THIS REPORT IS NOT A FINAL ORDER OF DISCIPLINE*

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

In the Matter of:	:	
	:	
LAWRENCE D. O'NEILL,	:	
	:	
Respondent.	:	Board Docket No. 19-BD-055
	:	Disc. Docket No. 2018-D113
A Member of the Bar of the	:	
District of Columbia Court of Appeals	:	
(Bar Registration No. 265702)	:	

REPORT AND RECOMMENDATION OF
THE AD HOC HEARING COMMITTEE

Respondent, Lawrence D. O'Neill, is charged with violating Rules 1.5(b), 1.15(a), 1.15(c), 1.16(d), 3.3(a)(1), 3.4(c), 8.1(a), 8.4(b), 8.4(c), and 8.4(d) of the District of Columbia Rules of Professional Conduct (the "Rules"), arising from his handling of entrusted funds from the sale of a client's business interest. Disciplinary Counsel contends that Respondent committed all of the charged violations and should be disbarred as a sanction for his misconduct. In his post-hearing brief, Respondent contends that the case should be dismissed and that no sanction is warranted.[1]

[1] At the hearing, Respondent admitted that he had improperly used his client's funds but sought leniency so that he would be able to continue to practice and have the ability to repay his client. Transcript of the hearing on November 13, and 14, 2019 ("Tr.") 379-80.

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

As set forth below, the Ad Hoc Hearing Committee finds that Disciplinary Counsel has proven by clear and convincing evidence that Respondent violated Rules 1.5(b), 1.15(a), 1.15(c), 1.16(d), 3.3(a)(1), 3.4(c), 8.1(a), 8.4(b), 8.4(c), and 8.4(d), and recommends that Respondent be disbarred.

I. PROCEDURAL HISTORY

On August 12, 2019, Disciplinary Counsel served Respondent with a Specification of Charges ("Specification").

The Specification alleges that Respondent violated the following rules:

- Rule 1.5(b), by failing to communicate in writing to his client the basis or rate of his fee and the scope of the representation;
- Rule 1.15(a), by failing to keep and preserve complete records of entrusted funds;
- Rule 1.15(a), by failing to safekeep and hold entrusted funds in his possession in connection with a representation separate from his own funds[2] and intentionally or recklessly misappropriating the funds;
- Rule 1.15(c), by failing to promptly deliver to the client the funds that the client was entitled to receive;
- Rule 1.15(c), by failing to promptly render a full accounting of the funds he received when requested;
- Rule 1.16(d), by, in connection with the termination of the representation, failing to take timely steps, to the extent

[2] Disciplinary Counsel did not argue or brief the commingling component of Rule 1.15(a), but we must address it nonetheless because Disciplinary Counsel does not have the authority to decline to pursue charges that have been approved by a Contact Member. *See In re Reilly*, Bar Docket No. 102-94 at 4 (BPR July 17, 2003). Having considered the evidence, we conclude that Disciplinary Counsel has not proven this charge.

reasonably practicable, to protect his client's interests by surrendering property or funds to which the client was entitled;

- Rule 3.3(a)(1), by making knowing false statements of fact to a tribunal and/or failing to correct false statements of material fact previously made;

- Rule 3.4(c), by knowingly disobeying an obligation under the Rules of a tribunal;

- Rule 8.1(a), by knowingly making false statements of fact in connection with a disciplinary matter;

- Rule 8.4(b), by committing criminal acts that reflect adversely on his honesty, trustworthiness, or fitness as a lawyer in other respects;

- Rule 8.4(c), by engaging in conduct involving dishonesty, fraud, deceit, and misrepresentation; and

- Rule 8.4(d), by engaging in conduct that seriously interfered with the administration of justice.

Specification at 8-9.

Respondent did not file an Answer. A hearing was held on November 13-14, 2019 before this Ad Hoc Hearing Committee (the "Hearing Committee"). Disciplinary Counsel was represented at the hearing by Deputy Disciplinary Counsel Julia L. Porter, Esquire. Respondent was present and was not represented by counsel. During the hearing, Disciplinary Counsel called as witnesses Adriano Fusco, Mark Walsh, and Azadeh Matinpour, while Respondent testified on his own

behalf. Tr. 25, 144, 226, 299. Disciplinary Counsel's Exhibits ("DX") 1-88 were admitted into evidence, without objection. Tr. 143.[3]

Upon conclusion of the hearing, the Hearing Committee made a preliminary non-binding determination that Disciplinary Counsel had proven at least one of the ethical violations set forth in the Specification. Tr. 378; *see* Board Rule 11.11. Neither party submitted evidence in aggravation or mitigation of sanction.

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) ("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"' (quoting *In re Dortch*, 860 A.2d 346, 358 (D.C. 2004))).

A. Background

1. After graduating from the University of Baltimore Law School, Respondent became a member of the Maryland Bar in 1975 and of the D.C. Bar in May 1979. His D.C. Bar number is 265702. DX 1; DX 19-350.

[3] Disciplinary Counsel offered an additional exhibit, DX 89, after the hearing concluded. Respondent did not object to the exhibit, and the Committee admitted it by order dated December 4, 2019.

2. In 2016, Respondent lived in New York and Ireland and practiced law from those locations. Respondent's letterhead at that time identified his business entity as "O'Neill & Company, International Legal Advisors," listed New York and Irish telephone numbers, and identified himself as "Partner." The letterhead stated that he was admitted in the District of Columbia, Maryland, and before the Supreme Court of the United States. It did not disclose that he was not licensed in Ireland or New York. His email signature block included his D.C. Bar number – 265702. DX 5-122; DX 23-435; DX 24; DX 26; DX 33-459; Tr. 238-39 (Walsh); Tr. 328-330, 334 (O'Neill). O'Neill's current website lists offices in New York and Ireland, and now also in D.C. Tr. 328-30 (O'Neill).

3. In July 2015, Fusco and Enda Tweedy formed Rokebury Designated Activity Company ("Rokebury"), an Irish limited liability company, to lease and develop property in downtown Dublin as a restaurant and night club. DX 5-34-35, 54-57; Tr. 25-26 (Fusco). Mark Walsh, an Irish solicitor, helped Tweedy and Fusco establish Rokebury. He then represented Rokebury as an entity, including in negotiating its leases. DX 5-34, 59-70; Tr. 26 (Fusco); Tr. 227-29 (Walsh).

4. Fusco and Tweedy later had a falling out, and by April 2016 decided that they could no longer operate Rokebury together. Walsh tried to mediate the dispute but eventually advised Tweedy and Fusco that he could not represent either one of them against the other and that they should retain separate counsel to negotiate the severance of their interests in Rokebury. DX 5-35-36; Tr. 26-27 (Fusco); Tr. 230-32, 235 (Walsh).

5. Tweedy retained Daniel O'Connor, an Irish solicitor, as her counsel, and Fusco retained Respondent. Tr. 27-28, 132 (Fusco); Tr. 234-35 (Walsh).

6. Adriano Fusco's brother, Fabio, had introduced Fusco to Respondent as a lawyer who was living and practicing law in Ireland. In May 2016, Respondent had represented Fabio and his Irish company, E Street Online, Ltd. DX 23; Tr. 36-37 (Fusco); Tr. 302-03, 332-33 (O'Neill). Respondent had provided Fabio an engagement letter on his legal letterhead setting forth the terms of Respondent's legal representation of Fabio, including the hourly fees he would charge. DX 23; Tr. 332-35 (O'Neill).

7. In or around June 2016, Adriano Fusco asked Respondent to represent him in the negotiations with Tweedy relating to Rokebury. Fusco believed Respondent was an Irish lawyer or solicitor. Tr. 27-28, 30 (Fusco); Tr. 235-36 (Walsh).

8. Fusco thought that Respondent would provide him a written fee agreement, similar to the one he provided Fabio, and that Respondent would charge for his time, as he had done in Fabio's legal matter. Respondent, however, never gave Fusco a written fee agreement. Tr. 29-30, 37, 106, 132, 140 (Fusco).

9. Walsh continued to be involved in the negotiations as a mediator and proposed that Tweedy and Fusco provide secret bids to buy out the other's interest with the highest bidder becoming the sole owner of Rokebury. DX 5-35-36; Tr. 30-32 (Fusco); Tr. 233-34 (Walsh).

10. Respondent provided legal advice to Fusco and participated in negotiations with Tweedy, O'Connor, and Walsh as Fusco's lawyer. Respondent held himself out to Fusco, Walsh, and O'Connor as Fusco's lawyer, including in his correspondence, on his legal letterhead and in emails. Respondent referred to Fusco as his client and referred to himself as an "Esq[uire]." In a letter to Ms. Tweedy's counsel on Ms. Tweedy's request for additional time, Respondent wrote, "It would be negligence to advise them to grant you more time to close, and malpractice for me to agree to give you more time without their instructions." DX 26-445. He made reference on multiple occasions to having funds sent to his "IOLTA account." DX 5-122; DX 24-DX 29; DX 26-445; Tr. 30, 38, 40-42, 46, 71, 104 (Fusco); Tr. 236-38 (Walsh); *see also* Tr. 335-39 (O'Neill).

11. Fusco and Walsh did not know that Respondent was not licensed to practice law in Ireland. DX 5-33, 36; Tr. 27-29, 90, 106, 132-33 (Fusco); Tr. 237-39 (Walsh).

12. Walsh prepared all the legal documents governing the parties' secret bids for Rokebury, including the closing documents that would transfer sole ownership to the winning bidder. DX 5-37, 72-120; Tr. 45-46 (Fusco). Walsh provided Respondent, in his capacity as Fusco's lawyer, the legal documents he prepared. Tr. 238-39, 241-42 (Walsh). All the documents provided that Irish law would govern the bidding process. DX 5-80, 87, 107; Tr. 294 (Walsh).

13. In late July 2016, Walsh opened the secret bids and declared Tweedy, who had offered €325,000 for Fusco's share, the winner and entitled to sole

ownership of Rokebury. Tr. 33-34 (Fusco); Tr. 240 (Walsh). Walsh received in trust the €325,000 from Tweedy pending completion of the transaction. Tr. 42-43 (Fusco); Tr. 241-44 (Walsh); *see also* DX 65-530 at ¶4. Walsh sent the closing papers to Respondent and Tweedy's solicitor; Respondent provided specific comments regarding completion of the transaction, including that Walsh "transfer the funds which you hold to my account today and to send me a confirmation of the same." DX 27-448-49.

14. On August 2, 2016, Walsh provided Fusco a check for €325,000 payable to Respondent, as Fusco's lawyer in the matter. DX 79; DX 5-124-35; Tr. 34-35 (Fusco); Tr. 243-45 (Walsh). Fusco delivered the check to Respondent, who deposited the funds in his account at Ulster Bank. DX 5-37-38; Tr. 34-35, 43 (Fusco); Tr. 306 (O'Neill).

15. Between early August and mid-September 2016, Respondent disbursed some of the €325,000, at Fusco's direction. Tr. 47-48 (Fusco). Respondent made five transfers directly to Fusco from the Ulster bank to Fusco's Irish bank account: €25,000 on August 8, and then four payments of €10,000 each on August 10, August 19, September 6, and September 16. DX 80; Tr. 48-51 (Fusco).

16. At Fusco's request, Respondent also transferred €6,000 to the Sheriff's office for VAT taxes in early August 2016 (DX 29; Tr. 52-53 (Fusco)); and three payments totaling €80,000 to Fabio in mid-to-late-August, 2016 (DX 5-163; DX 30; Tr. 54, 76 (Fusco)). Fusco had only authorized an initial €40,000 transfer to Fabio

and had instructed Respondent to pay him only €60,000 in total. DX 5-38-39, 46, 127; DX 30; DX 35; DX 36-468; DX 73-563; Tr. 51-52, 54-55, 67, 79-80 (Fusco).[4]

17. Between August 8 and 17, 2016, Respondent also made three transfers of Fusco's funds totaling $104,478.50 from Respondent's Ulster account to Respondent's IOLTA account at JP Morgan Chase in New York ("Chase IOLTA"). DX 84-609-10; Tr. 161, 186-87 (Matinpour). Prior to Respondent depositing Fusco's funds, the balance in the Chase IOLTA was $12.62. DX 84-608-09.

18. Fusco had not requested that Respondent transfer his funds from the Ulster account to JP Morgan Chase and was not aware that Respondent had made the transfer. DX 5-42; Tr. 58-59, 107-08 (Fusco).

19. Immediately after Respondent transferred the entrusted funds to his Chase IOLTA, he began making unauthorized withdrawals. Between August 8-10, 2016, he made three wire transfers to a personal bank account he shared with his wife, totaling $23,000. DX 84-610. He later deposited $25,000 back into the account on August 18, 2016. DX 84-609. He also made a $1,000 transfer to his overdrawn business checking account on August 8, 2016. DX 84-610, DX 85-660;

[4] Fabio had provided financial assistance to Fusco in connection with Rokebury. The brothers agreed that if Fusco was the winning bidder, Fabio would receive a share of Rokebury, and if Tweedy was the winning bidder, Fusco would repay Fabio the funds he had advanced and a percentage of the sales price. DX 5-38, 127; Tr. 32-33, 130, 135, 137 (Fusco). Because Fusco had incurred expenses for the care of their mother, Fusco told O'Neill to pay Fabio no more than €60,000. Tr. 51-52 (Fusco).

Tr. 163 (Matinpour). Finally, he sent $10,622.34 to Andrew Krieger, his friend and client, in two installments on August 17 and August 19, 2016.[5] DX 84-610.

20. On August 19, 2016, without Fusco's authorization, Respondent transferred $45,998.16 (or €40,000) to Fabio (through a Fabio-affiliated company). DX 84-609-10, DX 5-163; Tr. 161-62 (Matinpour); *see* FF 16, *supra*. After that transfer, Respondent should have had $58,480.34 in the Chase IOLTA belonging to Fusco; however, the ending balance on August 19, 2016 was only $48,870.62. DX 84-609-10.

21. By the mid-September 2016, Respondent had disbursed: €65,000 directly to Fusco, €80,000 to Fabio (only €60,000 of which was authorized by Fusco), and €6,000 to the Sheriff. Tr. 76 (Fusco). Respondent made no other transfers to Fusco. DX 86; Tr. 309 (O'Neill). At the end of August 2016, he should have been holding €174,000 in trust for Fusco between the Ulster and Chase IOLTA accounts.

22. Respondent took all of Fusco's remaining funds in the Chase IOLTA and the Ulster accounts, and used them for his own purposes. In September 2016, Respondent made a series of online transfers from the Chase IOLTA account that brought its balance down to $50.84. Specifically, on September 1, 2016, he sent $26,500 for "legal fees" to Krieger. DX 84-612; Tr. 165 (Matinpour). On September 6, 2016, he transferred $8,300 to his personal account. DX 84-614. On

[5] Some of the payments to Krieger were sent to his wife, Valerie Krieger. *See* DX 84-610; Tr. 343-45 (O'Neill).

September 9, 2016, he transferred $2,000 to his overdrawn business account. Tr. 84-812; Tr. 165 (Matinpour). On September 16, 2016, he transferred $9,219.78 to the Ulster account. DX 84-612; Tr. 165. On September 23, 2016, he transferred $2,500 to "Dan," who was not identified. DX 84-612; Tr. 165. Finally, on September 26, 2019, he transferred an additional $300 to Krieger. *Id. See generally* Tr. 309-10, 344-45, 375-77 (O'Neill). Respondent took these funds without Fusco's knowledge or consent. Tr. 101 (Fusco); Tr. 343 (O'Neill).

23. O'Neill also took all of Fusco's funds that remained in his Ulster account. According to his testimony, Respondent used Fusco's funds to pay the legal fees of his friend Krieger who was facing criminal charges in Germany. Tr. 307-10, 344, 375 (O'Neill). He did so without Fusco's knowledge or consent. Tr. 101 (Fusco); Tr. 343 (O'Neill).[6]

24. Respondent concealed from Fusco that he had taken the balance of his funds. Tr. 56-57, 81 (Fusco). When Fusco asked Respondent to forward additional payments from the entrusted funds he believed Respondent was holding, Respondent lied about what he had done with the funds and why he was unable to pay Fusco. Tr. 85, 133 (Fusco); Tr. 311, 343 (Respondent admits he lied). On or about October 5, 2016, Fusco asked Respondent to send him an additional €20,000. Respondent falsely told Fusco that he had wired him the funds and claimed his bank in New York

[6] Respondent failed to obtain any bank records from the Ulster Bank, and thus Disciplinary Counsel was not able to trace the precise movement of funds from the Ulster account. Tr. 177 (Matinpour).

had confirmed that the funds were sent. DX 5-40-41, 129, 131; DX 31-DX 32; Tr. 85, 133 (Fusco). Respondent knew he had not sent any funds; nor could he have done so because he had only $50.84 in his Chase IOLTA account when he falsely represented to Fusco that the funds were on their way. DX 31; DX 84-613; Tr. 311, 343 (O'Neill).

25. Respondent repeated this lie to Fusco for a week and then manufactured another excuse as to why Fusco had not received the funds. He claimed that Chase had put a hold on the transfer because the name Fabio Fusco was on the United Nations terrorist watch list. DX 5-43-45; Tr. 59-60, 63, 138-39 (Fusco). Respondent falsely told Fusco that the bank needed an affidavit from him establishing that neither Fusco nor any member of his family was on the terrorist watch list. DX 5-43-44, 133; Tr. 60-62 (Fusco); Tr. 311 (Respondent admitted this was a lie).

26. In response, Fusco proposed a simple solution, "transfer the monies back into your Irish account and disburse from there." Respondent falsely claimed his bank would not permit him to do so. DX 5-44-45, 135, 139-41, 145. Respondent concealed from Fusco that he already had taken his funds for himself. Tr. 56-57, 74 (Fusco); Tr. 311 (O'Neill).

27. On or around October 13, 2016, Fusco contacted Walsh and told him about Respondent's failure to give him the rest of his money. DX 5-45; Tr. 61-62, 65 (Fusco); Tr. 246 (Walsh). On October 13, 2016, Walsh wrote to Respondent as a "colleague" – *i.e.*, a fellow lawyer – asking him to deliver the funds to Fusco or to

Walsh, on Fusco's behalf. Walsh also asked Respondent to provide an accounting and his records for his handling of the €325,000. DX 5-45-46, 148-51; Tr. 66-67 (Fusco); Tr. 248-49 (Walsh). Respondent acknowledged Walsh's correspondence, but did not respond substantively. Walsh sent Respondent another email on October 15, 2016, repeating his requests for the funds and an accounting. DX 5-47, 153-56; Tr. 67-68 (Fusco).

28. Respondent responded by email on October 17, 2016. DX 5-47-48, 158-63; Tr. 250-51 (Walsh); *see also* DX 33 (another copy of Respondent's email with attachments). Respondent falsely represented to Walsh and Fusco that he held €169,271 belonging to Fusco in his New York IOLTA account. DX 33-459; Tr. 74 (Fusco); Tr. 252 (Walsh) (noting the amount as $186,124.58). He attached what purported to be bank records for his Chase IOLTA. These records were fabricated. Tr. 350-51 (Respondent admitted he fabricated the records). The fabricated records included a €20,000 wire transfer request, a wire detail, and a phony bank statement for the IOLTA account reflecting a number of transactions and a running balance of $445,000 to around $750,000. DX 33-460-62; Tr. 157-58 (Matinpour); Tr. 350-51. In fact, the balance in the Chase IOLTA was $50.84 at the beginning of October and fell to $0.84 after Respondent made a $50 transfer on October 13, 2016, four days *before* he sent his email. DX 84-613; Tr. 166-68 (Matinpour).

29. Respondent also provided an "Account" that purported to list his transfers from the €325,000, including a €20,000 transfer to Fusco on October 4, 2016 which was never made. DX 33-463; Tr. 73-75 (Fusco). In this accounting,

Respondent disclosed that he had paid himself €4,125 for his "Legal Fees" and an additional €580 in "Bank Fees" for a total of €4,705. DX 33-463.

30. Respondent never provided any supporting records or information to demonstrate that he was entitled to take €4,705 from Fusco's funds. Respondent had not requested or obtained Fusco's permission to take €4,705 in legal fees and expenses that he paid himself. Respondent had spent only four to five hours representing Fusco – time that would not support the fees he charged. DX 5-39; Tr. 29-30, 77, 140 (Fusco).

31. In a second email on October 17, 2016, Respondent told Fusco and Walsh that Chase Bank needed the affidavit from Fusco disclaiming any relationship to the alleged terrorist using the alias of Fabio Fusco. Respondent attached a draft affidavit for Fusco's signature. DX 34; Tr. 78-79 (Fusco); Tr. 250-52 (Walsh). In this email and draft affidavit attached thereto, Respondent falsely stated that he held $186,124.58 for "the Fusco brothers" in his IOLTA account, that he had a major closing coming through the account which the "compliance process" was complicating, and that he had provided the bank the "contract" evidencing Fusco's sale of his interest in Rokebury. DX 34. These were all false statements, which Respondent knew. Tr. 353-55 (O'Neill). Respondent's Chase IOLTA had a balance of $0.84, which Respondent must have known having just made a transfer a few days earlier. DX 84-613. The balance in the Chase IOLTA remained at $0.84 through February 23, 2017. DX 84-613-17.

32. Although dubious of Respondent's claim about an alleged terrorist and the bank's need for an affidavit, Fusco signed the affidavit, and Walsh sent it to Respondent. DX 5-165; Tr. 62, 79 (Fusco); Tr. 250-53 (Walsh). Respondent then made additional excuses for why he could not pay Fusco, including that he had not received the affidavit (DX 36), and that the bank had limited the amount of money he could transfer out of his IOLTA account (DX 37). These were false. *See* Tr. 81; (Fusco); 354-55 (O'Neill).

33. For the remainder of October and the first half of November 2016, Walsh continued to call and email Respondent asking him to pay Fusco his money. Respondent responded to some of those requests by stating he had sent the funds or was about to send them. Tr. 253-56 (Walsh); DX 5-48-51, 166-73, 177-79, 181-82, 184-86, 188-90. Respondent sent Mr. Walsh what purported to be bank records for wire transfers from his Chase IOLTA to Fusco's account. DX 5-173-75; Tr. 81, 83 (Fusco); Tr. 254-55 (Walsh). The bank records that Respondent attached to his emails were fabricated. Tr. 352. Respondent never attempted to wire funds from his IOLTA, much less "completed" a transfer. DX 5-174-75; Tr. 84-85 (Fusco); Tr. 255 (Walsh); Tr. 352 (Respondent admitted providing phony bank records). Respondent's Chase IOLTA still had only $0.84. DX 84-613-14; Tr. 168-69 (Matinpour).

34. Because Respondent would not return his funds, Fusco reported him to the Irish police. The police, however, declined to take any action because of the amount involved (less than €1 million). DX 5-50, 179, 182; Tr. 61 (Fusco); Tr. 256

(Walsh). Fusco and Walsh also reported Respondent to the Law Society of Ireland, at which time they learned that Respondent was never qualified or licensed as a solicitor. DX 5-33, 185, DX 40; Tr. 70-71 (Fusco); Tr. 262-63, 265 (Walsh).

35. On November 22, 2016, Walsh submitted a notice of motion supported by Fusco's affidavit and numerous documents to the High Court of Ireland. DX 4-DX 5. The motion and supporting documents sought an injunction preventing Respondent from using Fusco's funds, the return of the €169,271 that Respondent admitted he owed Fusco, an accounting of how Respondent had used the €325,000 he had received initially, and the current whereabouts of the €169,271 that Respondent claimed he was still holding. DX 4-DX 5; Tr. 44-45, 69, 86-87 (Fusco); Tr. 256-57 (Walsh).

36. On November 22, 2016, the High Court issued an ex parte order restraining Respondent from dissipating his assets below €200,000 and scheduling a hearing for November 25, 2016. DX 6; Tr. 92. The High Court stated that plaintiff's solicitor (Walsh) could notify Ulster Bank of the order. DX 6; Tr. 260-61 (Walsh).

37. That same day, Walsh and Fusco drove to Respondent's house in Dublin to serve him with the court order and the documents initiating the lawsuit. Although he was at home, Respondent refused to come to the door and told his son to say he was not home. DX 7-194-95; DX 39; Tr. 90-92 (Fusco); Tr. 258-59 (Walsh). Walsh left the papers in Respondent's door and then called, emailed, and sent text messages to Respondent. Respondent would not answer or respond, other

than to send a return text stating that he was not in Dublin. DX 39-474-75; Tr. 259-60 (Walsh).

38. On November 24, 2016, Respondent responded to one of Walsh's emails. Respondent acknowledged that he owed Fusco €169,271, and stated that he would pay him no later than November 28, 2016. DX 9-227; DX 41; Tr. 266 (Walsh).

39. In the interim, Walsh notified Ulster Bank of the court order. DX 40; Tr. 260-61 (Walsh). Fusco, however, was not able to collect any funds from the bank, which closed the account upon receiving notice of the court action. Tr. 93, 96 (Fusco); Tr. 261 (Walsh); Tr. 311, 367 (O'Neill).

40. Respondent failed to attend the November 25, 2016 hearing at the High Court. Tr. 93 (Fusco); Tr. 265 (Walsh); *see also* Tr. 267 (Walsh). During that hearing, Walsh provided the High Court copies of his recent communications with Respondent, as Respondent had requested him to do. DX 9-216; Tr. 266-67 (Walsh).

41. On November 25, 2016, the High Court entered a judgment against Respondent ordering him to return the €169,271 to Fusco by November 28, 2016 and scheduled another hearing for November 30, 2016. DX 8.

42. Walsh sent Respondent emails attaching the court order, advising him what had transpired at the hearing, and notifying him of the next hearing on November 30, 2016. DX 8; DX 9. Respondent acknowledged receipt of the order and told Walsh that he would return Fusco's funds before the court-ordered deadline.

He subsequently informed Walsh on November 29, 2016 that there had "been a slight delay" in transmitting the funds. DX 9-229-30; DX 42; *see also* Tr. 94-95 (Fusco).

43. Respondent failed to appear for the November 30, 2016 hearing or have anyone appear on his behalf. DX 10; Tr. 95-96 (Fusco); Tr. 267 (Walsh). At the conclusion of that hearing, the High Court issued another order directing Respondent to pay Fusco €169,271 – the amount that Respondent claimed he was holding in trust and owed to Fusco. DX 10. The court also directed Respondent to disclose in writing his assets and warned him that his failure to obey the order could result in imprisonment. DX 10.

44. Respondent was personally served with the High Court's order of November 30, 2016, the following day. DX 11; Tr. 97 (Fusco). Respondent failed to comply with the court order: he did not pay Fusco any money, and he failed to disclose his assets. DX 13-255; DX 17-303; DX 19-320; Tr. 267-68 (Walsh).

45. On December 8, 2016, Walsh requested another court hearing because Respondent still had not complied with the court order. DX 12-13; Tr. 268 (Walsh). After receiving the motion and supporting affidavit filed by Walsh (DX 14-15; Tr. 98 (Fusco)), Respondent stated to Walsh on the phone that he would pay Fusco on December 9, but by no later than December 12. DX 13-256, 262-63, 266. Respondent never sent any funds.

46. The High Court scheduled another hearing for December 15, 2016. DX 16. On December 13, 2016, two days before the hearing, Respondent sent

Walsh a letter, "embarrassed to write" that he had "not been entirely forthcoming with all of the facts regarding Mr. Fusco's funds." He claimed that he had "temporarily lost control of Mr. Fusco's funds, which are currently in the possession of a company, Viktor Koenig AG, a Seychelles company with its principal offices in Dubai" and its chief executive Vijay Kumar Raja. DX 17-295-96. Respondent claimed that: he made a transfer of €200,000 to Raja in error; the funds to make the payment belonged to Fusco; the mistaken payment occurred when the funds in Respondent's account were "restricted by banking compliance to verify certain transactions, including that of Mr. Fusco"; Raja acknowledged the payment was a mistake and promised to return the funds; and Respondent had no intention of converting Fusco's funds. DX 17-295-96; Tr. 100-01 (Fusco); Tr. 268-70 (Walsh). During his testimony before the Hearing Committee, Respondent admitted that this story was false. Tr. 365. In fact, as of the end of September 2016, Respondent had appropriated €174,000 of Fusco's funds for himself and third parties including his friends, the Kriegers. DX 86.

47. Respondent attached to his December 13, 2016 letter what purported to be an affidavit from Raja (DX 17-297.) The content of the purported Raja affidavit supported the false story that Respondent told Walsh and the High Court in December 2016.

48. Respondent's December 2016 version of the story involving Raja contradicted Respondent's previous representations to Fusco and Walsh that he still held Fusco's funds in his IOLTA account. Walsh filed another affidavit with the

court recounting Respondent's previous claims and including Respondent's recent letter with attachments setting forth his latest excuse.[7] DX 17; Tr. 269-70 (Walsh).

49. On December 14, 2016, Respondent sent Walsh another letter, in which he denied ever acting as Fusco's lawyer; claimed he had told both Fusco and his brother that he was not a solicitor or qualified to practice law in Ireland; made disparaging statements about Fusco; and claimed that he had transferred Fusco's funds to New York at Fusco's request. DX 18-314-15; DX 43. Walsh and Fusco submitted additional affidavits to the High Court refuting Respondent's false representations in his recent letters, which they attached to their affidavits. DX 17-304-05; DX 18-307-11; Tr. 106-09 (Fusco).

50. Respondent appeared at the December 15, 2016 hearing and told the High Court his false story about Raja, providing the fabricated affidavit as support. DX 18-314-15; Tr. 105 (Fusco); Tr. 270-71 (Walsh). Respondent told the High Court that he would obtain a loan to pay Fusco the money he was owed, and the court adjourned the case until December 20th. DX 44-45; DX 46-486; Tr. 109-10 (Fusco); Tr. 271 (Walsh).

51. At the December 20, 2016 hearing, Respondent again sought to shift the blame to Raja, claiming Raja had Fusco's funds and refused to return them. Respondent falsely claimed he had arranged for a loan from Chase to repay Fusco.

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[7] Respondent knew that that the court would be provided the false evidence, which Respondent himself said he planned to present at the December 15, 2016 hearing. DX 17-305; DX 43.

DX 46; Tr. 312, 365-66. The court adjourned the case until December 21, 2016. DX 46.

52. During the December 21, 2016, hearing or another hearing around this time, Walsh and William Maher, the barrister representing Fusco, asked the High Court to order Respondent to surrender his passport so that he could not leave Ireland without paying Fusco. Tr. 271-72 (Walsh). The High Court declined to take Respondent's passport (or passports, as Respondent said he had three) based on Respondent's promise not to leave the country and his claims that he was trustworthy, had served on boards of Irish companies, and was an officer of the court. Tr. 119 (Fusco); Tr. 272 (Walsh); *see also* Tr. 279-80 (Walsh).

53. When Respondent testified at the December 21, 2016 hearing, he denied ever being restricted or disqualified from serving on the boards of Irish companies. Walsh later filed an affidavit with the High Court demonstrating that Respondent's testimony, including his denial of being restricted or disqualified as a director and his alleged trustworthiness, were false. DX 19-317-18; Tr. 279-81 (Walsh). Walsh provided the court with documents demonstrating that in March 2013, Respondent had been restricted or banned from serving in various capacities for Irish companies for five years because he had breached his statutory duties as a director. DX 19; Tr. 280-81 (Walsh); *see also* Tr. 323-25 (O'Neill).

54. At the conclusion of the hearing on December 21, 2016, the court adjourned the proceedings based on Respondent's representation that he had secured a loan from Chase Bank to repay Fusco. Respondent said he would pay Fusco before

Christmas, and in no event later than December 31, 2016. DX 20-368; Tr. 271-72 (Walsh).

55. In fact, Respondent had not arranged for a $250,000 loan from Chase as he claimed. DX 47; Tr. 112-13; *see also* Tr. 312 (Respondent had negotiated a line of credit, representing it to be for operational expenses. When he attempted to withdraw the entire line of credit in one transfer, Chase terminated the agreement the basis that he had misrepresented its purpose.). The bank account into which Respondent claimed the loan proceeds were deposited – the Chase 6062-business account – was opened in September 2015. In December 2016, the account never had a balance of more than $850; in January 2017, the highest balance in the account was $1,099.08. DX 85-672-78; Tr. 153, 172-76 (Matinpour).

56. Following the hearing on December 21, 2016, Walsh wrote, emailed, and called Respondent asking him to pay Fusco. Tr. 273-78 (Walsh); DX 20-368-77 (Walsh affidavit); DX 20-380-431; DX 47-52 (correspondence, emails, and phone record of Walsh's communications with Respondent between December 21, 2016, and January 11, 2017). Respondent responded to some of Walsh's emails and text messages by stating that he had sent or was in the process of sending Walsh $171,000 from his 6062-business account at Chase. Respondent attached to some of his emails "bank records" reflecting wire transfers that Respondent claimed he had made or was making. DX 20-388, 401, 426; DX 47-488-89; Tr. 273-75 (Walsh). One of the "bank records" that Respondent sent Walsh was dated January 10, 2017 and reflected a "Finished" $171,000 wire transfer from his 6062-business

account to Walsh's account. DX 20-426. In fact, Respondent had never attempted to wire any funds to Walsh or Fusco. Respondent fabricated the "bank records." Tr. 113-14 (Fusco); Tr. 276-77 (Walsh); Tr. 353, 366-67 (Respondent admitted bank record was fabricated). His 6062-business account from which the transfer was allegedly made had minimal funds, insufficient to cover a $171,000 wire transfer, as Respondent knew, given his numerous deposits in and withdrawals from the account. DX 85-670-79; Tr. 174-76 (Matinpour).

57. In January 2017, Walsh advised the High Court of Respondent's continued failure to pay Fusco or to account for his funds as required by the November 30, 2016 order. DX 19-DX 20. The High Court held at least five more hearings in January and February 2017. *See* DX 20-368; DX 52 (hearings on January 11 and 13, 2017). Respondent attended only two of them. *Id.*

58. At the January 11 hearing, Respondent represented to the court that the funds to pay Fusco had been delayed because of his inability to locate a notary – a representation contradicted by the phony bank record he had sent to Walsh stating the wire transfer was "Finished." DX 20-376, 424 (Respondent falsely claimed that delay in sending funds was caused by need for notarized signatures on lien on his New York apartment securing the loan.).

59. At the next hearing held on January 13, 2017, Respondent told the court he had provided Walsh's firm a check, written on an account in the name of Respondent's wife. DX 53. The Bank dishonored the check. DX 81. Walsh promptly informed Respondent that the funds did not clear, and the check was

returned unpaid, marked "Refer to Drawer." DX 54-55; Tr. 281-82 (Walsh). Respondent provided no explanation and made no further effort to pay Fusco. Tr. 116-17 (Fusco); Tr. 282 (Walsh).

60. Respondent did not appear at the next hearing on January 25, 2017, but a solicitor appeared on his behalf and advised the court that Respondent had left for New York the night before on "urgent client business." DX 57; Tr. 118 (Fusco). The court adjourned the case until February 3, 2017. DX 57; DX 65-531.

61. On February 3, 2017, Respondent again did not appear for the hearing. DX 58; Tr. 283 (Walsh). His solicitor told Walsh that Respondent had promised to send the funds but failed to do so. DX 58. The High Court found Respondent "guilty of contempt" for his continued refusal to comply with the court's order of November 30, 2016 and sentenced him to 28 days of imprisonment. DX 21; DX 58; Tr. 118-20 (Fusco).

62. After the High Court held him in contempt, Respondent did not return to Ireland. Tr. 289 (Walsh).

63. The High Court held a final hearing on February 10, 2017, in which it awarded costs to Fusco. DX 22; Tr. 120 (Fusco); Tr. 284-85 (Walsh). Fusco's legal expenses, including the fees of Walsh and the barrister, totaled €87,414.94 (which includes the VAT taxes). DX 82; Tr. 120-21 (Fusco); Tr. 286-87 (Walsh). Neither Respondent nor his solicitor attended the February 10, 2017 hearing. DX 22.

64. Walsh notified Respondent of the February court orders and provided him copies. DX 59-61; Tr. 287-88 (Walsh). Respondent did not respond to Walsh's

requests that he comply with the November 30, 2016 order and pay Fusco. DX 62; DX 63; Tr. 288-90 (Walsh).

65. In 2017, Walsh and Fusco filed complaints against Respondent with disciplinary authorities in the U.S., initially with Maryland. DX 63. The Maryland Bar Counsel referred Walsh to the Attorney Grievance Committee in New York, where Respondent lives and has his office. DX 64-65; Tr. 121-22 (Fusco); Tr. 290-91 (Walsh).

66. New York declined to take any action because Respondent has never been licensed there and referred the complaint to D.C. DX 64; DX 65; Tr. 122 (Fusco); Tr. 291 (Walsh).

67. Disciplinary Counsel opened an investigation of Respondent in April 2018 and sent him a letter requesting a response to the allegations in the complaint. DX 66.

68. In his response dated April 20, 2018, Respondent represented that "[t]he funds owed to Mr. Fusco have been paid to him in full, and the matter is now closed as to both Mr. Fusco and the Irish courts." DX 67-546. These representations were false, as Respondent knew, because he had not paid Fusco and the court case in Ireland was not closed. DX 67; DX 86; Tr. 124 (Fusco); Tr. 346-47 (O'Neill).

69. Respondent also claimed that: he had never been retained or acted as counsel for Fusco; and that Respondent had moved some of the €325,000 from his Irish bank to his "business account" in New York at Fusco's request. DX 67-546-47.

70. Respondent also repeated the story about Raja, claiming that the €200,000 had been "improperly transferred" from his business account to Raja, his "business partner." He stated that he had raised the necessary sums on his own and paid the debt in full. DX 67-547.

71. These representations to Disciplinary Counsel were false, as Respondent knew. DX 68 (Walsh's reply); Tr. 124-26, 137 (Fusco); Tr. 292-93 (Walsh); Tr. 346-48 (Respondent admitted most statements were lies).

72. In a subsequent response to Disciplinary Counsel sent by email in March 2019, Respondent came up with a different story: Fusco's funds were "stolen" from his account. DX 73-560. He now claimed that the only funds transferred to his IOLTA were the funds owed to Fabio. Respondent also stated that he had paid Fusco the funds he was owed, claiming that he had "borrowed [funds] from a client in Spain" to make the "final payment" to Fusco. DX 73.

73. With his March 2019 response, Respondent provided Disciplinary Counsel a new "Account." DX 73-563. In this accounting, Respondent represented that he had paid €169,000 to Fusco by wire on July 2, 2018, and wrote a check on January 5, 2017, for €271 to an unidentified payee. A review of the bank records demonstrates that this is false. Tr. 149-50 (Matinpour). And Respondent admits that his representation was false. Tr. 349 (O'Neill); DX 86.

74. O'Neill's March 2019 accounting also recharacterized the €4,125 payment made to himself. In the October 2016 accounting to Walsh and Fusco, Respondent represented that the payment was for "Legal Fees," but the March 2019

accounting to Disciplinary Counsel now characterized the payment as an "Agreed Comm." *Compare* DX 33-463, *with* DX 73-563; Tr. 148-49 (Matinpour).

75. Beginning in March 2019, Disciplinary Counsel requested that Respondent provide additional information, documents, and financial records to support his claims. Although Respondent claimed on some occasions that he would, he never did provide this information. Disciplinary Counsel was not able to obtain any records for the Ulster account. DX 67; DX 69-DX 76; Tr. 147-50, 177-78 (Matinpour); Tr. 350 (O'Neill).

76. Disciplinary Counsel sent Respondent the proposed charges in May 2019 (DX 77) and served him with the filed charges in August 2019 (DX 3). Respondent never sought to correct his knowing false statements to Disciplinary Counsel after receiving the charges. Tr. 348-49 (O'Neill).

77. On November 12, 2019, the eve of the hearing, Respondent sent Disciplinary Counsel emails admitting that in fact he never had paid Fusco. DX 86-DX 88; Tr. 345 (O'Neill). Respondent offered yet another story to explain why he had not paid Fusco. Respondent claimed he used Fusco's money to pay the legal fees of his client Krieger. As if it were an explanation, he related that Raja owed Krieger €200,000, and that he (Respondent) had been trying to collect Krieger's money from Raja, and with those funds would be able to pay Fusco. DX 86-88; Tr. 309-10, 355-56, 369 (O'Neill).

78. Respondent provided Disciplinary Counsel what purported to be an affidavit of Raja (DX 86-695). This affidavit differed in appearance from the Raja

affidavit that Respondent provided the High Court in December 2016. DX 17-297; Tr. 184 (Matinpour); *see also* Tr. 358-62 (O'Neill). Respondent admitted that there was only one Raja affidavit and could not explain how the content of the Raja affidavit he provided to Disciplinary Counsel now supported his current story. Tr. 356-64 (O'Neill). Respondent admitted that the story he told the High Court in December 2016 about Raja and the alleged second mistaken payment of €200,000 was false. Tr. 363-65 (O'Neill).

79. To date, Respondent has not produced the original Raja affidavit, despite his agreement to do so. Tr. 357, 361 (O'Neill).

80. On November 12, 2019, Respondent also produced a new "Accounting" of Fusco's money. DX 86-694. In this accounting, Respondent said he used €169,922.34 of Fusco's funds to pay Krieger, Krieger's wife, and Krieger's lawyers. *Id.* Respondent did not provide any records to support his new accounting. The records from Chase refute some of the entries in Respondent's latest accounting. For example, Respondent claimed he transferred $2,000 from his IOLTA account to Krieger's attorney on September 1, 2016. The bank records, however, show no such transfer. Instead, the bank records show that Respondent transferred the $2,000 on September 9, 2016, to his own account and used those funds to pay his personal expenses. DX 84-612; DX 85-663; Tr. 179-80 (Matinpour); *see also* Tr. 375-77 (Contrary to his initial explanation, but upon questioning, Respondent admitted that he had used some of the funds for his personal expenses.)

81. To date, Respondent has failed to pay Fusco any of the more than €170,000 he misappropriated. Tr. 121 (Fusco); Tr. 283, 288-89 (Walsh). Since October 2016, Respondent has received substantial sums, including $50,000 from Krieger's wife in February 2017, and $582,500 in August 2017. DX 84-617; Tr. 370-72 (O'Neill). While he claims he always intended to pay Fusco, he has not paid Fusco a penny in more than three years. Tr. 127 (Fusco); Tr. 288-89 (Walsh); Tr. 319, 322-23, 372 (O'Neill).

82. Respondent's unauthorized taking of Fusco's money caused Fusco substantial hardship. Fusco could not pay his creditors and employees and lost one of his businesses that employed 11 people. He also fell behind on his tax obligations. Tr. 103-04, 127-28 (Fusco); DX 5-52, DX 12-246, and DX 17-304.

III. CONCLUSIONS OF LAW

Disciplinary Counsel contends that Respondent violated all the Rules charged in the Specification of Charges. Of most significance, Disciplinary Counsel contends that Respondent intentionally misappropriated Fusco's funds. In addition, Disciplinary Counsel alleges multiple instances of dishonesty, including: (1) Respondent repeatedly lied to Fusco about what he did with Fusco's money and made false excuses as to why he could not pay him; (2) Respondent fabricated bank records and other documents to support his lies; (3) Respondent made misrepresentations to the High Court in Ireland and failed to comply with the Court's order directing him to pay Fusco the moneys owed; and (4) falsely claiming to Disciplinary Counsel that he had paid Fusco in full, and subsequently,

acknowledging that he had not paid Fusco, but making up another story to explain the missing funds.

Respondent contends that he acted as a business advisor to Fusco, not as a lawyer, and that the District of Columbia Rules of Professional Conduct cannot have extraterritorial application to his activities in Ireland and do not apply to what he characterizes as "non-legal activities." Respondent also contends that he never intended to permanently deprive Fusco of the funds and remains committed to repaying the funds. He acknowledges that his behavior was "deceptive [as] to Fusco" and the "misdirection of Fusco's funds was improper," but contends that it was "neither illegal nor the action of an attorney." R. Brief at 14. He seeks a dismissal of the case.

The Hearing Committee finds clear and convincing evidence that Respondent intentionally misappropriated Fusco's funds in violation of Rule 1.15(a); violated Rule 8.4(b) by committing the criminal acts of larceny, theft, and wire fraud that reflect adversely on his honesty, trustworthiness or fitness as a lawyer; violated Rule 3.3(a)(1) by making false statements of fact to a tribunal; violated Rule 8.1(a) by knowingly making false statements of fact in connection with a disciplinary matter; and violated Rule 8.4(c) by engaging in conduct involving dishonesty, fraud, misrepresentations, and deceit; and also committed other, less serious Rule violations as set forth below.

A. Respondent is Subject to the D.C. Rules of Professional Conduct and He Was Acting as Fusco's Lawyer.

As a preliminary matter, Respondent contends that his conduct is not subject to the D.C. Rules of Professional Conduct. He contends that the D.C. Rules "cannot reasonably have an extraterritorial application" to his activities in Ireland; and further, that he was acting as a business advisor to Fusco, not as a lawyer, and that the D.C. Rules do not apply to his "non-legal activities." R. Brief at 12-14.

As a member of the District of Columbia Bar, Respondent is subject to the jurisdiction of the D.C. disciplinary system regardless of where his misconduct occurred. D.C. Bar R. XI, § 1(a) ("All members of the District of Columbia Bar . . . are subject to the disciplinary jurisdiction of this Court and its Board . . . ."); Rule 8.5(a) ("A lawyer admitted to practice in this jurisdiction is subject to the disciplinary authority of this jurisdiction, regardless of where the lawyer's conduct occurs.").

Only two of the charged Rule violations included in the Specification require as a predicate that the lawyer's misconduct occur during the course of a client representation: Rule 1.5(b) (written fee agreement) and Rule 1.15(a) (safekeeping and maintaining complete records of entrusted funds). Thus, even if he were acting as a business advisor, his conduct violates the other charged Rule violations.

Further, the Hearing Committee concludes that Respondent's contemporaneous statements and actions demonstrate that he was acting as Fusco's lawyer. *See In re Fay*, 111 A.3d 1025, 1030 (D.C. 2015) (per curiam) (providing that the existence of an attorney-client relationship is determined by examining the

"totality of the circumstances" (citing *In re Lieber*, 442 A.2d 153, 156 (D.C. 1982))); *see also In re Francis*, 137 A.3d 187, 192 (D.C. 2016) (per curiam) (noting that once an attorney-client relationship is formed, the attorney "'undertakes the full burdens of a legal relationship no matter how informal or how unremunerative that relationship may be'" (quoting *In re Washington*, 489 A.2d 452, 456 (D.C. 1985))). Respondent's letterhead refers to his company as O'Neill & Company, International Legal Advisors, identifies himself as "Partner," and lists bar memberships in Maryland and the District of Columbia. His email signature block references his District of Columbia Bar number. FF 2. In written communication, Respondent refers to himself as "Esquire" and Fusco as his "client." FF 10. He asked that funds be sent to his IOLTA account, which by definition is a trust account maintained by lawyers. FF 10; *see In re Green*, Board Docket No. 13-BD-020, at 9-10 (BPR Aug. 5, 2015) (finding an attorney-client relationship based in part on an escrow agreement calling for funds to be deposited into the respondent's firm's "attorney escrow account"), *recommendation adopted*, 136 A.3d 699, 700-01 (D.C. 2016) (per curiam). He gave legal advice to Fusco, participated in negotiations, and provided specific comments on the legal documents drafted by Walsh, sharing those comments with Walsh and Tweedy's solicitor. FF 10-14. In response to Tweedy's request for additional time, he referred to his client's interest and commented that to accede to Tweedy's request could be malpractice. FF 10. In an October 2016 accounting, he identified the €4,125 payment to himself as "legal fees." FF 29; *see Green*, Board Docket No. 13-BD-020, at 9-10 (finding an attorney-client

relationship based in part on the attorney's claim of entitlement to fees for "legal services"), *recommendation adopted*, 136 A.3d at 700-01. Lastly, Fusco and Walsh both testified that Respondent held himself out and acted as Fusco's lawyer in connection with the Rokebury transaction. FF 10-14.

B. Major Alleged Rule Violations

1. Respondent Violated Rule 1.15(a) by Intentionally Misappropriating Funds.

Rule 1.15(a) prohibits misappropriation of entrusted funds held "in connection with a representation." *See Green*, Board Docket No. 13-BD-020, at 9-10 (providing that "Rule 1.15(a) applies where 'the fiduciary relationship [bears] a reasonable relationship to [a] Respondent's conduct in his professional capacity as an attorney admitted to practice in the District of Columbia'" (quoting *In re Confidential*, 664 A.2d 364, 367 (D.C. 1995))), *recommendation adopted*, 136 A.3d at 700-01. Misappropriation is '"any unauthorized use of client's funds entrusted to [an attorney], including not only stealing but also unauthorized temporary use for the lawyer's own purpose, whether or not [the attorney] derives any personal gain or benefit therefrom."' *In re Cloud*, 939 A.2d 653, 659 (D.C. 2007) (first alteration in original) (quoting *In re Harrison*, 461 A.2d 1034, 1036 (D.C. 1983)).

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

third party]." *In re Ahaghotu*, 75 A.3d 251, 256 (D.C. 2013) (internal quotation marks and citations omitted). 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)).

Second, Disciplinary Counsel must establish whether the misappropriation was intentional, reckless, or negligent. *See Anderson*, 778 A.2d at 336-38. Intentional misappropriation most obviously occurs where an attorney takes a client's funds for the attorney's personal use. *See id.* at 339 (intentional misappropriation occurs where an attorney handles entrusted funds in a way "that reveals . . . an intent to treat the funds as the attorney's own" (citations omitted)).

"Reckless misappropriation reveal[s] an unacceptable disregard for the safety and welfare of entrusted funds, and its hallmarks include: the indiscriminate commingling of entrusted and personal funds; a complete failure to track settlement proceeds; the total disregard of the status of accounts into which entrusted funds were placed, resulting in a repeated overdraft condition; the indiscriminate movement of monies between accounts; and finally the disregard of inquiries concerning the status of funds." *Ahaghotu*, 75 A.3d at 256 (internal quotation marks and citation omitted); *see also Anderson*, 778 A.2d at 339 ("[R]ecklessness is a state of mind in which a person does not care about the consequences of his or her action." (internal citations and quotation marks omitted)). Further, "'[r]eckless misconduct requires a conscious choice of a course of action, either with knowledge of the

serious danger to others involved in it or with knowledge of facts that would disclose this danger to any reasonable person.'" *Anderson*, 778 A.2d at 339 (quoting 57 Am. Jur. 2d *Negligence* § 302 (1989)). Thus, an objective standard should be applied in assessing whether a respondent's misappropriation was reckless.

Respondent misappropriated Fusco's funds when he took and used Fusco's funds without Fusco's knowledge or consent. Respondent took the Fusco funds remaining in his Ulster account and the Fusco funds in his Chase IOLTA and transferred those funds to himself and to third parties. FF 14-23.

Respondent's misappropriation of Fusco's funds was intentional. Respondent admitted this at the hearing. "I shouldn't have [trusted Raja], but I did, and I took some of Mr. Fusco's money, wrongly, and paid it over to [the Kriegers.]" Tr. 309 (O'Neill); FF 21-23. He treated Fusco's funds as his own, choosing to use those funds to "help out" his friends, the Kriegers, and to fund his own personal expenses. *See, e.g.*, FF 21-24. He never sought permission from Fusco to use his funds, and in fact went to great lengths to deceive Fusco as to the status of his funds. Tr. 309-311 ("I then lied, obfuscated and delayed."); FF 22-25. Respondent's intentional misappropriation of Fusco's funds violated Rule 1.15(a).

2. Respondent Violated Rule 8.4(b) by Committing Criminal Acts That Reflect Adversely on His Honesty, Trustworthiness, or Fitness as a Lawyer in Other Respects.

Under Rule 8.4(b), "[i]t is professional misconduct for a lawyer to . . . [c]ommit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects." Thus, "an attorney may be

disciplined for having engaged in conduct that constitutes a criminal act." *In re Slattery*, 767 A.2d 203, 207 (D.C. 2001). "[A] respondent does not have to be charged criminally or convicted to violate the rule. . . . It is sufficient if his conduct violated a criminal statute and the crime reflects adversely on his honesty, trustworthiness, or fitness." *In re Silva*, 29 A.3d 924, 937-38 (D.C. 2011) (appended Board Report) (citing *Slattery*, 767 A.2d at 207; *In re Pierson*, 690 A.2d 941 (D.C.1997); *In re Gil,* 656 A.2d 303 (D.C. 1995)). Not all criminal conduct violates Rule 8.4(b); rather, "the rule is designed to professionally sanction only those criminal acts that implicate and call into question the fundamental characteristics we wish attorneys to possess." *See In re Harkins*, 899 A.2d 755, 759 (D.C. 2006). To establish a Rule 8.4(b) violation, Disciplinary Counsel must identify and establish the elements of the alleged criminal offense. *See Slattery*, 767 A.2d at 212-13.

Here, Disciplinary Counsel has alleged that Respondent's conduct violated both the larceny statute of New York and the theft statute of Ireland – the two jurisdictions in which Respondent held the Fusco funds before taking them for himself and his friends, as well as wire fraud under U.S. federal law. Under the Court's ruling in *Gil*, the Committee may look to the law of any jurisdiction that could have prosecuted Respondent for the misconduct to determine whether the lawyer's conduct is a "criminal act" under Rule 8.4(b). 656 A.2d at 305.[8]

[8] The Specification of Charges also alleged, in the alternative, that Respondent committed theft under D.C. Code § 22-3211. There is no evidence that Respondent committed any elements of a crime within the District of Columbia; therefore, only New York, Irish, and federal laws are at issue. *See In re Wilde*, Board Docket No.14-BD-067, at 23-24 (BPR July 31, 2019) ("[T]o prove

Section 155.05 of the Penal Law in New York provides in relevant part:

> 1. A person steals property and commits larceny when, with intent to deprive another of property or to appropriate the same to himself or to a third person, he wrongfully takes, obtains or withholds such property from an owner thereof.
>
> 2. Larceny includes a wrongful taking, obtaining or withholding of another's property, with the intent prescribed in subdivision one of this section, committed in any of the following ways:
>
> > (a) By conduct heretofore defined or known as common law larceny by trespassory taking, common law larceny by trick, embezzlement, or obtaining property by false pretenses; . . . .

Respondent's conduct violated the New York statute. He intentionally embezzled or appropriated more than €170,000 he was supposed to be holding in trust for Fusco.[9] He used Fusco's funds to pay himself and third parties, knowing that he did not have Fusco's consent to take the funds. FF 21-23. His lies and fabrication of bank records to cover up his theft confirms his guilty state of mind. FF 23-62.

Respondent's conduct also violated the criminal theft statute in Ireland. The Irish statute provides that "a person is guilty of theft if he or she dishonestly

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a violation of Rule 8.4(b)" based on D.C. criminal law, "Disciplinary Counsel is required to prove by clear and convincing evidence that at least one element of the criminal violation occurred 'within the geographic boundaries of the District of Columbia.'" (quoting *Dobyns v. United States*, 30 A.3d 155, 157-58 (D.C. 2011))), *pending review*, D.C. App. No. 19-BG-702.

[9] Under New York Penal Ch. 40, Pt. Three, T.J. Art. § 155.40, Respondent's theft from the New York Chase IOLTA account constitutes grand larceny in the second degree because he embezzled or stole more than $50,000 of Fusco's funds from the account.

appropriates property without the consent of its owner and with the intention of depriving the owner of it." Section 4 of the Criminal Justice (Theft and Fraud Offences) Act of 2001. The statute further provides that '"appropriates', in relation to property, means usurps or adversely interferes with the proprietary rights of the owner of the property; 'depriving' means temporarily or permanently depriving." Respondent's conduct satisfies all the elements of the Irish criminal statute because he intentionally misappropriated Fusco's funds in the Ulster account for himself and third parties knowing that he did not have Fusco's consent to do so, and thereby deprived Fusco of his funds – for more than three years running. FF 20-23.

Respondent also engaged in criminal wire fraud in violation of 18 U.S.C. § 1343. The elements of wire fraud are: (1) participation in a scheme to defraud; (2) an intent to defraud; and (3) the use of wires in furtherance of the fraudulent scheme. *United States v. Corrigan*, 912 F.3d 422, 429 (7th Cir. 2019). Respondent's scheme included sending emails (wire transmissions) that included false representations that he held the funds in his accounts and had or was transferring them, and that attached fabricated bank records corroborating his lies. Respondent stole Fusco's funds and then engaged in a fraudulent scheme to lull his client into a false belief that his funds were safe. His fraudulent scheme continued during the disciplinary investigation, when Respondent sent emails falsely claiming that he had paid Fusco in full and attaching a false accounting as support.

Respondent's criminal acts of theft and fraud clearly reflect adversely on his "honesty, trustworthiness, or fitness as a lawyer in other respects . . ." as proscribed by Rule 8.4(b). *See, e.g.*, *In re Pelkey*, 962 A.2d 268, 277-79 (D.C. 2008) (stealing funds from a business partner violated Rule 8.4(b)); *see also, e.g.*, *Silva*, 29 A.3d at 940 (falsifying signatures on lease agreement and falsely purporting to have the signatures notarized with the intent to deceive the client violated Rule 8.4(b)); *In re Slaughter*, 929 A.2d 433, 444-45 (D.C. 2007) (forging signature on retainer agreement that lawyer provided to the firm's management committee violated Rule 8.4(b)). After stealing Fusco's funds, Respondent went to great lengths to defraud and deceive his client, including creating and providing him multiple fabricated and forged documents. FF 23-62. Clear and convincing record evidence establishes that Respondent committed criminal acts in violation of Rule 8.4(b) by conduct violating Section 155.05 of the Penal Law in New York (Larceny), Section 4 of the Ireland Criminal Justice (Theft and Fraud Offences) Act of 2001, and 18 U.S.C. § 1343 (Wire Fraud).

3. Respondent Violated Rule 3.3(a)(1) by Making Knowing False Statements of Fact to a Tribunal and Failing to Correct False Statements of Material Fact Previously Made.

Rule 3.3(a)(1) provides that a lawyer shall not knowingly "[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, unless correction would require disclosure of information that is prohibited by Rule 1.6." The obligation under Rule 3.3 to speak truthfully to a tribunal as one of a lawyer's "fundamental

obligations." *In re Ukwu*, 926 A.2d 1106, 1140 (D.C. 2007) (appended Board Report). Rule 3.3 requires a "knowingly" false statement. As the Board noted in *Ukwu*, it is important for the Hearing Committee to determine (1) whether Respondent's statements or evidence were false, and (2) whether Respondent knew that they were false. *Id.* at 1140-41. The term "knowingly" "denotes actual knowledge of the fact in question," and this knowledge may be inferred from the circumstances. *See* Rule 1.0(f); *see also In re Spitzer*, 845 A.2d 1137, 1138 n.3 (D.C. 2004) (per curiam) (the respondent could not "knowingly" violate Rule 8.1(b) without actual knowledge of a Disciplinary Counsel investigation).

While Respondent failed to participate in most of the hearings before the Irish High Court, in the few instances in which he appeared, he made knowing false statements to the court, including that: he had never been restricted or disqualified from serving on the boards of Irish companies; he could not pay Fusco because of a "notary" issue; he had made a second payment of €200,000 to Raja in error, resulting in the loss of Fusco's funds; Raja had Fusco's funds; he had arranged for a loan from Chase to pay Fusco; and he had provided Walsh's firm the funds owed to Fusco by check. FF 46-47, 50-55, 58-59. Respondent never corrected any of the false statements he made to the Irish court. These false statements where material to the Irish High Court's determinations because they led the court to believe that the payment to Fusco was imminent and hid the fact that he had stolen the money. Disciplinary Counsel established by clear and convincing evidence that Respondent

violated Rule 3.3(a)(1) by knowingly making false statements and failing to correct the false statements of material fact previously made to the Irish High Court.

Respondent cannot escape liability for this violation because the court proceedings were in Ireland. *See Pelkey*, 962 A.2d at 277, 280 (Court applied D.C. Rules 3.1, 3.2(a), 3.3(a)(1), 4.4(a), and 8.4(d) to Pelkey's conduct, even though much of it occurred in court proceedings in California where Pelkey was not admitted but proceeded as a *pro se* litigant). The D.C. Rules applied to Respondent in the Irish litigation both while he was *pro se* and while he was represented by a solicitor. In any event, the Irish rules regulating barristers prohibit the same conduct, so applying the Irish rules, which Respondent has never claimed apply to him, would not change the result. *See In re Bernstein*, 774 A.2d 309, 315-16 (D.C. 2001) (Court declined to decide choice-of-law contentions because Bernstein failed to show that application of the Virginia rules would have been more favorable to him).[10]

4. Respondent Violated Rule 8.1(a) by Knowingly Making False Statements of Fact in Connection with a Disciplinary Matter.

Rule 8.1(a) provides that "a lawyer . . . in connection with a disciplinary matter, shall not . . . knowingly make a false statement of fact[.]" The Rule requires Disciplinary Counsel to prove by clear and convincing evidence that Respondent

[10] The Code of Conduct for the Bar of Ireland requires barristers to: not engage in dishonesty or conduct bringing the profession into disrepute or which is prejudicial to the administration of justice (Rule 1.2(b)); not to deceive or knowingly mislead the court, and take appropriate steps to correct misleading statements (Rules 2.2, 5.3, and 5.9(c)); take all reasonable steps to ensure that court engagements are properly fulfilled (Rule 2.15); attend the trial or hearing where a brief is accepted (Rule 4.12); and not to waste the court's time (Rule 5.2).

"knowingly" made a false statement. Note that Comment [1] to Rule 8.1 provides that "it is a separate professional offense for a lawyer knowingly to make a misrepresentation or omission in connection with a disciplinary investigation of the lawyer's own conduct." Moreover, the "[l]ack of materiality does not excuse a knowingly false statement of fact." Rule 8.1, cmt. [1].

While making representations to the contrary, Respondent knew that: he had not paid Fusco in full and that the Irish court order was outstanding; he had moved some of Fusco's funds to his New York account without Fusco's knowledge or consent; he had not paid Fusco at least €170,000 that he was owed; he had not "in error" transferred Fusco's funds to Raja; Fusco's funds were not "stolen" (other than by Respondent himself); the accounting he provided contained false entries; and the accounting provided to Disciplinary Counsel was fabricated. Respondent acknowledged that he lied to Disciplinary Counsel and submitted a fabricated accounting. FF 68, 71, 73. Respondent's knowingly false representations to Disciplinary Counsel violated Rule 8.1(a). FF 67-80.

5. Respondent Violated Rule 8.4(c) by Engaging in Conduct Involving Dishonesty, Fraud, Deceit, and Misrepresentation.

Disciplinary Counsel charges Respondent with a violation of Rule 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit, and misrepresentation). Dishonesty is the most general category in Rule 8.4(c), defined as:

> fraudulent, deceitful, or misrepresentative behavior [and] conduct evincing a lack of honesty, probity or integrity in principle; [a] lack of fairness and straightforwardness . . . . Thus, what may not legally be characterized as an act of fraud, deceit or misrepresentation may still evince dishonesty.

In re Shorter, 570 A.2d 760, 767-68 (D.C. 1990) (per curiam) (internal quotation marks and citation omitted); *see also In re Scanio*, 919 A.2d 1137, 1142-43 (D.C. 2007). Dishonesty in violation of Rule 8.4(c) does not require proof of deceptive or fraudulent intent. *See In re Romansky*, 825 A.2d 311, 315 (D.C. 2003). Thus, when 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." *Id.* at 315.

Respondent's conduct was not merely dishonest. It was fraudulent and deceitful and included multiple knowingly false statements. His misconduct violating Rule 8.4(c) included:

- Misappropriating Fusco's funds held in Ulster and IOLTA accounts (FF 20-23);
- Falsely representing that he held Fusco's funds in his IOLTA account and that he had or would transfer them to Fusco (FF 24-25, 27-33);
- Fabricating bank records to support his misrepresentations that he still held Fusco's funds (FF 28, 33);
- Creating false excuses for why the funds had not been transferred, including that Chase Bank needed an affidavit from Fusco disclaiming any association with an alleged terrorist FF 31);
- Providing his client and later Disciplinary Counsel with false accountings that he knew did not accurately reflect what he had done with Fusco's funds (FF 29-30, 73-74, 80);
- Concocting a story about an alleged double payment to Raja of €200,000 from one of Respondent's accounts that held Fusco's funds and presenting a purported affidavit from Raja (FF 46-50);
- Making misrepresentations in the Irish court proceedings, including that he had held Fusco's funds until a double payment was made to Raja, that Raja had Fusco's funds, that he had never

been restricted or disqualified from serving on the boards of Irish companies, and that Respondent had secured a loan from Chase Bank to repay Fusco (FF 50-51, 53, 55; *see* Part III.B.3, *supra*);

- Repeating the lie to Walsh and others that he would be able to repay Fusco from the Chase loan, fabricating more bank records to corroborate his lie, and giving false excuses for why he had not sent any funds (FF 51, 54-56, 58);

- Making numerous false representations to Disciplinary Counsel in his initial response, including that he had paid Fusco in full, and that Fusco's funds had been transferred to his "business partner," Raja (FF 68-70; *see* Part III.B.4, *supra*);

- Repeating his lie to Disciplinary Counsel that he had paid Fusco, and presenting a false account of what he had done with Fusco's funds (FF 72-74; *see* Part III.B.4, *supra*); and

- Failing to correct his lies for more than a year, and then creating a new false story on the eve of the hearing (FF 77-79).

This pattern of dishonesty was "obviously wrongful" and intentional. Further, he sought to conceal his theft of client funds by deceit and fraud, his dishonesty was prolonged, and his lies were aggravated by his fabrication and presentation of false documents. Considering Respondent's conduct as a whole, we find that he engaged in flagrant dishonesty, which, in addition to our finding of intentional misappropriation, is an independent basis for our recommendation of disbarment. *See Pelkey*, 962 A.2d at 281 & 281 n.34 (providing that disbarment is the presumptive sanction for "flagrant dishonesty"); *In re Pennington*, 921 A.2d 135, 141-42 (D.C. 2007) (defining "flagrant dishonesty" as reflecting '"a continuing and pervasive indifference to the obligations of honesty in the judicial system"' (quoting *In re Corizzi*, 803 A.2d 438, 443 (D.C. 2002)).

C. Other Alleged Rule Violations

1. Respondent Violated Rule 1.5(b) by Failing to Communicate in Writing to His Client the Basis or Rate of His Fee and the Scope of His Representation.

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. Respondent never provided Fusco a fee agreement. FF 8. He charged and appropriated from Fusco's funds €4,125 for "legal fees" and an additional €580 for bank fees. FF 29. Disciplinary Counsel established by clear and convincing evidence that Respondent's failure to explain in writing the fees and expenses for which Fusco would be responsible and how they would be calculated violated Rule 1.5(b).

2. Respondent Violated Rule 1.15(a) by Failing to Keep and Preserve Complete Records of Entrusted Funds.

Rule 1.15(a) requires lawyers to keep "[c]omplete records of . . . account funds and other property" and preserve them "for a period of five years after termination of the representation." *See In re Edwards*, 990 A.2d 501, 522 (D.C. 2010) (appended Board Report).

Despite multiple requests, Respondent failed to produce any records of what he did with the €325,000 except for a single accounting he provided to Fusco and Walsh in October 2016 (FF 29), and two accountings he provided to Disciplinary Counsel, one in March 2019 (FF 73) and another in November 2019 (FF 80). None of the accountings accurately set forth his handling of Fusco's funds, and in fact are

inconsistent. None of the accountings reflect when and in what amounts Respondent transferred Fusco's funds from the Ulster account. FF 75. Disciplinary Counsel established by clear and convincing evidence that Respondent's failure to keep and maintain adequate financial records violated Rule 1.15(a).

3. Respondent Violated Rule 1.15(c) by Failing to Promptly Deliver the Client the Funds That the Client Was Entitled to Receive.

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." *See, e.g.*, *Edwards*, 990 A.2d at 520-21.

Clear and convincing evidence demonstrates that Respondent failed to promptly deliver to the client the funds he was entitled to receive. Respondent admits that Fusco is owed more than €169,000. FF 38. In over three years, Respondent still has not paid Fusco the funds he is owed. Disciplinary Counsel established by clear and convincing evidence that Respondent's failure to promptly deliver the funds to Fusco is a violation of Rule 1.15(c).

4. Respondent Violated Rule 1.15(c) by Failing to Promptly Render a Full Accounting of the Funds He Received When Requested.

Rule 1.15(c) provides that upon request from a client or third person, a lawyer "shall promptly render a full accounting" of "any funds or other property that the client or third person is entitled to receive."

Starting in October 2016, Walsh, on behalf of Fusco, requested that Respondent provide an accounting of Fusco's funds, including supporting

documentation. Respondent ignored most of the requests, but in October 2016 did provide a list of disbursements against the Fusco account. That list was false and did not disclose that he had already taken Fusco's funds for himself and his friends, the Kriegers. FF 24, 29. The only financial documents that Respondent provided were fabricated bank records. FF 28, 33, 56. Disciplinary Counsel established by clear and convincing evidence that Respondent never provided a full and accurate accounting of funds to Fusco, in violation of Rule 1.15(c).

5. Respondent Violated Rule 1.16(d) by, in Connection with the Termination of the Representation, Failing to Take Timely Steps, to the Extent Reasonably Practicable, to Protect His Client's Interests by Surrendering Funds to Which the Client Was Entitled.

Rule 1.16(d) states: "In connection with any termination of representation, a lawyer shall take timely steps to the extent reasonably practicable to protect a client's interests, such as . . . surrendering papers and property to which the client is entitled."

For more than three years, Respondent has made no effort to pay Fusco the funds he admittedly is owed. In an effort to protect Fusco's interests, Respondent could have made periodic payments to Fusco to reimburse him for the funds taken. FF 81. Disciplinary Counsel established by clear and convincing evidence that Respondent's failure to pay Fusco for over three years violates Rule 1.16(d).

6. Respondent Violated Rule 3.4(c) by Knowingly Disobeying an Obligation Under the Rules of a Tribunal.

Rule 3.4(c) provides that a lawyer shall not "[k]nowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists." The "knowledge" element requires proof

of "actual knowledge of the fact in question," which "may be inferred from circumstances." Rule 1.0(f).

Walsh served Respondent with copies of all the pleadings filed and orders issued in the Irish court proceedings. Respondent nevertheless failed to attend most of the court hearings for which he had advance notice. FF 40, 43, 57, 60-61, 63. He had a solicitor appear on his behalf for only two of the hearings. In a November 30, 2016 order the court ordered Respondent to pay Fusco and disclose his assets and their whereabouts. FF 43-44. After Respondent produced what turned out to be a bogus check, another hearing was scheduled for January 25, 2017. The night before that hearing, he fled Ireland and failed to appear at the hearing. The court found him in contempt for failing to comply with its order of November 30, 2016. FF 60-61. His failure to pay Fusco violated the court order. Respondent also failed to comply with other provisions of the order, including disclosing his assets and their whereabouts. FF 44, 61; DX 10-233.

Disciplinary Counsel established by clear and convincing evidence that Respondent's failure to attend the court hearings after being properly served and his failure to comply with the court order violated Rule 3.4(c). *See, e.g.*, *In re McClure*, Board Docket No. 13-BD-018, at 28-29 (BPR Dec. 31, 2015) (ignoring multiple court orders, resulting in a contempt citation, violated Rule 3.4(c)), *recommendation adopted*, 144 A.3d 570, 571-72 (D.C. 2016) (per curiam). Again, it makes no difference that the court proceedings were in Ireland. *See* Part III.B.3, *supra*.

7. Respondent Violated Rule 8.4(d) by Engaging in Conduct That Seriously Interfered with the Administration of Justice.

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 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).

Respondent's conduct before the Irish court and in these disciplinary proceedings satisfied all three elements. As discussed above, Respondent engaged in improper conduct when he: failed to attend court hearings, FF 40, 43, 57,60-61, 63; made false representations to the Irish court FF 50-55; presented false evidence, including the fabricated Raja affidavit FF 46-47, 50; obtained continuances or adjournments based on false promises to pay FF 50, 54; and fled the jurisdiction after being found in contempt. FF 60-63. Respondent engaged in further improper conduct during Disciplinary Counsel's investigation. He made knowing false statements, presented false evidence, and refused to provide information and documentation in response to follow-up requests. FF 70-71, 72-74, 76-77, 78.

Respondent's improper conduct bore directly on the Irish court proceedings and the D.C. disciplinary investigation, and it tainted the processes in both. The

Irish court relied on Respondent's false representations and evidence to adjourn the proceedings on a number of occasions. *See In re Cole*, 967 A.2d 1264, 1266-67 (D.C. 2009) (Rule 8.4(d) is violated if the lawyer's conduct causes the unnecessary expenditure of time and resources in a judicial proceeding). By providing false and misleading information and refusing to provide his financial records, Disciplinary Counsel had to expend time and resources to obtain the information and relevant documents and records from other sources. *See In re Vohra*, 68 A.3d 766, 783 (D.C. 2013) (appended Board Report) (finding a violation of Rule 8.4(d) where "the multiple misrepresentations Respondent made to [Disciplinary] Counsel during the investigation . . . materially interfered with [Disciplinary] Counsel's ability to understand the true facts of th[e] case and caused [Disciplinary] Counsel needlessly to expend time and resources on assembling evidence to disprove those misrepresentations").

Clear and convincing evidence established that Respondent engaged in multiple violations of Rule 8.4(d).

IV. RECOMMENDED SANCTION

In this case, Disciplinary Counsel has asked the Hearing Committee to recommend the sanction of disbarment. Respondent contends in his post-hearing brief that no sanction is warranted. At the hearing, Respondent requested "leniency" to allow him to continue to practice so that he could repay Fusco. Tr. 379. For the reasons described below, we recommend the sanction of disbarment.

A. Standard of Review

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); *Cater*, 887 A.2d at 17. "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)).

B. Presumptive Sanction of Disbarment for Intentional Misappropriation.

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); *In re Hewett*, 11 A.3d 279, 286 (D.C. 2011); *see also In re Mayers*, 114 A.3d 1274, 1279 (D.C. 2015) (per curiam) ("'[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.'") (quoting *Addams*, 579 A.2d at 191). 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*, 190 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 action." *Addams*, 190 A.2d at 191, 193.

Accordingly, once misappropriation involving more than simple negligence has been established, the inquiry turns to whether sufficient mitigating factors rebut

the presumption of disbarment. *Anderson I*, 778 A.2d at 337-38 (citing *Addams*, 579 A.2d at 191).[11]

The Hearing Committee does not find any extraordinary circumstances or mitigating circumstances to rebut the presumptive sanction of disbarment. While he openly admits that his actions were wrong, his behavior to date, including his conduct at the hearing, reveals that he does not comprehend the gravity of his offenses, the harm he has done to his client, and the burdens he has imposed on others. Even in admitting his wrongdoing, his words belie his true concerns – himself. "I have absolutely screwed up here . . . . It has totally disrupted – it hasn't destroyed my life, but it has certainly disrupted my life, my family, my relationships . . . . A few of my closest friends have stood by me. Most people are fairly fickle and scandal upsets them." Tr. 321-22. While making mention of the harm to Fusco, he is most focused on his own predicament – which was entirely of his own making. Respondent puts forward – as if it were a defense – the fact that he never denied owing Fusco the funds (*except to Disciplinary Counsel*) and claims that he still intends to pay him. He fails to appreciate that his "intention" to pay – especially three years later, when he has not paid a penny and never proposed a payment plan – is not mitigating. He requests "leniency" so that he would be able to repay Mr. Fusco – which he claims now is a top priority. This rings hollow, given that in over three years he has not made any effort to pay Fusco. Instead, over the years, he has

[11] As noted above, our finding of flagrant dishonesty is a second, independent basis for disbarment recommendation. *See* Part III.B.5, *supra*.

engaged in a campaign of misrepresentation and deceit, first with Mr. Fusco, then Fusco's solicitor, Mr. Walsh, the Irish High Court, Disciplinary Counsel, and even the Hearing Committee. Under these circumstances, disbarment is the appropriate sanction.

V. CONCLUSION

For the foregoing reasons, the Committee finds that Respondent violated Rules 1.5(b), 1.15(a) (intentional misappropriation and recordkeeping), 1.15(c) (both), 1.16(d), 3.3(a)(1), 3.4(c), 8.1(a), 8.4(b) (all but theft under the D.C. Code), 8.4(c) (all), and 8.4(d), and should receive the sanction of disbarment. 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).

AD HOC HEARING COMMITTEE

Rebecca C. Smith, Esquire, Chair

Marcia Carter, Public Member

Jeffrey Dill, Esquire, Attorney Member