 78-79 (Thornton).

73. Respondent did not file a response to the complaint or produce the documents requested in the subpoena. Tr. 79 (Thornton).

74. On February 1, 2023, Disciplinary Counsel filed with the Board a motion for an order to compel Respondent to respond, which was served on Respondent by email. DCX 17. Respondent did not respond to the motion. Tr. 80-81 (Thornton).

75. But, that same day, Respondent made a $10,000 transfer from the Lion Farms trust account to his personal account. DCX 27 at 056; DCX 29 at 005. By February 1, 2023, Respondent had taken $530,000 of Lion Farms's funds. DCX 29 at 005. He would take another $55,000 by the end of July 2023. *Id.*

76. On February 23, 2023, the Board granted Disciplinary Counsel's motion and directed Respondent to provide a written response within 10 days. DCX 19. The Board served Respondent by email. *Id.* at 001.

77. That same day, Disciplinary Counsel sent another letter to Respondent asking him to respond to the allegations in the complaint and provide the documents described in the subpoena. DCX 20. Disciplinary Counsel's letter enclosed the Board's order together with the previous correspondence and was sent to Respondent by email and mail to his office and home addresses. *Id.* The letters were not returned. Tr. 82-83 (Thornton).

78. Respondent did not respond to Disciplinary Counsel's inquiries. Tr. 83 (Thornton).

79. On February 7, 2023, Disciplinary Counsel moved the Court of Appeals to enforce the subpoena. DCX 18. Disciplinary Counsel served Respondent by email. *Id.* at 003; Tr. 84 (Thornton). Respondent did not respond to the motion. Tr. 84 (Thornton).

80. On March 17, 2023, the Court granted the motion and directed Respondent to provide the requested documents within ten days. The Court emailed and mailed its order to Respondent. DCX 18 at 017-019.

81. That same day, Disciplinary Counsel wrote Respondent asking him to produce his documents responsive to the subpoena. Disciplinary Counsel's letter enclosed the Court's order and another copy of the subpoena and was emailed and mailed to Respondent at his office and home addresses. The email did not bounce back and the letters (with the exception of the certified letter to Respondent's home) were not returned. Tr. 85-86 (Thornton).

82. Respondent never provided any responsive documents. Tr. 86 (Thornton).

83. Disciplinary Counsel sent Respondent the draft charges before they were submitted (DCX 21), and the final version of the charges when they were submitted to the Board Office on March 27, 2023 (DCX 22). Respondent did not respond. Tr. 87-88 (Thornton).

84. When the charges were approved, Disciplinary Counsel sent Respondent a copy of the Specification of Charges by email and asked for his cooperation in accepting service. DCX 23. Respondent did not respond. Tr. 88 (Thornton).

85. The process server was unable to personally serve Respondent, including when, at least on one occasion, Respondent was in his apartment but refused to open the door. DCX 24 at 008. Respondent also did not respond to Disciplinary Counsel's voice message and emails requesting his cooperation. *Id.* at 003, 007, 009.

86. On May 10, 2023, Disciplinary Counsel filed a motion seeking permission from the Court to serve Respondent by alterative means – *i.e.*, by regular and certified mail, and by email. DCX 24. Respondent did not respond to the motion. Tr. 89 (Thornton).

87. On May 18, 2023, the Court granted the motion. DCX 25. Disciplinary Counsel served Respondent in accordance with the order that same day. DCX 3; Tr. 90-91 (Thornton: only the package sent by certified mail to Respondent's home address was returned unclaimed).

88. Respondent did not file an answer. Tr. 91 (Thornton). He also failed to respond to Disciplinary Counsel's emails and voice message relating to the pre-hearing conference, and he failed to appear for the hearing after receiving notice of the hearing date in a scheduling order issued by the Committee. *See* Tr. 6; Order dated August 3, 2023.

## III. CONCLUSIONS OF LAW

For the reasons set forth below, the Hearing Committee finds that Disciplinary Counsel has proven by clear and convincing evidence that Respondent violated Rules 1.5(b), 1.15(a), (c), and (d), 8.1(b), and 8.4(c) and (d), as well as D.C. Bar Rule XI, § 2(b)(3).

### A. Respondent Violated Rule 1.5(b) by Failing to Provide a Written Fee Agreement.

Rule 1.5(b) provides that the writing a lawyer is required to give a client must address not only the basis or rate of the fee and the scope of the lawyer's representation, but also the expenses for which the client will be responsible.

Comment [1] explains that "[i]n a new client-lawyer relationship . . . an understanding as to the fee should be promptly established, together with the scope of the lawyer's representation and the expenses for which the client will be responsible." While "[i]t is not necessary to recite all the factors that underlie the basis of the fee," the agreement should include the factors "that are directly involved in its computation." *Id.* Thus, "[i]t is sufficient . . . to state that the basic rate is an hourly charge or a fixed amount or an estimated amount, or to identify the factors that may be taken into account in finally fixing the fee." *Id.* However, if "developments occur during the representation that render an earlier estimate substantially inaccurate, a revised estimate should be provided to the client." *Id.*

While a writing is required, "[u]nless there are unique aspects of the fee arrangement, the lawyer may utilize a standardized letter, memorandum, or pamphlet explaining the lawyer's fee practices, and indicating those practices

applicable to the specific representation." Rule 1.5, cmt. [2]. For example, a lawyer's hourly rate publication should "explain applicable hourly billing rates . . . and indicate what charges (such as filing fees, transcript costs, duplicating costs, long-distance telephone charges) are imposed in addition to hourly rate charges." *Id.*

Here, when Lion Farms hired Respondent to file a lawsuit against the government, Respondent did not discuss the fees he intended to charge the company. FF 12. Instead, he waited until the end of the representation – over four years after he had filed suit – before demanding a one-third contingency fee. FF 24.[2] Thus, Respondent violated Rule 1.5(b) by failing to provide Lion Farms with any written statement regarding his fees or the scope of the representation.

B. Respondent Violated Rule 1.15(c) by Failing to Notify Lion Farms of the Receipt of Settlement Funds.

Rule 1.15(c) requires a lawyer to "promptly notify the client or third person" "[u]pon receiving funds . . . in which a client or third person has an interest" and to "promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive." This provision "recognize[s] that lawyers often receive funds from third parties from which the lawyer's fee will be paid." Rule 1.15, cmt. [7]. A lawyer violates Rule 1.15(c) if he fails promptly to deliver entrusted funds when the purpose for which he holds them has been rendered

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[2] Rule 1.5(c) describes the specific requirements of a contingency fee agreement, which also must be in writing.

moot. *See In re Smith*, 70 A.3d 1213, 1216-17 (D.C. 2013); *In re Edwards*, 990 A.2d 501, 520-21 (D.C. 2010) (appended Board Report). There is no bright-line test for what constitutes "prompt" payment. *In re Ross*, 658 A.2d 209, 211 (D.C. 1995). Rather, a case-specific inquiry is required. *In re Martin*, 67 A.3d 1032, 1046 (D.C. 2013); *In re Moore*, 704 A.2d 1187, 1192 (D.C. 1997) (per curiam) (appended Board Report) ("no doubt" that six-month delay in paying medical providers is not "prompt"); *Ross*, 658 A.2d at 211 (eleven-month delay was not prompt). Rule 1.15(c) further requires a lawyer to, "upon request by the client or third person, . . . promptly render a full accounting regarding such property, subject to Rule 1.6."

Here, Respondent received the settlement funds in the Lion Farm trust account on November 22, 2019. FF 21. Respondent did not notify Lion Farms that he had received it; rather, on November 26 and 27, 2019, he told Lion Farms that it would receive the funds directly from the government. FF 22-23. On December 6, 2019, Respondent opened a second trust account, where he would transfer the entire settlement amount plus accrued interest. FF 26. He ignored Lion Farms's inquiries about the status of the settlement funds throughout the first half of 2020. FF 29. Lion Farms did not learn that Respondent had been holding the settlement funds until July 2020, after it contacted the government directly. FF 31. Thus, Respondent violated Rule 1.15(c) when he failed to inform Lion Farms that he had received its settlement funds in November 2019 or any time thereafter.

C. Respondent Violated Rules 1.15(a) and (d) by Engaging in Intentional Misappropriation.

Rule 1.15(a) prohibits misappropriation of entrusted funds. Misappropriation is "any unauthorized use of [a] client's funds entrusted to [the lawyer], including not only stealing but also unauthorized temporary use for the lawyer's own purpose, whether or not [the lawyer] derives any personal gain or benefit therefrom." *In re Nave*, 197 A.3d 511, 514 (D.C. 2018) (per curiam) (quoting *In re Anderson*, 778 A.2d 330, 335 (D.C. 2001) (alterations in original)). Rule 1.15(d) requires that the lawyer hold separate and in trust any funds in which the client claims an interest until there is an accounting and severance of interests and to disburse only that portion of the funds that is undisputed.

Misappropriation occurs where (1) client funds were entrusted to the attorney; (2) the attorney used those funds for the attorney's own purposes; and (3) such use was unauthorized. *In re Harris-Lindsey*, 242 A.3d 613, 620 (D.C. 2020) (citing *In re Travers*, 764 A.2d 242, 250 (D.C. 2000)). Funds are "entrusted" when the lawyer is "imbued with authority to prevent their unauthorized use." *Id.* at 624 (applying holding prospectively); *see Anderson*, 778 A.2d at 335; *In re Harrison*, 461 A.2d 1034, 1036 (D.C. 1983) (Misappropriation is defined as "any unauthorized use of client[] [or third party] funds entrusted to [the lawyer], including not only stealing but also unauthorized temporary use for the lawyer's own purpose, whether or not he derives any personal gain or benefit therefrom" (citation and quotation marks omitted)).

Misappropriation is essentially a *per se* offense and does not require proof of improper intent. *See Anderson*, 778 A.2d at 335.[3] Thus, an attorney commits "unauthorized use" when either "the client did not consent to the attorney's use of the funds" or "the funds or assets were accessed without required prior approval by a court" where required. *Harris-Lindsey*, 242 A.3d at 624 (applying holding regarding court approval prospectively). It occurs where "the balance in [the attorney's] trust account falls below the amount due to the client [or third party]." *In re Ahaghotu*, 75 A.3d 251, 256 (D.C. 2013) (internal quotation marks and citations omitted). Thus, "when the balance in [a] [r]espondent's . . . account dip[s] below the amount owed to" the respondent's client or clients, misappropriation has occurred. *In re Chang*, 694 A.2d 877, 880 (D.C. 1997) (per curiam) (appended Board Report) (citing *In re Pels*, 653 A.2d 388, 394 (D.C. 1995)). This is the case even when the attorney has sufficient cash in hand in other accounts to cover the shortage. *See Pels*, 653 A.2d at 394.

Second, Disciplinary Counsel must establish whether the misappropriation was intentional, reckless, or negligent. *See Anderson*, 778 A.2d at 336. Intentional misappropriation occurs where an attorney takes a client's funds for the attorney's personal use. *See Anderson*, 778 A.2d at 339 (intentional misappropriation occurs where an attorney handles entrusted funds in a way "that reveals . . . an intent to treat

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[3] The Court has observed that all findings of misappropriation to date have involved "some finding of a culpable mindset at least rising to the level of negligence." *In re Krame*, 284 A.3d 745, 767 n.11 (D.C. 2022).

the funds as the attorney's own" (citations omitted)). "Reckless misappropriation reveal[s] an unacceptable disregard for the safety and welfare of entrusted funds, and its hallmarks include: the indiscriminate commingling of entrusted and personal funds; a complete failure to track settlement proceeds; the total disregard of the status of accounts into which entrusted funds were placed, resulting in a repeated overdraft condition; the indiscriminate movement of monies between accounts; and finally the disregard of inquiries concerning the status of funds." *Ahaghotu*, 75 A.3d at 256 (internal quotation marks and citation omitted); *see also Anderson*, 778 A.2d at 339 ("[R]ecklessness is a state of mind in which a person does not care about the consequences of his or her action." (internal citations and quotation marks omitted)). Finally, where Disciplinary Counsel establishes the first element of misappropriation (unauthorized use), but fails to establish that the misappropriation was intentional or reckless, "'then [Disciplinary] Counsel proved no more than simple negligence.'" *Anderson*, 778 A.2d at 338 (quoting *In re Ray*, 675 A.2d 1381, 1388 (D.C. 1996)).

Rule 1.15(d) provides, in pertinent part, that "[i]f a dispute arises concerning the respective interests among persons claiming an interest in . . . property [in a lawyer's possession], the undisputed portion shall be distributed and the portion in dispute shall be kept separate by the lawyer until the dispute is resolved." Pursuant to this "unambiguous" rule, "an attorney may not withdraw a portion of . . . deposited funds when the attorney's right to receive that portion is 'disputed' by the client." *In re Haar*, 667 A.2d 1350, 1353 (D.C. 1995) ("*Haar I*"). If the dispute involves a

"lawyer's entitlement to funds that presently or potentially belong to a client, a lawyer who withdraws the funds before the dispute is resolved has committed misappropriation." *In re Midlen*, 885 A.2d 1280, 1286 (D.C. 2005) (citing *In re Haar*, 698 A.2d 412, 417-18 (D.C. 1997) ("*Haar II*")).

Here, in December 2019, Respondent transferred $150,000 of the settlement funds to his personal bank account despite knowing that Lion Farms was still expecting to receive the settlement funds directly from the government and that it had not responded to his claim that he was entitled to a 1/3 contingency fee. FF 24-25, 27. Thus, contrary to Lion Farms's expectation that it could negotiate a fee agreement with Respondent after it received the settlement funds, Respondent secretly began taking settlement funds for himself. FF 25. After spending those funds on personal expenses, the balance in his personal account fell below $50,000 by January 10, 2020. FF 28. Thus, by spending over $100,000 of the settlement funds, while knowing he was not acting pursuant to a fee agreement and lacked authorization to take any particular amount of the settlement as his fee, Respondent engaged in intentional misappropriation, in violation of Rule 1.15(a). *See Anderson*, 778 A.2d at 339.

After Lion Farms learned that Respondent had received the settlement funds, Respondent sent it a check for 2/3 of the total amount. FF 35. Bruce Lion immediately emailed Respondent on August 4, 2020, offering a $1 million fee as opposed to the 1/3 contingency fee Respondent had previously asserted. FF 36-37. Respondent did not respond to that email or multiple follow-up emails and calls.

FF 36-37. Instead, while he was ignoring his client's inquiries, Respondent resumed withdrawing funds from the trust account, in $10,000 increments, between October and December 2020. FF 41. He used those funds to pay personal expenses, and by December 10, 2020, the balance in his personal account fell below $7,500. FF 42. By continuing to use the settlement funds for his own purposes, while he and Lion Farms had not agreed on the amount of his fee, Respondent again engaged in intentional misappropriation, in violation of Rule 1.15(a). *See Anderson*, 778 A.2d at 339. Lion Farms's offer of a $1 million fee did not entitle Respondent to withdraw any portion of the settlement funds, since there had been no clear, unequivocal agreement to that effect. *See* FF 37-38; *Haar I*, 667 A.2d at 1354-55 (explaining that a client, by making a settlement offer, did not concede that the respondent was entitled to withdraw that amount).

Respondent was again notified that Lion Farms disputed his claim to a 1/3 contingency fee in December 2021, when Mr. Schumack first offered $1,600,000 in exchange for an agreement to a mutual release. FF 44. Respondent ignored that offer as well; thus, there was again no mutual agreement that Respondent was entitled to take that or any other amount as his fee. FF 45-46.

In February 2022, Respondent was asked to respond to the ACAB petition filed the month before, in which Lion Farms offered $250,000, which in fact was $180,000 less than the amount he had already taken ($430,000) from the trust account by that point. FF 48; *see* DCX 5 at 097 (PX-19). Respondent did not respond, but nevertheless made two additional transfers of $10,000 in March and

June of 2022, respectively. FF 53. Even after he was personally served with the petition in July 2022 (FF 50) and received notice of the ACAB award in Lion Farms's favor (FF 56), Respondent continued to withdraw settlement funds from the trust account on seven occasions between August and December 2022. FF 57, 60. After the motion to enforce the award was granted in December 2022, Respondent made six additional transfers of $10,000 to his personal account, plus $5,000 in cash, between February and July 2023. FF 66-67. Respondent's numerous withdrawals between March 2022 and July 2023 of funds that were in dispute or owed to Lion Farms pursuant to the ACAB award constituted intentional misappropriation, in violation of Rule 1.15(d). *See Midlen*, 885 A.2d at 1286.

D. Respondent Violated Rules 8.1(b) and 8.4(d) and D.C. Bar Rule XI, § 2(b)(3) by Knowingly Failing to Respond to Disciplinary Counsel's Requests for Information.

Rule 8.1(b) provides, in relevant part, that "a lawyer . . . in connection with a disciplinary matter, shall not . . . knowingly fail to respond reasonably to a lawful demand for information from . . . [a] disciplinary authority . . . ." Thus, a knowing failure to respond to a request from Disciplinary Counsel regarding an ethical complaint constitutes a violation of Rule 8.1(b). *See, e.g.*, *In re Lea*, 969 A.2d 881, 888 (D.C. 2009). The Rule "specifically addresses the requirement of responding to [Disciplinary] Counsel as opposed to the more general requirements of Rule 8.4(d)." *In re Rivlin*, Bar Docket Nos. 436-96 *et al.*, at 41 n.20 (BPR Oct. 28, 2002).

Rule 8.4(d) provides that it is professional misconduct for a lawyer to "[e]ngage in conduct that seriously interferes with the administration of justice." To

establish a violation of Rule 8.4(d), Disciplinary Counsel must demonstrate by clear and convincing evidence that: (i) Respondent's conduct was improper, *i.e.*, that Respondent either acted or failed to act when he should have; (ii) Respondent's conduct bore directly upon the judicial process with respect to an identifiable case or tribunal; and (iii) Respondent's conduct tainted the judicial process in more than a de minimis way, *i.e.*, it must have at least 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). Failure to respond to Disciplinary Counsel's inquiries and orders of the Board and the Court constitutes a violation of Rule 8.4(d). Rule 8.4, cmt. [2]; *see In re Bailey*, 283 A.3d 1199, 1209 (D.C. 2022).

D.C. Bar R. XI, § 2(b)(3) provides that the "[f]ailure to comply with any order of the Court or the Board" shall be "grounds for discipline."

On December 29, 2022, and again on January 19, 2023, Disciplinary Counsel sent Respondent letters requesting a response to the disciplinary complaint filed by Lion Farms. FF 70, 72. He never responded to either letter as required by Rules 8.1(b) and 8.4(d). FF 71, 73. He did so knowingly since Disciplinary Counsel had sent its inquiries and subpoena to the email address and physical addresses on record with the Bar. FF 70, 72, 77, 81. Respondent had previously used the email address in correspondence with Lion Farms and in court filings in the underlying litigation, and he accepted service in the ACAB matter at the residential address six months earlier. FF 50, 70. He later actively evaded personal service of the Specification of Charges at his residential address. FF 85.

Respondent also ignored a Board Order compelling him to respond to Disciplinary Counsel's inquiries and a Court Order enforcing Disciplinary Counsel's subpoena, in violation of Rules 8.4(d) and D.C. Bar R. XI, § 2(b)(3). *See* FF 76-82. Both Orders were sent to Respondent's email address, office address, and residential address on record with the Bar. FF 76-77, 80-81.

E. Respondent Violated Rule 8.4(c) by Engaging in Dishonesty, Fraud, and Deceit.

Rule 8.4(c) provides that "[i]t is professional misconduct for a lawyer to . . . engage in conduct involving dishonesty, fraud, deceit, or misrepresentation." The Court has held that each of these terms encompassed within Rule 8.4(c) "should be understood as separate categories, denoting differences in meaning or degree." *In re Shorter*, 570 A.2d 760, 767 (D.C. 1990) (per curiam). Each category requires proof of different elements. *See In re Romansky*, 825 A.2d 311, 315 (D.C. 2003).

Dishonesty is the most general of these categories. It includes "not only fraudulent, deceitful or misrepresentative conduct, but also 'conduct evincing a lack of honesty, probity or integrity in principle; a lack of fairness and straightforwardness.'" *In re Samad*, 51 A.3d 486, 496 (D.C. 2012) (per curiam) (quoting *Shorter*, 570 A.2d at 767-68). The Court holds lawyers to a "high standard of honesty, no matter what role the lawyer is filling," *In re Jackson*, 650 A.2d 675, 677 (D.C. 1994) (per curiam) (appended Board Report), because "[l]awyers have a greater duty than ordinary citizens to be scrupulously honest at all times, for honesty is 'basic' to the practice of law." *In re Hutchinson*, 534 A.2d 919, 924 (D.C. 1987) (en banc).

If the dishonest conduct is "obviously wrongful and intentionally done, the performing of the act itself is sufficient to show the requisite intent for a violation." *Romansky*, 825 A.2d at 315. Conversely, "when the act itself is not of a kind that is clearly wrongful, or not intentional, [Disciplinary] Counsel has the additional burden of showing the requisite dishonest intent." *Id.*; *see also In re Uchendu*, 812 A.2d 933, 939 (D.C. 2002) ("[S]ome evidence of a dishonest state of mind is necessary to prove an 8.4(c) violation."). Dishonest intent can be established by proof of recklessness. *See Romansky*, 825 A.2d at 315-317. To prove recklessness, Disciplinary Counsel must establish by clear and convincing evidence that the respondent "consciously disregarded the risk" created by his actions. *Id.*; *see, e.g.*, *In re Boykins*, 999 A.2d 166, 171-72 (D.C. 2010) (finding reckless dishonesty where the respondent falsely represented to Disciplinary Counsel that medical provider bills had been paid, without attempting to verify his memory of events from more than four years prior, and despite the fact that he had recently received notice of non-payment from one of the providers). The entire context of the respondent's actions, including their credibility at the hearing, is relevant to a determination of intent. *See In re Ekekwe-Kauffman*, 210 A.3d 775, 796-97 (D.C. 2019) (per curiam).

Rule 1.0 defines fraud as "conduct that is fraudulent under the substantive or procedural law of the applicable jurisdiction and has a purpose to deceive." Rule 1.0(d). The Court has held that fraud "embraces all the multifarious means . . . resorted to by one individual to gain an advantage over another by false suggestions or by suppression of the truth." *Shorter*, 570 A.2d at 767 n.12 (citation omitted).

Fraud requires a showing of intent to deceive or to defraud. *See Romansky*, 825 A.2d at 315; *Hutchinson*, 534 A.2d at 923 (finding no violation of Rule 8.4(c) where the respondent committed misdemeanor violation of Securities Exchange Act of 1934 and crime did not require proof of specific intent to defraud or deceive).

Deceit is the "suppression of a fact by one who is bound to disclose it, or who gives information of other facts which are likely to mislead . . . ." *Shorter*, 570 A.2d at 767 n.12 (citation omitted). To establish deceit, the respondent must have knowledge of the falsity, but it is not necessary that the respondent have intent to deceive or defraud. *In re Schneider*, 553 A.2d 206, 209 (D.C. 1989) (finding deceit where attorney submitted false travel expense forms but did not intend to deceive the client or law firm and there was no personal gain).

As described in Part III, *supra*, Respondent began withdrawing funds from the settlement and using them for personal expenses while knowing that there was no agreement as to his legal fee and that Lion Farms still falsely believed it would be receiving the settlement funds directly from the government. FF 22-30. Respondent's intentional failure to inform Lion Farms that he was holding the settlement funds and had begun withdrawing his purported fee, while ignoring its repeated inquiries, was dishonest, fraudulent, and deceitful.

## IV. RECOMMENDED SANCTION

It is particularly disturbing to the Hearing Committee that Respondent, a sworn officer of the court, chose to ignore all legal process in the disputes with his client. It is unnecessary to reiterate all the repeated efforts to serve Respondent in the numerous judicial and administrative proceedings, including this one; Respondent simply refused to participate. He has clearly demonstrated a total disregard for the legal system that he swore to uphold. These are strong words, but his conduct allows for no other conclusion. His absence before this Committee makes our task rather straightforward.

Disciplinary Counsel has asked the Hearing Committee to recommend the sanction of disbarment. For the reasons described below, we adopt Disciplinary Counsel's recommendation.

The sanction imposed in an attorney disciplinary matter is one that is necessary to protect the public and the courts, maintain the integrity of the legal profession, and deter the respondent and other attorneys from engaging in similar misconduct. *See, e.g.*, *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 Cater*, 887 A.2d 1, 17 (D.C. 2005). "In all cases, [the] purpose in imposing discipline is to serve the public and professional interests . . . rather than to visit punishment upon an attorney." *In re Reback*, 513 A.2d 226, 231 (D.C. 1986) (en banc) (citations omitted); *see also In re Goffe*, 641 A.2d 458, 464 (D.C. 1994) (per curiam).

The sanction also must not "foster a tendency toward inconsistent dispositions for comparable conduct or . . . otherwise be unwarranted." D.C. Bar R. XI, § 9(h)(1); *see, e.g.*, *Hutchinson*, 534 A.2d at 923-24; *In re Berryman*, 764 A.2d 760, 766 (D.C. 2000). In determining the appropriate sanction, the Court of Appeals considers a number of factors, including: (1) the seriousness of the conduct at issue; (2) the prejudice, if any, to the client which resulted from the conduct; (3) whether the conduct involved dishonesty; (4) the presence or absence of violations of other provisions of the disciplinary rules; (5) whether the attorney has a previous disciplinary history; (6) whether the attorney has acknowledged his wrongful conduct; and (7) circumstances in mitigation or aggravation. *See, e.g.*, *Martin*, 67 A.3d at 1053 (citing *In re Elgin*, 918 A.2d 362, 376 (D.C. 2007)). The Court also considers "'the moral fitness of the attorney' and 'the need to protect the public, the courts, and the legal profession . . . .'" *In re Rodriguez-Quesada*, 122 A.3d 913, 921 (D.C. 2015) (per curiam) (quoting *In re Howes*, 52 A.3d 1, 15 (D.C. 2012)).

The law regarding misappropriation is clear and consistent: absent "extraordinary circumstances," disbarment is the presumptive sanction for intentional or reckless misappropriation. *In re Addams*, 579 A.2d 190, 191 (D.C. 1990) (en banc) ("[I]n virtually all cases of misappropriation, disbarment will be the only appropriate sanction unless it appears that the misconduct resulted from nothing more than simple negligence."); *see also In re Hewett*, 11 A.3d 279, 286 (D.C. 2011). The Court further held that "it is appropriate . . . to consider the surrounding circumstances regarding the misconduct and to evaluate whether the mitigating

factors are highly significant and [whether] they substantially outweigh any aggravating factors such that the presumption of disbarment is rebutted." *Addams*, 579 A.2d at 195. The Court recognized that extraordinary circumstances are present when a respondent is entitled to mitigation under *In re Kersey*, 520 A.2d 321, 326 (D.C. 1987), but the Court warned that "mitigating factors of the usual sort" are not sufficient to rebut the presumptive sanction of disbarment, and "[o]nly the most stringent of extenuating circumstances would justify a lesser disciplinary sanction." *Id*. at 191, 193.

As explained above, Respondent engaged in intentional misappropriation. There are no extenuating circumstances presented in this case. To the contrary, Respondent has shown an utter disregard for his obligations as a lawyer both with respect to his client and to these disciplinary proceedings. Therefore, pursuant to *Addams*, disbarment is the only appropriate sanction. Although Respondent's other proven violations are sanctionable, it is not necessary to conduct a detailed sanctions analysis for each violation. Disciplinary precedent clearly establishes that the sanction for intentional misrepresentation is disbarment. The compound effect of all the other proven violations further supports the disbarment decision.

## V. CONCLUSION

For the foregoing reasons, the Committee finds that Respondent violated Rules 1.5(b), 1.15(a), (c), and (d), 8.1(b), and 8.4(c) and (d) and D.C. Bar Rule XI, § 2(b)(3) and should be disbarred. We further recommend that Respondent's

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

HEARING COMMITTEE NUMBER TWO

Jay A. Brozost, Chair

Patricia Mathews, Public Member

Mark Schamel, Attorney Member