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:	:	
	:	
MONIQUE DANIEL PRESSLEY,	:	
	:	Board Docket Nos. 18-BD-025 &
Respondent.	:	18-BD-093
	:	Disc. Docket Nos. 2015-D265,
A Member of the Bar of the	:	2016-D368, & 2018-D017
District of Columbia Court of Appeals	:	
(Bar Registration No. 464432)	:	

REPORT AND RECOMMENDATION OF THE AD HOC HEARING COMMITTEE

Respondent, Monique Daniel Pressley, is charged with violating Rules 1.1(a) and (b), 1.3(a), (b)(1), and (c), 1.4(a) and (b), 1.5(b), 1.15(a), (b), (c) and (e), 1.16(d), 5.3(a) and (c)(2), and 8.4(c) of the District of Columbia Rules of Professional Conduct (the "Rules"), arising from her representation of clients in three matters. Disciplinary Counsel contends that Respondent committed all of the charged violations, and should be disbarred as a sanction for her misconduct.

As set forth below, the Hearing Committee finds that Disciplinary Counsel has proven violations of Rules 1.1(a) and (b), 1.3(a), (b)(1), and (c), 1.4(a) and (b), 1.5(b), 1.15(a), (b), (c) and (e), 1.16(d), and 8.4(c) by clear and convincing evidence and recommends that Respondent be disbarred.

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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.

I. PROCEDURAL HISTORY

On July 3, 2018, Disciplinary Counsel served Respondent with a Specification of Charges in Board Docket No. 18-BD-025 ("*Pressley I*"). She was served with a Specification of Charges in 18-BD-093 ("*Pressley II*") on October 16, 2018. Respondent did not file an Answer in either case. Respondent requested and received a continuance of the pre-hearing conference from October 29, 2018 to December 13, 2018 due to her inability to hire counsel. At the December pretrial conference, Respondent stated that she was still seeking counsel. The hearing was scheduled to begin on January 23, 2019. On January 17, 2019, six days before the hearing, respondent filed an emergency motion requesting a continuance on the basis that she had identified counsel who was willing to represent her in the matter, contingent upon continuance of the scheduled hearing date. The Chair convened a telephonic hearing on the motion. The identified counsel participated along with Respondent and Disciplinary Counsel. Respondent and the identified counsel represented that they would be prepared and available to proceed with the hearing starting on April 3, 2019. The hearing was continued to April 3, 2019. No counsel ever entered an appearance for Respondent. And Respondent did not respond to Disciplinary Counsel's attempts to confer regarding stipulations of fact, as ordered.

The hearing began on April 3, 2019, and Respondent did not appear, despite being under subpoena by Disciplinary Counsel. Following the conclusion of the first day of the Hearing, Respondent filed an emergency motion to stay the proceedings on the basis that she was gathering documentation with which to request an abeyance

from the Board due to disability. The emergency motion was denied and the hearing resumed, as scheduled, on April 5, 2019 for Disciplinary Counsel's remaining witness and closing argument. Again, Respondent did not appear.

Prior to the hearing, Disciplinary Counsel submitted DX A through D and DX 1 through 50.[1] DX 51-54 were introduced during the hearing. All of Disciplinary Counsel's exhibits were received into evidence. Tr. 190. During the hearing, Disciplinary Counsel called as live witnesses the clients in the three cases at issue (Billy Greer, Paula Amaker, and Randal Landers); Mrs. Amaker's husband, Edwin Amaker; opposing counsel in the Amaker matter (Aileen Oliver); and Disciplinary Counsel's investigator (Kevin O'Connell). Disciplinary Counsel also called Mr. Due Tran, referred to by Respondent as "co-counsel" in the Amaker matter, and successor counsel in the Landers matter (Heather Tenney) to testify remotely.

Upon conclusion of the hearing, the Hearing Committee made a preliminary non-binding determination that Disciplinary Counsel had proven at least one of the Rule violations set forth in the Specifications of Charges. *Id.*; *see* Board Rule 11.11. Disciplinary Counsel did not submit evidence in aggravation of sanction, and the record was closed. Tr. 190.

In accordance with the scheduling order, Respondent's post-hearing brief was due on May 20, 2019. On May 23, Respondent filed a motion requesting an extension until June 4 in part because "she had been delayed out of state due to a

[1] "DX" refers to Disciplinary Counsel's exhibits. "Tr." refers to the transcript of the hearing held on April 3 and 5, 2019.

family matter and has been under physician's care due to two medical issues." She certified that she served Disciplinary Counsel and the Board on Professional Responsibility by mail on May 20, 2019.[2] Disciplinary Counsel filed a response on June 5, explaining that Disciplinary Counsel only received Respondent's motion on June 3 because Respondent had not mailed it until May 31, as evidenced by the postmarked envelope. The Chair denied Respondent's motion as moot but granted Respondent leave to file a renewed motion, attaching the brief, by June 14, 2019. Respondent did not file any subsequent motion or 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 facts 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 fact sought to be established" (quoting *In re Dortch*, 860 A.2d 346, 358 (D.C. 2004))).

A. Background

1. Respondent is a member of the Bar of the District of Columbia Court of Appeals, having been admitted by motion on September 13, 1999, and assigned Bar number 464432. DX A.

[2] The certificate of service states that Respondent mailed copies of "the foregoing Renewed Motion to Hold in Abeyance" to Disciplinary Counsel and the Board on Professional Responsibility. The referenced motion in fact is "Motion for Extension of Time to File Response."

2. Respondent was principal of the Pressley Firm, PLLC, between 2013 and 2017, when the events at issue in this case took place. DX 28 at 4 (Amaker retainer agreement); DX 40 at 12 (Landers retainer agreement). She also made frequent media appearances and represented celebrities. Tr. 40 (Amaker); Tr. 91 (Landers); DX 4 at 1-6 (text messages); DX 22 at 6 (Greer complaint). Her husband, Carlton Pressley was not a lawyer and not connected to the firm. Tr. 134 (O'Connell); DX 27 at 3 ¶ 10. He was affiliated with a separate entity, "The Pressley Group LLC," and Respondent had no relationship with the Pressley Group. DX 27 at 1 ¶ 2, 3 ¶ 10.

3. Before January 2016, Respondent did not maintain an attorney trust or escrow account. *See* DX 25 (Respondent identifying escrow account as SunTrust Bank Account ending in –2767); DX 52 (Disciplinary Counsel subpoena to SunTrust bank for –2767 records from January 1, 2015 to December 31, 2015); DX 53-54 (SunTrust subpoena response stating account was opened after requested time period).

4. On January 12, 2016, Respondent opened a SunTrust Bank attorney trust account ending in –2791, on which she was the sole signatory. DX 39 (signature card).

The Amaker Matter

5. Paula Amaker and her husband, Edwin Amaker, were members of a church where Respondent and her husband, Carlton Pressley, served as elders. Tr. 13 (P. Amaker); Tr. 49 (E. Amaker). The Amakers knew the Pressleys as

"trusted" members of the church community. Tr. 46 (P. Amaker). "They are not just regular church people. These are elders. These are people you go to when you got problems . . . ." Tr. 63 (E. Amaker).

6. On or about September 16, 2013, Mrs. Amaker's business partner, Gary Gunnulfsen, allegedly locked her out of her office, took her equipment and supplies, tarnished her reputation with clients, and generally sabotaged the business she had built over ten years. Tr. 12, 32, 46 (P. Amaker); Tr. 49 (E. Amaker); DX 35 at 7 (complaint).

7. Mr. Amaker spoke about his wife's situation with Mr. Pressley, who recommended that Mrs. Amaker hire Respondent. Tr. 13 (P. Amaker); Tr. 49-50 (E. Amaker).

8. On September 18, 2013, after paying $350 for an initial consultation, Mrs. Amaker hired Respondent. Tr. 17-19 (P. Amaker); DX 28 at 2 (fee agreement).

9. Respondent's fee agreement set forth an hourly rate of $425 per hour and called for an advanced payment of $5,000. DX 28 at 2-3. Respondent agreed to provide Mrs. Amaker with monthly invoices detailing the work she did. DX 28 at 3.

10. Mrs. Amaker paid Respondent $5,000 by check. Tr. 18-19 (P. Amaker); DX 30 at 1 (check). Respondent said she would deposit the funds into an escrow account and draw them down as she earned them. Tr. 19 (P. Amaker); Tr. 51 (E. Amaker).

11. Respondent did not deposit the funds into a trust account, as she did not have one at that time. FF 3. Instead, the next day, she cashed the check. Tr. 137 (O'Connell); DX 30 at 1; *see also* DX 27 at 3 ¶ 8 (Respondent's Response to Disciplinary Counsel Inquiry) (Respondent unable to explain what she did with the funds after cashing the check). Mrs. Amaker did not authorize Respondent to take the funds as cash. Tr. 20 (P. Amaker).

12. On October 22, 2013, Respondent communicated with Mr. Gunnulfsen's attorney – Aileen Oliver – about resolving the dispute. Tr. 76-78 (Oliver). They did not reach an agreement, and this was the last conversation Respondent ever had with Ms. Oliver. Tr. 78 (Oliver).

13. Thereafter, Respondent told Mrs. Amaker the matter would likely go to court; she offered to convert their fee agreement from an hourly basis to a flat fee. Tr. 20-21 (P. Amaker). Respondent told Mrs. Amaker she could pay an additional $3,000 and would not have to pay any additional funds for the life of the case. *Id.*

14. On November 13, 2013, Mrs. Amaker agreed to the flat fee arrangement and paid Respondent an additional $3,000 by check. Tr. 22 (P. Amaker); DX 30 at 2 (check). Respondent told Mrs. Amaker to make sure the funds were available in her bank account, so that Respondent could withdraw the money quickly and move forward with the case: "She says, when you get the check [from your friend], cash it. Put cash in your account. So that the check that I gave her, she could cash immediately." Tr. 22 (P. Amaker). Respondent did not provide an updated fee agreement or otherwise memorialize the flat fee arrangement. *Id.*

15. Again, Respondent did not deposit the funds into a trust account; she did not have one. FF 3; DX 27 at 3 ¶ 9. Respondent cashed Mrs. Amaker's check the day after receiving it. Tr. 137-38 (O'Connell); DX 30 at 2; *see also* DX 27 at 3 ¶ 9. As before, Mrs. Amaker did not authorize Respondent to spend the funds prior to earning them. Tr. 22 (P. Amaker).

16. Thereafter, Respondent told Mrs. Amaker that she was preparing a lawsuit against Mr. Gunnulfsen. Tr. 24 (P. Amaker); DX 28 at 34 (email).

17. Mrs. Amaker communicated to Respondent that her ex-partner continued to denigrate her to clients and steal her business. She wanted to move quickly with the lawsuit to protect what was left of her business. Tr. 23-24 (P. Amaker); DX 28 at 35-36, 41.

18. For the next several months, Respondent said she would file a lawsuit against Mr. Gunnulfsen imminently. Tr. 25 (P. Amaker); DX 28 at 36, 41-42, 46, 58, 62-63, 65 (emails); DX 29 at 7, 9, 14, 20-21, 27 (text messages). Mrs. Amaker continued to ask Respondent to move forward with the case. DX 29 at 18, 27; DX 28 at 41-42, 44, 56. During this period, Respondent rarely returned Mrs. Amaker's phone calls, and Mrs. Amaker frequently had to send multiple emails or text messages to get a response. Tr. 23-26 (P. Amaker); DX 28 at 36-37, 44-54, 58, 62-63; DX 29 at 24-26.

19. Respondent told Mrs. Amaker she was associating with a Maryland lawyer, Due Tran. DX 29 at 14, 17-18, 20-21; DX 28 at 63; *see also* DX 27 at 3 ¶¶ 12-13. She repeatedly used Mr. Tran's unavailability as an excuse to postpone

progress on the case (DX 29 at 17-18, 20-21), telling Mrs. Amaker that he was "critical to moving forward because he collaborates with [her] on all [her] Maryland circuit court cases" (DX 29 at 20) and that she would file suit "in conjunction with [him]." DX 28 at 63.

20. In fact, Mr. Tran had never served as co-counsel or local counsel with Respondent in a Maryland case. Tr. 69 (Tran). He never saw Mrs. Amaker's client file and never reviewed any draft complaint. Tr. 71 (Tran). He never agreed to file a lawsuit on Mrs. Amaker's behalf in Maryland and would not have done so because at the time in question he was winding up private practice to take a job in the federal government. Tr. 72 (Tran).

21. On May 5, 2014, Respondent told Mrs. Amaker she would send a formal demand letter to opposing counsel (Ms. Oliver) before filing suit and would forward a copy to Mrs. Amaker the next day. DX 29 at 21. A month later, Mrs. Amaker had received nothing and followed up with Respondent by text message and e-mail on June 5, 10, and 13. DX 29 at 25-27; DX 28 at 52-54.

22. On June 18, 2014, Respondent emailed Ms. Oliver, purporting "to follow up on a letter sent to you by my firm approximately four weeks ago." DX 28 at 55; *see* Tr. 78 (Oliver). Respondent forwarded a copy of the email to Mrs. Amaker. DX 28 at 55. Respondent had not previously sent any letter to Ms. Oliver. Tr. 78-81 (Oliver); DX 31 at 9 (email from Oliver to legal assistant).

23. In the June 18, 2014 email, Respondent told Ms. Oliver that the "numerous actionable claims [against Mr. Gunnulfsen] include tortious interference

with business contracts, illegal removal from commercial rental property, conversion of shared property for sole personal and professional use, and slander." DX 28 at 55.

24. In Maryland, tortious interference and property damage fall under the general civil statute of limitations of three years. Md. Code Ann., Cts. & Jud. Proc. § 5-101; *see Dual Inc. v. Lockheed Martin Corp*., 857 A.2d 1095, 1105 (Md. 2004). The statute of limitations for slander is one year. Md. Code Ann., Cts. & Jud. Proc. § 5-105.

25. On June 19, 2014, Ms. Oliver replied to Respondent's email, stating that she never received the referenced letter and asking Respondent to send it by email. DX 32 at 1 (email); Tr. 78-79 (Oliver). Respondent did not reply or otherwise communicate with Ms. Oliver thereafter. Tr. 79-80 (Oliver). *See generally* DX 38 (Respondent's subpoena response containing her outgoing emails in the matter, but no email replying to Ms. Oliver).

26. Nevertheless, over the next two months, Respondent told Mrs. Amaker that Ms. Oliver was discussing the demand letter with her client and had asked for additional information. DX 28 at 58, 62-63. In fact, Ms. Oliver had not asked for additional information, other than a copy of the letter purportedly sent earlier. Tr. 78-80 (Oliver).

27. By October 2014, Mrs. Amaker was feeling more and more upset and desperate because she was not seeing any results or evidence of work being done. Tr. 26-27 (P. Amaker). Respondent still had not sent Mrs. Amaker a draft complaint

and had not filed a lawsuit on her behalf. Tr. 24-27 (P. Amaker). Mrs. Amaker expressed her frustration to her husband, who talked to Mr. Pressley about the matter. Tr. 27 (P. Amaker); Tr. 53 (E. Amaker). Mr. Pressley told the Amakers that he would handle Mrs. Amaker's case because Respondent was busy with other matters. Tr. 28, 31, 40 (P. Amaker); Tr. 53 (E. Amaker).

28. Mrs. Amaker understood Mr. Pressley to be an attorney who worked with Respondent at The Pressley Firm. Tr. 28 (P. Amaker). In fact, Mr. Pressley was not an attorney and was not affiliated with The Pressley Firm. Tr. 134 (O'Connell); DX 27 at 3 ¶ 10.

29. For almost two years, between October 2014 and September 2016, Respondent did not have any communication with Mrs. Amaker. Tr. 40 (P. Amaker). *See generally* DX 38. The Amakers understood that Respondent's husband was keeping her informed throughout this period. Tr. 31, 40-41 (P. Amaker); *see* DX 28 at 66 ("Carlton told me that he updated you on where things stand . . . ."). *Compare* DX 28 at 6, *with* DX 33 at 54 (email originally sent to Respondent forwarded to Mrs. Amaker by Mr. Pressley).

30. After he "took over" the case, Mr. Pressley continued to lead Mrs. Amaker to believe that her case was progressing, telling her that:

- he would file a lawsuit on her behalf (Tr. 31 (P. Amaker); DX 34 at 10-11 (text messages));
- he was engaging in settlement discussions with opposing counsel (Tr. 32-33 (P. Amaker);
- he would conduct a "deposition" of Mrs. Amaker at his church (Tr. 33-34 (P. Amaker));

- based on the deposition, "we are looking at 750,000 that you can get back from this case." *Id.*
- court proceedings were beginning; court proceedings were delayed (DX 34 at 17, 20-21, 23-26);
- motions were being filed in court (DX 34 at 26-27); and
- he was attempting to transfer the case from Maryland to D.C. (Tr. 31 (P. Amaker); Tr. 53 (E.Amaker)).

31. In fact, no case had ever been filed in court, and Mr. Pressley had never spoken with Mr. Gunnulfsen's attorney. Tr. 81-82 (Oliver). Mr. Pressley took advantage of the Amakers' lack of familiarity with legal proceedings to mislead them about the status of the case. Tr. 33-34, 36-37 (P. Amaker) (what Mr. Pressley called a "deposition" took place at the church with Mr. Pressley asking Mrs. Amaker questions, and his "assistant" taking notes; opposing counsel did not attend).

32. After nearly two years "handling the case," Mr. Pressley told Mrs. Amaker that Respondent would resume responsibility. Tr. 39 (P. Amaker). On September 19, 2016, Respondent emailed Mrs. Amaker, "Carlton told me he updated you on where things stand and we can now setup [sic] a final meeting and discussion re next steps involved with filing suit." DX 28 at 66; *see* Tr. 39-40 (P. Amaker).

33. On or about October 5, 2016, Mr. and Mrs. Amaker met with Respondent. DX 28 at 68-69. Mrs. Amaker complained that it had been three years and Respondent had not done anything. Tr. 41-42 (P. Amaker). Respondent said that she had been "off this case" and told Mrs. Amaker she would need to pay several thousand dollars for additional expenses, if she wanted to proceed with filing the lawsuit. DX 28 at 71; *see* Tr. 42-44 (P. Amaker); Tr. 56 (E. Amaker).

34. On October 26, 2016, Mrs. Amaker filed a complaint with the Office of Disciplinary Counsel. DX 35 at 4-7. She also asked Respondent for a refund. Tr. 43-44 (P. Amaker). Respondent did not give her any refund. *Id.*

35. Mrs. Amaker later petitioned the Attorney Client Arbitration Board for a refund. Tr. 44-45 (P. Amaker). After several delays at Respondent's request, a hearing was scheduled for February 21, 2019. *Id.*; DX 51 (ACAB Consent Decision). On the day of the hearing, Respondent attempted again to delay the hearing. Tr. 45 (P. Amaker). When that failed, she signed an agreement promising to pay Mrs. Amaker $8,350 by March 31, 2019. *Id.*; DX 51. As of April 3, 2019, Respondent had not made any payment. Tr. 46 (P. Amaker).

36. Mrs. Amaker and her husband suffered in multiple ways from Respondent's conduct. Tr. 46 (P. Amaker). Mrs. Amaker described being "blind-sided" and "victimized twice, by two people I utterly, utterly trusted." Tr. 46 (P. Amaker). To raise the money to pay Respondent's fee, she went into debt to family and friends and had to seek public assistance. *Id.* As a result, she experienced depression, continuing anxiety, and humiliation from Respondent's treatment. *Id.*; Tr. 61-62 (E. Amaker). Mr. Amaker also suffered, as he felt responsible for having referred his wife to Respondent. Tr. 63-64 (E. Amaker).

The Greer Matter

37. In 2013, Billy Greer filed a lawsuit alleging gender and age discrimination in the United States District Court for the District of Columbia against his employer, the University of District of Columbia. Tr. 166 (Greer); DX 2

(complaint). UDC moved to dismiss Mr. Greer's complaint. DX 1 at 2 (docket sheet). After numerous extensions of time, the Court stayed the briefing schedule on the motion and permitted Mr. Greer's attorney to withdraw. *Id.* at 3.

38. The court then scheduled a February 11, 2015 hearing at which any substitute counsel was to appear. Tr. 169 (Greer); DX 1 at 4 (docket sheet). Based on a friend's referral, Mr. Greer called Respondent, who agreed to meet him on the day of the hearing. Tr. 168 (Greer).

39. On the morning of February 11, 2015, Mr. Greer and Respondent met at a Starbucks near the federal courthouse. Tr. 168 (Greer); DX 4 at 1-7 (text messages). After Mr. Greer explained his case, Respondent agreed to attend the hearing that afternoon and represent him. Tr. 168 (Greer). Respondent estimated she would need eight hours to handle the first stage of the lawsuit, including filing an amended complaint. *Id.* She charged Mr. Greer a rate of $350 per hour and asked that he pay $2,400 in advance to litigate the case through the motion to dismiss. *Id.* Respondent did not provide Mr. Greer with a written fee agreement. Tr. 172-73 (Greer). *See generally* DX 25 (client file subpoena response).

40. At the hearing, Respondent informed the court that she was representing Mr. Greer. DX 7 (hearing transcript). Respondent acknowledged awareness of the pending motion to dismiss and said she would need to amend the complaint because "there [were] just some things necessary for viability of the case that [were] missing." *Id.* at 3. She estimated doing so within two weeks, which the

court permitted; however, she did not file it until March 25, 2015 – a month and a half later. *Compare* DX 7 at 3-4, *with* DX 9 at 1.

41. After the hearing, Mr. Greer met up with Respondent and paid her $2,400. Tr. 172 (Greer). Mr. Greer initially gave Respondent a cashier's check (or money order) but she insisted that he pay in cash. *Id.* Ms. Pressley and Mr. Greer drove around the corner to a nearby bank. He "went in and cashed it, and came out to her vehicle and gave her the [$]2400." Tr. 186 (Greer). Mr. Greer did not authorize Respondent to spend the funds before earning them or to give the money to Carlton Pressley. Tr. 172 (Greer).

42. Respondent deposited the funds into an overdrawn Bank of America business checking account for "The Pressley Group LLC," restoring the balance to $2,054.74. DX 6 at 3, 7 (bank statement showing $2,400 deposit on Feb. 11, 2015; balance $2,054.74). Carlton Pressley, Respondent's husband, was the sole signatory on the account. DX 5 (signature card). Respondent had no relationship with the Pressley Group. DX 27 at 1 ¶ 2, 3 ¶ 10.

43. By February 25, 2015, two weeks later, the balance of the Pressley Group account had dropped to $121.04. DX 6 at 7. Mr. Greer's funds were spent on gas, food, cash withdrawals, and other day-to-day expenses. *Id.* at 3-7. At that point, Respondent had done no work on the case other than meeting with Mr. Greer and attending the five-minute status conference. *See* DX 7 at 1, 5 (conference began at 2:07 PM and ended at 2:12 PM); DX 1 at 6 (Respondent's notice of appearance filed March 20, 2015).

44. In late March, Respondent asked Mr. Greer to send her an electronic copy of his original complaint and his date of birth. DX 8 (text messages). Respondent did not otherwise interview Mr. Greer about his case. Tr. 170, 174 (Greer).

45. On March 25, 2015, Respondent filed a motion for leave to amend the complaint and an amended complaint. DX 9 (filings). The amended complaint added two sentences alleging Mr. Greer's race, gender, and age, and altered another sentence to include allegations of gender and age discrimination. DX 9 at 13. Otherwise, the amended complaint tracked the original filing. DX 9 at 12-20. Respondent did not cite the Age Discrimination in Employment Act in support of Mr. Greer's age discrimination claim, citing instead Title VII of the Civil Rights Act of 1964. DX 9 at 9. Respondent also did not allege that Mr. Greer had applied for positions awarded to others or that the positions he had applied to were awarded to persons outside of a protected class, even though the underlying facts would have supported such allegations. DX 9 at 2-8.

46. On April 8, 2015, UDC moved to dismiss Mr. Greer's complaint advancing the same arguments it had set forth in the motion pending when Respondent entered the case – including the plaintiff's failure to cite the ADEA and the lack of sufficient factual allegations. *Compare* DX 11, *with* DX 3 (previous motion to dismiss).

47. On April 20, 2015, three days before Mr. Greer's opposition was due, Respondent sent Mr. Greer a text message telling him that they needed to discuss

their fee arrangement going forward. DX 12 at 1-7 (text messages). Mr. Greer was confused because he had understood the $2,400 payment to cover the motion to dismiss phase of the lawsuit. Tr. 174-75 (Greer); DX 12 at 11-13 (text messages); *see also* DX 25 at 261 (Respondent's email saying they would revisit the fee arrangement "should your law suit survive the motion to dismiss by UDC"). Although Respondent knew from the start she would need to amend the complaint, she now told Mr. Greer she had "ended up having to amend [his] complaint" and had already exhausted his $2,400 payment. DX 12 at 14. She told Mr. Greer that if he did not pay additional fees, she would not work on the case further. Tr. 187 (Greer); DX 12 at 11, 15.

48. Mr. Greer felt his "back [was] against the wall" and reluctantly agreed to pay an additional $7,500 as a flat fee for the remainder of the case. Tr. 175, 187 (Greer). At Respondent's direction, Mr. Greer deposited the funds in three installments into the Pressley Group account. Tr. 175-76 (Greer); Tr. 135-36 (O'Connell); DX 12 at 16-19; DX 13 at 3 (bank statement); DX 14 (deposit slips); DX 16 at 3 (bank statement). Respondent did not tell Mr. Greer that the account belonged to her husband. Tr. 176-77 (Greer). She did not provide a retainer agreement, setting forth milestones by which she would earn the flat fee, and Mr. Greer did not authorize Respondent to spend the funds before resolving his case. *Id.*

49. On May 1, 2015, Respondent filed a short opposition to UDC's motion to dismiss. DX 15 (Plaintiff's Opposition). She argued that even if there were

deficiencies in the amended complaint, it would be "both equitable and permissible" to allow Mr. Greer a further amendment. DX 15 at 6.

50. After Mr. Greer deposited the last of the $7,500 into the Pressley Group account, the balance was $4,114.32. Tr. 136 (O'Connell); DX 16 at 11. Within two weeks, the balance dropped to $17.47. *Id.* Again, the funds were spent on food, gas, cash withdrawals, and other day-to-day expenses. DX 16 at 4-10.

51. On June 11, 2015, the court held a hearing on UDC's motion to dismiss. DX 17 (hearing transcript). The court took Respondent to task for failing to make substantial amendments to the complaint, despite having the benefit of knowing UDC's arguments as to its specific insufficiencies. *Id.* Respondent blamed prior counsel for not providing a file, but she could not explain why her amended complaint perpetuated identical legal deficiencies. *Id.*

52. On July 10, 2015, the court granted UDC's motion to dismiss, concluding that the amended complaint failed to state a claim for any of the alleged causes of action. DX 18 (memorandum opinion). The court noted that Respondent "had the benefit of knowing the arguments [UDC] had raised almost one year earlier about the inadequacies of the original complaint" but that,

> [d]espite this advance knowledge, the First Amended Complaint made minimal changes to [Mr. Greer's] allegations, and the arguments in the motion before the [c]ourt mirror[ed] those made previously. . . . [While the Court was] sympathetic to the difficulties replacement counsel faces when taking on an already-pending case . . . these difficulties cannot be used to explain many of the deficiencies in the operative complaint. [Mr. Greer] did not need access to documents in order to remedy his failure to specifically invoke the Age Discrimination in Employment Act [or] to plead, on information and belief if necessary, that he applied

> for (or was prevented from applying for) and was qualified for the jobs he ultimately did not receive.

Id. at 2-3 (internal citations omitted).

53. The court nonetheless granted Mr. Greer another opportunity to file for leave to amend the complaint "[b]ecause it does appear possible that a second amended complaint could survive a motion to dismiss." *Id.* at 19. The Court set a deadline of July 24, 2015 to do so. *Id.*; DX 1 at 9.

54. Respondent did not tell Mr. Greer about the court's decision before the deadline and did not move for further amendment. Tr. 180-81 (Greer); DX 1 at 9. On July 27, 2015, the court dismissed and closed the case. DX 1 at 9.

55. Almost a month after the Court's order, on August 6, 2015, Respondent informed Mr. Greer that the Court had dismissed his case. Tr. 177-78 (Greer); DX 19 (text messages). She blamed prior counsel, mischaracterized the court's ruling, and did not tell Mr. Greer the court had afforded her another opportunity to amend the complaint. DX 19 at 3-5.

56. Mr. Greer asked Respondent for a copy of the court decision. Days later, when Respondent finally emailed Mr. Greer a copy, he learned that the court had criticized Respondent and had given her another opportunity to amend the complaint. Tr. 179-80 (Greer). Mr. Greer notified the court that he was filing a complaint against Respondent and asked for reconsideration. Tr. 181 (Greer); DX 20 (*pro se* motion for reconsideration). The court reopened the case. At that point, Mr. Greer, however, did not have funds to hire counsel because he had spent his money hiring Respondent. Tr. 181 (Greer); DX 21 (notice).

57. Months after the case was dismissed, in December 2015, Respondent refunded $7,500. Tr. 182-83 (Greer); DX 19 at 9-10; DX 25 at 249 (deposit receipt).

58. Mr. Greer later filed for arbitration, seeking the $2,400 that Respondent had not refunded. Tr. 183 (Greer). The arbitrator awarded him $1,200 and gave Respondent a deadline in October 2018 to pay the award. *Id.* Respondent did not make the payment, forcing Mr. Greer to file a complaint in Superior Court to enforce the award, which was still pending at the time of the disciplinary hearing. Tr. 183-84 (Greer).

59. Mr. Greer never got the chance to pursue his discrimination case against his employer because Respondent simply failed to follow the judge's direction "telling her what she needed to do." Tr. 184 (Greer). Mr. Greer was embarrassed and humiliated with his employer, when his case was summarily dismissed. *Id.* Respondent never provided Mr. Greer with any invoice showing the work she had completed on the case. Tr. 188 (Greer).

The Landers Matter

60. On August 23, 2015, Randal Landers's son died under suspicious circumstances. Tr. 84 (Landers). Mr. Landers and his wife, Tara Landers, decided to hire an attorney to investigate the circumstances of his death and communicate their concerns to U.S. Navy. Tr. 84 (Landers); DX 40 at 10-14 (retainer agreement).

61. After considering at least 20 law firms, Mr. and Mrs. Landers chose Respondent. Tr. 84-85 (Landers). They relied on her experience representing Bill

Cosby and appearing on television, and they believed she would be a voice for their family. Tr. 91 (Landers).

62. Mr. and Mrs. Landers hired Respondent on March 31, 2017. Tr. 85-86 (Landers); DX 40 at 10-14. The written fee agreement set Respondent's hourly rate at $625 per hour and called for a $15,000 payment in advanced fees. Tr. 91-92 (Landers); DX 40 at 11. Respondent agreed to provide Mr. and Mrs. Landers with monthly invoices detailing the work she had done. DX 40 at 11.

63. At Mr. Landers' insistence, the agreement included an appendix of specific action items to be completed, including "Acquire unredacted version of the Line of Duty/Command Investigation (LOD/CI)"; "All Navy mental health records previously sited [sic] in the LOD but not provided"; "Copy of the NCIS investigation"; and "Request modem/router traffic from AT&T for the period of 8/20/15 thru 9/3/15 (trying to ID items that were logged on to David's network shortly before, during and after his death)." DX 40 at 1-4, 14; *see* Tr. 86-90 (Landers).

64. After signing the agreement, Mr. and Mrs. Landers wired $15,000 into Respondent's SunTrust trust account, as directed by Respondent. Tr. 92 (Landers); Tr. 139 (O'Connell); DX 40 at 15 (wire instructions); DX 41 (wire receipt); DX 42 at 1 (bank statement). Before the wire transfer, the account had a negative balance of –$407.00, resulting in a balance of $14,588.01 after the transfer was executed. Tr. 139 (O'Connell); DX 42 at 1.

65. Less than a week later, Respondent had taken nearly all of the funds by transfer or cash withdrawal. Tr. 139-41 (O'Connell); DX 42 at 2. Within two weeks, on April 12, the account had a negative ending balance of –$549.99. *Id.*

66. By the end of April 2017, Respondent had not provided any work product to Mr. and Mrs. Landers and had not accomplished any of the tasks in the appendix to the fee agreement. Tr. 92-94 (Landers). Respondent had not provided an invoice. Tr. 93 (Landers).

67. On May 1, 2017, Respondent introduced Mr. Landers by email to Leticia Kimble, whom she described as "of counsel with my firm" and who would be assisting on the matter. DX 43 at 3 (email); *see* Tr. 95 (Landers). Ms. Kimble appeared to have no relevant experience. Tr. 95 (Landers).

68. On May 8, 2017, Mr. Landers asked for an update regarding the next steps given that some of the actions item were time sensitive "given the timeframe to file a claim is winding down as well as the timeframe in which the Plaquemines Parrish [sic] Sheriff's Office will continue maintaining our son's weapon currently in their possession." DX 43 at 2 (email).

69. Two weeks later, on May 22, 2017, Mr. Landers participated in a teleconference with Respondent and Ms. Kimble. Tr. 95 (Landers); DX 43 at 1-3. Although Mr. Landers supplied a list of topics to discuss in advance, the teleconference was unproductive: Ms. Kimble left the call shortly after it began, and Respondent was unprepared to discuss the topics. Tr. 95-97 (Landers); DX 43 at 4-5.

70. In June 2017, disappointed in Respondent's knowledge of the case, Mr. Landers supplied her with summaries of the documents he had previously provided, along with new documents related to his son's death. Tr. 97-99 (Landers); DX 43 at 6-8. Mr. Landers asked for Respondent's reaction to the documents provided. He wrote, "I'm starting to realize on this grieving journey that we were not as open to see and comprehend some of the facts and details that were presented to us 12 months [ago] versus today. When you're grieving over the loss of someone you love and miss sorely, its blinding early on in the journey." DX 43 at 6. Mr. Landers also asked for a detailed billing statement so that he could track Respondent's work against fast-approaching deadlines. Tr. 98-99 (Landers); DX 43 at 6. Respondent did not provide an invoice. Tr. 99 (Landers).

71. Later that month, Respondent sent Mr. Landers a strategic plan she had prepared with Ms. Kimble. Tr. 101 (Landers); DX 43 at 9-12. Mr. Landers was disappointed with the plan. Respondent still had not obtained any of the records listed in the appendix to the fee agreement or completed any of the other tasks. Tr. 101 (Landers).

72. The Strategic Plan stated, "We estimate that by the end of this month [June] we will have spent about 25 hours." DX 43 at 11-12.

73. On June 26, 2017, Respondent sent a text to Mr. Landers asking if he had time for a brief call. She wrote that she would send him the first invoice shortly and asked to discuss his budget going forward. Tr. 99-100 (Landers); DX 44 at 1 (text messages). After reading the text messages, Mr. Landers grew concerned that

Respondent had spent his $15,000 without accomplishing any of the stated tasks. Mr. Landers responded on June 27 expressing his concerns: "I got the impression you are saying the $15K retainer has been consumed or largely consumed by document review/limited legal analysis based upon the info presented, a phone call and the generation of a strategy update memo?" DX 44 at 7-8 (email); *see* Tr. 100 (Landers).

74. Respondent replied by assuring Mr. Landers that the $15,000 "hasn't been consumed" and was set aside as an "insurance policy for settling the account (akin to the type of deposit that would be paid if renting office or housing space)." DX 44 at 6-7 (email); *see* Tr. 100 (Landers). Respondent said that she had to check the billing system but thought that the forthcoming invoice would reflect less than 10 hours of work. DX 44 at 6-7 (email).

75. Mr. Landers responded by email and disagreed with Respondent's characterization of the retainer. "I reread that portion of the contract again, as did another family member, and the explanation below differs significantly from what's stated in the contract (i.e. it is not being billed against for services)." DX 44 at 6 (email).

76. Respondent responded that she forgot that she had "altered" her standard agreement but was "a bit concerned" about adequate funding to complete the anticipated work. DX 44 at 4-5. She continued: "If you do not anticipate being able to financially support completion of these objectives, please let me know. We feel confident we can accomplish the goals as agreed upon, but I get the impression

the reality of legal expenses may not have been fully considered. If we have to revise or terminate the representation, I do understand, I just need to know where we stand as soon as possible so that we will not incur any more billable time on the matter." DX 44 at 5-6.

77. On July 8, Mr. Landers asked Respondent to send him the June invoice and explain what hours she had worked in July. Tr. 104-05 (Landers); DX 44 at 4. On July 9, Respondent responded that he should have already received invoices for May and June, but she would check on it tomorrow or "try to go in the system and have them resent myself if I have time this evening." DX 44 at 3.

78. When Respondent still did not provide an invoice, Mr. Landers terminated the relationship. He asked that Respondent return the remainder of the retainer, "given the billable hours you've acknowledged is 10 hours for June." DX 44 at 2-3; *see* Tr. 104-08 (Landers). Respondent told Mr. Landers she would finalize the account and "reply in due course." DX 44 at 2; *see* Tr. 105-06 (Landers). Mr. Landers expected Respondent to refund the majority of the $15,000, given how little she had accomplished. Tr. 107 (Landers).

79. After terminating their relationship with Respondent, Mr. and Mrs. Landers hired the law firm Tully Rinckey, who assigned Heather Tenney to the matter. Tr. 109 (Landers); Tr. 120 (Tenney). Mr. Landers asked Ms. Tenney to obtain his client file from Respondent, as well as invoices and any refund due. Tr. 109 (Landers); Tr. 121 (Tenney).

80. In July and August 2017, Ms. Tenney made numerous requests to Respondent by email, letter, and telephone for the Landers file, invoices, and a refund. Tr. 121-27 (Tenney); DX 45 (emails and letters). In an email dated September 20, 2017, Respondent stated, "I've confirmed that a hard copy of the client file and final invoice was sent to you via US mail from Los Angeles on Monday." DX 45 at 23. Despite Respondent's claims, Ms. Tenney never received any client file, invoices, or a refund. Tr. 110 (Landers); Tr. 127 (Tenney).

81. Ms. Tenney charged Mr. and Mrs. Landers an hourly rate of $230 an hour, and her attempts to obtain the documents from Respondent cost them several thousand dollars. Tr. 110 (Landers); Tr. 127-28 (Tenney); DX 47 (invoices).

82. After Ms. Tenney failed to obtain the file, Mr. Landers sent Respondent two letters of his own, requesting the file, invoices, and a refund. Tr. 111 (Landers); DX 46 (letters). Respondent did not respond. Tr. 111 (Landers).

83. Mr. Landers filed a complaint with the Office of Disciplinary Counsel. *Id.* Pursuant to an ODC subpoena, Respondent provided the Landers file. Tr. 112-13 (Landers); DX 49 (response). The file contained no invoices and no work product other than the strategic plan and emails between Respondent and Mr. Landers. Tr. 113 (Landers). The file otherwise consisted entirely of documents provided by Mr. Landers. *Id.*

84. Mr. Landers felt betrayed by Respondent, whom he had trusted to handle an important and emotionally difficult matter for his family. Tr. 113-14 (Landers). Mr. Landers hired Respondent "to try to get justice" for his son . . . ." *Id.*

He felt that he "got played" by Respondent. *Id.* He received nothing of value for the $15,000, which he paid using part of his son's death benefit. *Id.*; Tr. 117-18 (Landers).

III. CONCLUSIONS OF LAW

A. Respondent Engaged in Intentional Misappropriation of Client Funds in Violation of Rules 1.15(a) and (e).

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

Misappropriation requires proof of two distinct elements. First, Disciplinary Counsel must establish the unauthorized use of client funds. *See In re Anderson*, 778 A.2d 330, 335 (D.C. 2001); *Harrison*, 461 A.2d at 1036. Misappropriation is essentially a *per se* offense and does not require proof of improper intent. *See Anderson*, 778 A.2d 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. 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)).

Disciplinary Counsel argues that Respondent misappropriated advanced fees paid by each of her clients. Respondent converted Mrs. Amaker's advanced fees as cash prior to earning them. Respondent deposited Mr. Greer's advanced fees into her husband's business account, over which she lacked signatory authority, and the funds were spent from that account before being earned. Finally, Respondent withdrew the Landerses' advanced fees from her trust account prior to earning them.

Rule 1.15(e) provides that "[a]dvances of unearned fees and unincurred costs shall be treated as property of the client pursuant to paragraph (a) until earned or incurred unless the client gives informed consent to a different arrangement." The Court has held that "when an attorney receives payment of a flat fee at the outset of a representation, the payment is an 'advance[ ] of unearned fees'" and must be held as property of the client pursuant to Rule 1.15(e). *In re Mance*, 980 A.2d 1196, 1202 (D.C. 2009). The Court further held that: "Where there is no discussion regarding the fee arrangement besides merely stating the overall fee, and no mention of the escrow account option, a client cannot be said to have a sufficient basis to give informed consent to waive the requirements of a rule designed to protect the client's interests." *Id.* at 1207.

The Amaker Matter

Mrs. Amaker made two advanced fee payments to Respondent: a $5,000 payment to be earned at an hourly rate of $425 (FF 9-10) and a $3,000 payment as a flat fee for the completion of the representation (FF 14). In both instances, Respondent cashed the checks and did not deposit the funds into a trust account. FF 11, 15. Respondent has provided no explanation as to what she did with the cash she received. FF 11, 15; *see In re Thompson*, 579 A.2d 218, 223 (D.C. 1990) (failure to explain use of client funds after withdrawal is circumstantial evidence of dishonest misappropriation because "[a]fter cash has been taken without authorization, it becomes fungible and can rarely be traced except through serial numbers which are

seldom recorded"). By the very act of cashing the checks before she had earned the money, Respondent misappropriated Mrs. Amaker's funds.

Under Rule 1.15(e), advanced fees that Respondent had not earned were client property. Mrs. Amaker did not authorize Respondent to cash the checks before she had earned the money. FF 11, 15. She expected Respondent to place the funds into an escrow account, as Respondent had told her she would. FF 10.

This misappropriation was intentional. Respondent knew how advanced fees were supposed to be treated, as evidenced by her assuring Mrs. Amaker that she was going to place her funds into an escrow account (even though she did not have one). FF 3, 10. Instead, she simply cashed the checks and converted the funds to her own use. FF 11, 15. With respect to the second payment, Respondent gave Mrs. Amaker explicit instruction to deposit cash into Mrs. Amaker's account so that the funds would be immediately available to Respondent. FF 14. This evidenced her intent to use the funds for her own purposes.

The Greer Matter

Mr. Greer paid Respondent $2,400 in cash as an advanced fee at the outset of the representation. FF 41. Respondent deposited those funds into an overdrawn business checking account belonging to her husband, over which she lacked signatory authority. FF 42. Respondent or her husband spent those funds within two weeks, at which point she had merely met with Mr. Greer and attended a five-minute status conference, and thus had not earned that full amount. FF 43.

When Respondent demanded more money to continue working, Mr. Greer paid her an additional $7,500, this time as a flat fee for the completion of the representation. FF 47-48. At Respondent's direction, Mr. Greer deposited those funds into that same business checking account, and, again, Respondent or her husband spent those funds within two weeks, long before any significant portion of the funds were earned. FF 48, 50.

Respondent misappropriated the funds in both instances. Under 1.15(e), they were client funds, because they were advanced fees that had not yet been earned. Respondent had not earned the $2,400 because Respondent had not yet done sufficient work at her hourly rate. Similarly, Respondent had not earned the $7,500 because she had not yet done sufficient work at her hourly rate.

Respondent used the funds by depositing them into an overdrawn account over which she had no signatory authority. *See, e.g.*, *In re Padgett*, Board Docket Nos. 15-BD-039 *et al.*, at 3-4 (BPR Feb. 1, 2017) (finding intentional misappropriation where the respondent deposited advanced fees into an overdrawn operating account and continued to spend them without authorization), *recommendation adopted where no exceptions filed*, 159 A.3d 820, 820 (D.C. 2017) (per curiam). Once they were in that account, Respondent lost control over them; they were no longer entrusted to her. Even if Respondent had control over the Pressley Group account, she allowed the funds to be disbursed before they had been earned. *See Pels*, 653 A.2d at 394 ("[W]hen client funds are deposited into an . . .

account . . . misappropriation occurs when the balance in that account falls below the amount due to the client.").

Respondent's use of the funds was unauthorized. Mr. Greer did not authorize Respondent to place the funds into her husband's account or spend them before they were earned. FF 41, 48.

This misappropriation was intentional. Respondent demanded the first payment to be in cash. FF 41. Respondent immediately deposited the cash into an account over which she had no signatory authority. FF 42. The deposit of $2,400 restored the balance in the overdrawn account to $2,054.74, and then she or her husband used the funds to pay day-to-day expenses. FF 43. With respect to the second payment, the funds were depleted within two weeks, being spent on food, gas, and cash withdrawals. FF 50. Respondent treated the funds as her own. FF 43, 50.

The Landers Matter

The Landerses paid Respondent $15,000 in advanced fees by wiring the funds into Respondent's overdrawn trust account. FF 64. Respondent took the money within two weeks, long before she had worked sufficient hours to earn the funds. FF 65.

This was a straightforward misappropriation. Under Rule 1.15(e), the fee advance belonged to the Landerses until Respondent earned it, which would have taken 24 hours of work at her hourly rate of $625. *See* FF 62. By April 12, Respondent had taken the entire $15,000. By all accounts, she had done virtually no

work as of that date, certainly not 24 hours of work. FF 66. In May, when Mr. Landers convened a call, Respondent was unprepared. FF 69. She told Mr. Landers in June 2017 that her first invoice, which she never actually provided, was going to be for less than 10 hours of work. FF 74. The strategic plan Respondent provided to the Landerses estimated that she was not going to work 25 hours until the end of June. FF 72. More fundamentally, the evidence shows that Respondent did very little work on the matter, and never worked 24 hours on the Landers matter; she did little more than communicate with Mr. Landers by email, attend a teleconference and draft a short strategic plan. FF 83.

Respondent took the entire $15,000 before she had earned all of it. *See Pels*, 653 A.2d at 394 ("[W]hen client funds are deposited into an . . . account . . . misappropriation occurs when the balance in that account falls below the amount due to the client."). Mr. Landers did not authorize Respondent to take unearned fees. Instead, he expected to receive a refund of most of the funds after he terminated the representation. FF 78-79.

Respondent's misappropriation of the Landers funds was intentional. Respondent was the sole signatory on her trust account. FF 4. For the brief period that the Landerses' funds were in her trust account, it was the only money in the account, so she had to know that she was taking the Landerses' money when she withdrew the funds. FF 64-65. She started taking the money immediately upon receipt. A portion of the money compensated for a negative balance in the account.

She withdrew the bulk of the remaining money within a week and all of it within two weeks. *Id.* Again, Respondent treated the advance fees as her own funds.

B. Respondent Failed to Deposit Client Funds into a Trust Account or an IOLTA in Violation of Rules 1.15(a) and 1.15(b).

Rule 1.15(b) provides:

> All trust funds shall be deposited with an "approved depository" as that term is defined in Rule XI of the Rules Governing the District of Columbia Bar. Trust funds that are nominal in amount or expected to be held for a short period of time, and as such would not be expected to earn income for a client or third-party in excess of the costs incurred to secure such income, shall be held at an approved depository and in compliance with the District of Columbia's Interest on Lawyers Trust Account (DC IOLTA) program.

Respondent failed to deposit Mr. Greer's and Mrs. Amaker's funds into a trust account or an IOLTA as required by Rules 1.15(a) and 1.15(b). Respondent received $8,000 in advanced fees from Mrs. Amaker and $9,900 in advanced fees from Mr. Greer. FF 9, 14, 41, 47-48. Respondent did not deposit Mrs. Amaker's funds into any account; she converted the checks to cash. FF 11, 15. Respondent deposited Mr. Greer's funds into her husband's business checking account, neither a trust account nor an IOLTA. FF 42, 50. Her failure to deposit these funds into a trust account or IOLTA violated Rules 1.15(a) and 1.15(b).

C. Respondent Failed to Provide an Accounting of Client Funds Upon Request in Violation of Rule 1.15(c).

Despite Mr. Landers' numerous requests for an accounting of his advanced fees, Respondent never provided him with an accounting. Rule 1.15(c) provides that "a lawyer . . . upon request by the client . . . shall promptly render a full accounting

regarding [client funds]." Mr. Landers requested an accounting twice during the representation and several times after the representation ended. FF 70, 76, 77. Despite agreeing to provide Mr. Landers with monthly invoices, Respondent never provided him with a single invoice or other accounting of the $15,000 in advanced fees. FF 62, 70, 78, 80, 82. Her failure to do so violated Rule 1.15(c).

D. Respondent Acted Incompetently in Violation of Rule 1.1(a) and 1.1(b).

Rule 1.1(a) requires a lawyer to "provide competent representation to a client." The Court has determined that competent representation requires the "legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation." *See In re Drew*, 693 A.2d 1127, 1132 (D.C. 1997) (per curiam) (appended Board Report) (lawyer who has requisite skill and knowledge, but who does not apply it for particular client, violates obligations under Rule 1.1(a)). The comments to Rule 1.1 state that competent representation includes "adequate preparation, and continuing attention to the needs of the representation to assure that there is no neglect of such needs." Rule 1.1, cmt. [5].

Rule 1.1(b) mandates that "[a] lawyer shall serve a client with skill and care commensurate with that generally afforded to clients by other lawyers in similar matters."[3] A Hearing Committee, however, may find a violation of the standard of care without expert testimony when an attorney's "conduct is so obviously lacking that expert testimony showing what other lawyers generally would do is

[3] Rule 1.1(b) is "better tailored [than Rule 1.1(a)] to address the situation in which a lawyer capable to handle a representation walks away from it for reasons unrelated to his competence in that area of practice." *In re Lewis*, 689 A.2d 561, 564 (D.C. 1997) (per curiam) (appended Board Report).

unnecessary." *In re Nwadike*, Bar Docket No. 371-00, at 28 (BPR July 30, 2004), *findings and recommendation adopted*, 905 A.2d 221, 224, 227, 232 (D.C. 2006) (*inter alia*, at the time of the deadline for a plaintiff's attorney to file a D.C. Super. Ct. Civil R. 26(b)(4) expert witness statement and by the close of discovery, the attorney not only failed to fulfill the attorney's court-ordered discovery obligations regarding essential expert opinion, but also had not yet even obtained an opinion and was unaware of whether or not the attorney had proof to sustain the plaintiff's claim); *In re Schlemmer*, Bar Docket Nos. 444-99 & 66-00, at 13 (BPR Dec. 27, 2002) (noting, in a case where the respondent attorney failed to file an immigration appeal after the client paid the initial fee for the appeal, that Disciplinary Counsel need not "necessarily produce evidence of practices of other attorneys in order to establish a Rule 1.1(b) violation"), *recommendation adopted in relevant part*, 840 A.2d 657 (D.C. 2004) (remanding to the Board for further consideration of the appropriate sanction).

Respondent handled Mr. Greer's case incompetently, as she filed a deficient amended complaint after failing to properly investigate his claims, despite having acknowledged to the court that "some things necessary for viability" were missing a month and a half earlier. FF 40, *see* FF 44, 51. As the district court set forth in detail at the hearing on the motion to dismiss and in its Memorandum Opinion, Respondent's amended complaint was seriously deficient. Even though she knew in advance of certain deficiencies listed in UDC's motion to dismiss the original complaint, she left Mr. Greer's original complaint virtually untouched. FF 45, 51-

52; DX 17 at 7-8; DX 18 at 2-3. One of those obvious deficiencies previously pointed out by UDC was that the complaint alleged age discrimination under Title VII of the Civil Rights Act, which does not cover age discrimination, instead of the Age Discrimination in Employment Act, a sloppy error that could have led to dismissal of the claim on its own had the court not bent over backwards to reach the sufficiency of the allegations. FF 52; DX 3 at 8, 19-20; DX 17 at 7; DX 18 at 6-8. The original motion to dismiss also pointed out that the original complaint failed to allege that discriminatory retaliation was the "but-for" cause of the defendant's decision not to promote him, as required by Title VII. DX 3 at 8, 25; DX 17 at 8. Respondent also failed to allege basic factual elements of Mr. Greer's claims, such as identifying the race, gender, and age of individuals hired instead of Respondent, which she could have accomplished by simply interviewing Mr. Greer, or, as the court pointed out, alleging certain facts on information or belief. FF 44-45, 52; DX 3 at 11, 23; DX 17 at 9. Due to those deficiencies, the court dismissed all of Mr. Greer's claims. FF 52, 53. Respondent's failure to plead Mr. Greer's claims effectively constituted incompetence in violation of Rule 1.1(a) and 1.1(b). *See In re Ekekwe-Kauffman*, No. 17-BG-860, slip op. at 19-20 (D.C. June 27, 2019) (per curiam) (finding violations of Rules 1.1(a) and (b) where the respondent filed a "grossly deficient complaint" that named an improper defendant and made "difficult-to-comprehend legal claims without any contemporaneous factual investigation or research" and "fail[ing] to correct her errors after being made aware of them and obtaining leave to amend"); *In re Speights*, 173 A.3d 96, 99 (D.C. 2017)

(per curiam) (failure to investigate client's claim, among other things, violated Rules 1.1(a) and 1.1(b)).

E. Respondent Engaged in Neglect in Violation of Rule 1.3(a), 1.3(b)(l),and 1.3(c).

Rule 1.3(a) states that an attorney "shall represent a client zealously and diligently within the bounds of the law." That obligation "connotes an energy and enthusiasm for pursuing the client's objectives -- a desire to 'vindicate a client's cause or endeavor' through 'whatever lawful and ethical measures are required.'" *Ekekwe-Kauffman*, No. 17-BG-860, slip op. at 22 (quoting Rule 1.3, cmt. [1]). By contrast, "[n]eglect has been defined as indifference and a consistent failure to carry out the obligations that the lawyer has assumed to the client or a conscious disregard of the responsibilities owed to the client." *In re Wright*, 702 A.2d 1251, 1255 (D.C. 1997) (per curiam) (appended Board Report) (citing *In re Reback*, 487 A.2d 235, 238 (D.C. 1985), *adopted in relevant part*, 513 A.2d 226 (D.C. 1986) (en banc) (*Reback II*)).[4]

The Court has found neglect in violation of Rule 1.3(a) where an attorney persistently and repeatedly failed to fulfill duties owed to the client over a period of time. *See, e.g.*, *In re Ukwu*, 926 A.2d 1106, 1135 (D.C. 2007) (appended Board

[4] Rule 1.3(a) "does not require proof of intent, but only that the attorney has not taken action necessary to further the client's interests, whether or not legal prejudice arises from such inaction." *In re Bradley*, Bar Docket Nos. 2004-D240 & 2004-D302, at 17 (BPR July 31, 2012), *adopted in relevant part*, 70 A.3d 1189, 1191 (D.C. 2013) (per curiam); *see also Lewis*, 689 A.2d at 564 (appended Board Report) (Rule 1.3(a) violated even where "[t]he failure to take action for a significant time to further a client's cause . . . [does] not [result in] prejudice to the client").

Report) (respondent violated Rule 1.3(a) when he repeatedly failed to inform his clients about the status of their cases, prepare his clients for hearings and interviews with immigration officials, or prepare himself for court appearances); *Wright*, 702 A.2d at 1255 (appended Board Report) (respondent violated Rule 1.3(a) by failing to respond to discovery requests, a motion to compel, and a show cause order); *In re Chapman*, Bar Docket No. 055-02, at 19-20 (BPR July 30, 2007) (respondent violated Rule 1.3(a) where he did virtually no work on the client's case during the eight-month term of the representation, failed to conduct any discovery, and did not respond to discovery requests from the opposing party), *recommendation adopted*, 962 A.2d 922, 923-24 (D.C. 2009) (per curiam).

Rule 1.3(b)(1) provides that "[a] lawyer shall not intentionally . . . fail to seek the lawful objectives of a client through reasonably available means permitted by law and the disciplinary rules . . . ." A negligent failure to pursue a client's interest is deemed intentional when "the neglect is so pervasive that the lawyer must be aware of it" or "when a lawyer's inaction coexists with an awareness of his obligations to his client." *Ukwu*, 926 A.2d at 1116 (internal quotation marks and citations omitted). "[K]nowing abandonment of a client is the classic case of a Rule 1.3(b)(1) violation . . . ." *Lewis*, 689 A.2d at 564.

Rule 1.3(c) provides that an attorney "shall act with reasonable promptness in representing a client." "Perhaps no professional shortcoming is more widely resented by clients than procrastination," and "in extreme instances, as when a lawyer overlooks a statute of limitations, the client's legal position may be

destroyed." Rule 1.3, cmt. [8]. The Court has held that failure to take action for a significant time to further a client's cause, whether or not prejudice to the client results, violates Rule 1.3(c). *See, e.g.*, *Speights*, 173 A.3d at 101.[5]

Respondent neglected Mrs. Amaker's and Mr. Greer's cases. In Mrs. Amaker's case, she failed to move forward in preparing the lawsuit she was engaged to file, and then abandoned Mrs. Amaker for two years. In Mr. Greer's case, she failed to file a motion to amend Mr. Greer's complaint after the court gave her another opportunity to do so.

The Amaker Matter

Early into her representation of Mrs. Amaker, Respondent told her that the "absolute best thing we can do is sue [Mr. Gunnulfsen] in a court of law" (DX 28 at 36) and "[t]he best, and only, thing we can do in this case is sue [Mr. Gunnulfsen] for what he has done" (DX 28 at 41). In the coming year, she repeatedly told Mrs. Amaker that she was moving forward in preparing to sue Mr. Gunnulfsen. FF 18-19. During this time, Respondent rarely communicated with Mrs. Amaker, did not conduct any fact-finding, did not prepare a draft complaint, and never filed a lawsuit. FF 18, 27, 31. In Mrs. Amaker's view, nothing had been accomplished. FF 27.

After a year of stalling, Respondent abandoned the case for two years, leaving the case for her husband, a non-lawyer, to "handle." FF 27, 29. She did not have

[5] Comment [8] to Rule 1.3 provides that "[e]ven when the client's interests are not affected in substance . . . unreasonable delay can cause a client needless anxiety and undermine confidence in the lawyer's trustworthiness," making such delay a "serious violation."

any communication with Mrs. Amaker during this two-year period. FF 29. Even after she reappeared in September 2016, she delayed meeting with Mrs. Amaker until October 5, 2016 -- more than three years after Mrs. Amaker was locked out of her business. FF 32-33. The three-year statute of limitations now had run on Mrs. Amaker's potential claims. FF 24.

After accomplishing little, if anything, for Mrs. Amaker during the first year, Respondent walked away from the case for two years. By being absent for two years, she utterly failed to fulfill duties owed to the client. *See, e.g.*, *Ekekwe-Kauffman*, No. 17-BG-860, slip op. at 23 (finding violations of Rules 1.3(a), (b)(1), (b)(2) where the respondent "promised to file a new civil action" on behalf of the client and "continued accepting [her] payments for several months without doing any additional work on the case"); *Ukwu*, 926 A.2d at 1135) (appended Board Report) (respondent violated Rule 1.3(a) when he repeatedly failed to inform his clients about the status of their cases, prepare his clients for hearings and interviews with immigration officials, or prepare himself for court appearances); *Wright*, 702 A.2d at 1255 (appended Board Report) (respondent violated Rule 1.3(a) by failing to respond to discovery requests, a motion to compel, and a show cause order); *Chapman*, Bar Docket No. 055-02, at 19-20 (respondent violated Rule 1.3(a) where he did virtually no work on the client's case during the eight-month term of the representation, failed to conduct any discovery, and did not respond to discovery requests from the opposing party), *recommendation adopted*, 962 A.2d 922, 923-24 (D.C. 2009) (per curiam).

Further, Respondent failed to make diligent and timely efforts to accomplish her client's objectives. In the first year of the representation, Respondent did little to accomplish Mrs. Amaker's objective of filing suit. FF 18, 25-26. In the subsequent two years, she did nothing to advance Mrs. Amaker's objectives, and knew that her husband -- a non-lawyer -- could not accomplish that objective. FF 28-29.

Respondent's intentional neglect violated Rules 1.3(a), (b)(1), and (c). *See Drew*, 693 A.2d at 1133 (failure to make filings as directed by clients violated Rules l.3(a) and (b)(l)).

The Greer Matter

After the court dismissed Mr. Greer's complaint, it gave Respondent another opportunity to file an amended complaint. FF 52-53. The court's Memorandum Opinion practically provided Respondent a road map of how to plead Mr. Greer's claims in a way that would survive a motion to dismiss. FF 52. Instead of following that road map, Respondent did nothing, and the court dismissed Mr. Greer's case. FF 55. By failing to take any action, she abandoned her client. *See Ekekwe-Kauffman*, No. 17-BG-860, slip op. at 22, 24-25 (finding violations of Rules 1.3(a), (b)(1), and (b)(2) where the respondent "filed an amended complaint containing several of the same errors that led to the dismissal in the first place," which "put [her] on notice of the need to cure the deficiencies in her complaint"). Respondent's failure to file an amended complaint prior to the deadline imposed by the court

violated Rules 1.3(a) and (c). *See Schlemmer*, 840 A.2d at 660 (failure to meet filing deadline violated Rule l .3(a)).

F. Respondent Failed to Communicate in Violation of Rule 1.4(a) and Rule 1.4(b).

Rule l.4(a) provides that "[a] lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information." Rule 1.4(b) provides that "[a] lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation." Comment [1] to Rule 1.4 states that "The client should have sufficient information to participate intelligently in decisions concerning the objectives of the representation and the means by which they are to be pursued, to the extent the client is willing and able to do so."

Respondent failed to communicate with Mrs. Amaker and Mr. Greer. She did not communicate with Mrs. Amaker at all for nearly two years, and prior to that the communication was limited. She did not inform Mr. Greer of the Court's dismissal for almost a month, and never informed him that the court had given him another opportunity to amend his complaint.

The Amaker Matter

After settlement was ruled out, Mrs. Amaker wanted to file a lawsuit quickly. FF 17-18. She frequently asked Respondent for updates on the matter. Respondent was unresponsive and difficult to reach. Despite repeated and urgent requests by Mrs. Amaker, her emails and text messages went unanswered. FF 18. When she did respond, Respondent misled Mrs. Amaker into believing she was on the verge

of filing suit, falsely stating that the delay was the result of the unavailability of local counsel. FF 18-20. She also misled Mrs. Amaker into believing that she would send a demand letter to opposing counsel. FF 21-26. Then, for a period of nearly two years, Respondent did not communicate with Mrs. Amaker at all. FF 29. Instead, Respondent's husband provided false status updates. FF 30-31. Respondent's failure to keep Mrs. Amaker informed about the true status of her case violated Rules l.4(a) and (b). *See In re Steele*, 868 A.2d 146, 148 (D.C. 2005) (failure to inform client that statute of limitations period had expired violated Rule l.4(a)).

The Greer Matter

The court dismissed Mr. Greer's amended complaint on July 10, 2015, and set a deadline of July 24, 2015, for Respondent to file another amended complaint. FF 52-53. Respondent did not tell Mr. Greer about the dismissal until August 6, 2015, and never told him that the court had given him another chance, which she had missed. FF 54-55. Mr. Greer had to figure out on his own by reading the court's decision. FF 56. The dismissal was a critical juncture in Mr. Greer's case, and Respondent failed to inform him of it in a timely and meaningful way, in violation of Rule 1.4(a) and (b). *See Schlemmer*, 840 A.2d at 659-60 (failure to inform client about missed deadline violated Rule l.4(a)).

G. Respondent Failed to Provide a Written Fee Agreement in Violation of Rule 1.5(b).

Rule 1.5(b) provides that "[w]hen the lawyer has not regularly represented the client, the basis or rate of the fee, the scope of the lawyer's representation, and the expenses for which the client will be responsible shall be communicated to the client,

in writing, before or within a reasonable time after commencing the representation." Respondent failed to provide a written fee agreement to Mr. Greer as required by Rule 1.5(b), and failed to provide a new agreement to Mrs. Amaker after changing the terms of representation.

The Greer Matter

Respondent had not previously represented Mr. Greer but did not provide Mr. Greer with a written fee agreement. FF 39. Her failure to do so violated Rule 1.5(b).

The Amaker Matter

Respondent had never represented Mrs. Amaker before September 2013. Respondent initially provided Mrs. Amaker with a fee agreement setting forth an hourly rate. FF 7, 9. Just two months into this representation, she convinced Mrs. Amaker to change the terms of the agreement from an hourly rate to a flat fee. FF 13. This was a fundamental change in the "basis or rate of the fee," but Respondent did not provide Mrs. Amaker with an updated agreement. FF 14. An updated fee agreement would have informed Mrs. Amaker as to the specifics of how Respondent could earn the flat fee. *See Mance*, 980 A.2d at 1204. By failing to replace the outdated fee agreement with one that reflected their new arrangement, Respondent violated Rule 1.5(b).

H. Respondent Failed to Surrender Papers and Property at the Conclusion of a Representation in Violation of Rule 1.16(d).

Respondent failed to provide Mrs. Amaker with a refund despite failing to file a lawsuit. Respondent failed to provide Mr. Landers with his file or the invoices he requested. She failed to provide him with a refund even though she indicated that

she had not earned all of the advanced fees. Rule 1.16(d) provides that "[i]n 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, and refunding any advance payment of fee . . . that has not been earned."

The Amaker Matter

When Mrs. Amaker terminated her relationship with Respondent after three years of inaction, she requested a refund. FF 34. She was entitled to at least some portion of the funds that she had paid Respondent, since Respondent did little to prepare a lawsuit against Mr. Gunnulfsen, the clear objective of the representation. FF 17, 31, 34. Respondent never provided Mrs. Amaker with a single invoice showing how she earned any fees, despite agreeing to do so in her fee agreement, and she did not account for the funds she had been paid when she was discharged. FF 9; *see* FF 33. Respondent did not refund any fees to Mrs. Amaker even after she agreed to do so in the Attorney Client Arbitration Board proceedings. FF 35. Her failure to do so violated Rule 1.16(d). *See In re Hallmark*, 831 A.2d 366, 372 (D.C. 2003) (refusal to provide refund after failing to complete all tasks contemplated in flat fee representation violated Rule 1.16(d)).

The Landers Matter

When Mr. Landers terminated her relationship with Respondent, he hired Ms. Tenney to request his file, invoices, and a refund. FF 79. Respondent failed to provide them, despite repeated efforts by Ms. Tenney (at the Landerses' expense).

FF 80-81. Respondent should have immediately provided the file, and her failure to do so violated Rule 1.16(d). *In re Landesberg*, 518 A.2d 96, 102 (D.C. 1986) (per curiam) ("client should not have to ask twice" for file). The Landerses also were entitled to a significant refund from the $15,000 they paid as an advanced fee. Although she agreed on multiple occasions to provide invoices to the Landerses, Respondent never provided a single invoice. FF 70, 77, 80, 82. Other than a short strategic plan, the client file Respondent produced to Disciplinary Counsel contained no work product. FF 83. Respondent never accomplished any of the tasks that Mr. Landers specifically listed in the fee agreement (FF 63, 83), and she indicated that she had not worked sufficient hours to earn the entire fee (FF 72, 74). Respondent's failure to provide the Landerses with a refund also violated Rule 1.16(d). *See In re Kanu*, 5 A.3d 1, 15 (D.C. 2010) (failure to provide refund as promised violated Rule 1.16(d)).

I. Disciplinary Counsel Did Not Prove that Respondent Failed to Ensure Mr. Pressley Conformed to Her Professional Obligations or Failed to Mitigate His Dishonest Conduct.

Rule 5.3(a) requires that a partner in a firm establish "measures" giving reasonable assurance that the conduct of non-lawyer personnel in the firm is compatible with the professional obligations of the lawyer. Comment [1] to Rule 5.3 states that a lawyer should give nonlegal assistants "appropriate instruction and supervision" about the ethical aspects of their employment, "particularly regarding the obligation not to disclose information relating to representation of the client."

The comment also notes that lawyers should account for the fact that nonlawyers lack legal training and are not subject to rules of professional discipline.

Under Rule 5.3(c)(2), a lawyer "shall be responsible for the conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if . . . [t]he lawyer has direct supervisory authority over the person, or is a partner . . . in the law firm . . . in which the person is employed, and knows of the conduct at the time when its consequences can be avoided or mitigated but fails to take reasonable remedial action."

This is not a rule of simple imputed liability for a subordinate's misconduct. *In re Cohen*, 847 A.2d 1162, 1166 (D.C. 2004). Comment [5] to Rule 5.1, which applies to Rule 5.3(c),[6] discusses considerations relevant to determining whether a lawyer has knowledge of another's misconduct:

> The existence of actual knowledge is also a question of fact; whether a lawyer should reasonably have known of misconduct by another lawyer in the same firm is an objective standard based on evaluation of all the facts, including the size and organizational structure of the firm, the lawyer's position and responsibilities within the firm, the type and frequency of contacts between the various lawyers involved, the nature of the misconduct at issue, and the nature of the supervision or other direct responsibility (if any) actually exercised. The mere fact of partnership or a position as a principal in a firm is not sufficient, without more, to satisfy this standard. Similarly, the fact that a lawyer holds a position on the management committee of a firm, or heads a department of the firm, or has comparable management authority in some other form of organization or a government agency is not sufficient, standing alone, to satisfy this standard.

[6] *See* Rule 5.3, cmt. [2] ("Comments [4], [5], and [6] of Rule 5.1 apply as well to Rule 5.3.").

Cohen is in accord, as the Board "stress[ed] that Respondent's culpability here is not the result just of his status as a senior partner in the firm, nor is it a function merely of his role as supervisory partner for the [relevant] proceeding. Rather, it is the result of his relationship to and involvement in the [relevant] representations." Bar Docket No. 280-97, at 40 (BPR July 31, 2002), *recommendation adopted*, 847 A.2d at 1162.

Disciplinary Counsel concedes that, absent Respondent's testimony, it was unable to present evidence regarding Mr. Pressley's role in Respondent's firm. *See* Disciplinary Counsel's Proposed Findings of Fact, Conclusions of Law, and Recommendation as to Sanction at 26 n.3. We agree and find that Disciplinary Counsel has not submitted clear and convincing evidence demonstrating that Respondent had supervisory authority over Mr. Pressley or that she was aware of Mr. Pressley's dishonest conduct toward Mrs. Amaker. Accordingly, Disciplinary Counsel has not proven that Respondent violated Rules 5.3(a) and (c)(2).

J. Respondent Engaged in Dishonesty in Violation of Rule 8.4(c).

Rule 8.4(c) provides that it is professional misconduct for a lawyer to "[e]ngage in conduct involving dishonesty, fraud, deceit, or misrepresentation." The Court has instructed that "Rule 8.4(c) is not to be accorded a hyper-technical or unduly restrictive construction." *Ukwu*, 926 A.2d at 1113. The term "dishonesty" under Rule 8.4(c) includes not only fraudulent, deceitful, or misrepresentative conduct, but is a more general term that also encompasses "conduct evincing 'a lack of honesty, probity, or integrity in principle; [a] lack of fairness and

straightforwardness.'" *In re Hager*, 812 A.2d 904, 916 (D.C. 2002) (quoting *In re Shorter*, 570 A.2d 760, 767-68 (D.C. 1990) (per curiam)).

Respondent's contacts with all three clients are replete with misrepresentations and dishonesty, lying or misleading them about big and little things.[7] She misled Mrs. Amaker and Mr. Greer about the status of their cases. She misled all three clients as to the terms of the fee arrangements, taking advantage of Mr. Greer and Mrs. Amaker to extract additional funds.[8] Even though she signed arbitration agreements promising to make refunds to Mr. Greer and Mrs. Amaker, Respondent never did.

A detailed review of the Amaker case alone demonstrates that Respondent engaged in dishonest conduct in violation of Rule 8.4(c).

After Respondent told Mrs. Amaker that she needed to sue Mr. Gunnulfsen, Mrs. Amaker wanted to act quickly and pressed Respondent to move forward with the lawsuit. FF 17-18. Respondent told Mrs. Amaker to be patient, that she would make "one final attempt" to speak with opposing counsel and if that is not productive they would file suit. DX 28 at 41-42. She did not contact opposing counsel at that time. FF 12, 18. Respondent then claimed that she was associating with Mr. Tran,

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[7] There were many little lies. In response to Mr. Landers request for invoices, she claimed that he already should have received the May and June invoices -- but she would look into it and "try to go in the system and have the[m] resent myself if I have time this evening." DX 44 at 3. In response to Ms. Tenney's requests, on September 20, 2017, Respondent confirmed that the client file and final invoice file had been sent to Ms. Tenney "via US Mail from Los Angeles on Monday." No invoice or client file was ever received; no invoices existed. FF 80, 83.

[8] She attempted to do the same with Mr. Landers, but when he disputed the terms of the contract, she backtracked. FF 74-76.

who was critical to proceeding, and that his schedule was causing delay. FF 19. In fact, Mr. Tran had little involvement in the case and had never agreed to formally participate. FF 20. Respondent later told Mrs. Amaker that she wanted to try to send a demand letter to Ms. Oliver prior to filing suit. FF 21. When Mrs. Amaker repeatedly asked Respondent for an update, Respondent sent an email to Ms. Oliver referencing a non-existent demand letter. FF 22. When Ms. Oliver requested that she resend the non-existent demand letter, Respondent falsely told Mrs. Amaker that Ms. Oliver had asked for additional information and more time to discuss with her client. FF 26. These misrepresentations violated Rule 8.4(c). *See In re Weiss*, Board Docket No. 14-BD-089, at 11-12 (BPR July 26, 2018) (dishonesty where attorney "misled his client into believing that he was working on [his] case when, in fact, no work was being done").

IV. RECOMMENDED SANCTION

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." *Reback II*, 513 A.2d at 231 (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 only appropriate sanction in this case is disbarment. Respondent engaged in intentional misappropriation, showing no regard for the security of the advanced fees paid by her clients. She used the funds as her own. She also engaged in other Rule violations, including dishonesty, that demonstrate her disdain for her clients and her ethical obligations.

A. The Seriousness of the Misconduct

Respondent's misconduct included multiple instances of intentional misappropriation, violations that the Court has identified as among the most serious,

requiring disbarment in "virtually all cases." *In re Addams*, 579 A.2d 190, 191 (D.C. 1990) (en banc) ("In 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.").

There are no mitigating circumstances warranting any sanction other than disbarment. To the contrary, Respondent, in addition to misappropriation, engaged in dishonesty, incompetence, intentional neglect, failure to communicate over a period of years, and failure to provide refunds even after having arbitration awards sustained against her. These violations amount to a serious dereliction of Respondent's ethical obligations and, in themselves, would warrant a stiff sanction.

B. Prejudice to the Clients

Respondent's misconduct severely prejudiced each of her clients. Each of the clients came to Respondent with matters of great personal consequence; each was worse off for having engaged Respondent. Respondent preyed on her clients: obtaining their funds -- using them like an ATM machine; engaging in dishonesty to extract more funds, and to buy time to avoid being detected.

Mrs. Amaker felt that she lost her ability to seek legal recourse against her former business partner, and the statute of limitations for tortious interference and property damage expired while Respondent was neglecting the case. FF 17, 23-24. At a time when she had lost her business and had limited resources, Respondent took advantage of her -- taking her funds and forfeiting Mrs. Amaker's opportunity to protect her business interests. Even after signing an arbitration agreement promising

to make a refund to Mrs. Amaker, Respondent still did not make any payment. FF 35.

Mr. Greer never got a fair chance at litigating his discrimination claim against his employer because Respondent could not be bothered to do the bare minimum to amend the complaint. While she refunded him a portion of the fees he paid, Respondent did not do so until it was too late for him to retain another attorney to save his case. FF 56-57. She still owes Mr. Greer $1,200. FF 58.

The Landerses came to Respondent seeking her assistance in getting answers to the painful circumstances of their son's death. The Landerses identified specific tasks to be completed as part of the work under the contract and requested regular updates on the work accomplished. FF 62-63. Respondent nonetheless ignored their directions; she attempted to extract additional funds claiming that Mr. Landers had misunderstood the fee arrangement; and she did little, if any work, to investigate the circumstances of the death of the Landerses' son. FF 73-76, 83. As Mr. Landers testified, he felt "betrayed" and "played." FF 84. She compounded her misconduct by refusing to refund the advance fees and refusing to give them or successor counsel the client file. FF 78, 80-82. They lost over $17,000 due to their association with Respondent. FF 81, 84.

C. Respondent's Conduct in These Proceedings

Respondent's disregard for the disciplinary process should also be considered in determining the appropriate sanction and constitutes an additional justification for disbarment.

The Court has considered an attorney's conduct during disciplinary proceedings as an aggravating factor in determining the appropriate sanction. *See In re Yelverton*, 105 A.3d 413, 429 (D.C. 2014). An attorney "repeatedly evinc[ing] indifference (or worse) toward the disciplinary procedures by which the Bar regulates itself . . . raises a serious question about the attorney's continuing capacity and willingness to fulfill his or her professional obligations." *Cater*, 887 A.2d at 25 (quoting *In re Siegel*, 635 A.2d 345, 346 (D.C.1993) (per curiam)).

In this case, Respondent showed a consistent disregard for the disciplinary process. She never filed an Answer to either of the Specifications of Charges, despite being given several opportunities to do so. She engaged in a pattern of dilatory tactics at every step of the process, as described in the Procedural History section above. *See* Part I, *supra*.

One of the aims of the disciplinary system is to protect the integrity of the Bar. *Reback II*, 513 A.2d at 231. The disciplinary system cannot achieve that objective if it allows a member of the Bar to continue practicing after treating the system with such disregard. Respondent has shown a lack of respect for the disciplinary process -- seeking to postpone the proceedings with endless and questionable excuses, and otherwise refusing to participate.

V. CONCLUSION

The Hearing Committee finds by clear and convincing evidence that Respondent violated Rules 1.1(a), 1.1(b), 1.3(a), 1.3(b)(1), 1.3(c), 1.4(a), 1.4(b), 1.5(b), 1.15(a), 1.15(b), 1.15(c), 1.15(e), 1.16(d), and 8.4(c), 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

Mary C. Larkin, Public Member

Christian S. White, Esquire, Attorney Member