THIS REPORT IS NOT A FINAL ORDER OF DISCIPLINE*

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

FILED

Oct 4 2021 1:44pm

Board on Professional Responsibility

In the Matter of:	:	
RICHARD L. MORRIS,	:	Board Docket No. 20-BD-064
	:	Disciplinary Docket Nos. 2019-D136,
Respondent.	:	2019-D152, 2019-D158, 2019-D315,
	:	2020-D009, 2020-D087, &
	:	2020-D119
A Temporarily Suspended Member	:	
of the Bar of the D.C. Court of Appeals	:	
(Bar Registration No. 491646)	:	

REPORT AND RECOMMENDATION OF HEARING COMMITTEE NUMBER EIGHT

Respondent, Richard L. Morris, is charged with violating numerous Rules of the District of Columbia Rules of Professional Conduct (the "Rules"), arising from his representation of seven clients. Disciplinary Counsel ("ODC") contends that Respondent committed all of the charged violations, and should be disbarred as a sanction for his intentional misappropriation of entrusted funds in violation of Rule 1.15(a). Respondent appeared at the hearing, but did not file a post-hearing brief, and thus has not attempted to counter the facts and arguments in Disciplinary Counsel's brief.

As set forth below, the Hearing Committee finds that Disciplinary Counsel has proven by clear and convincing evidence that Respondent violated Rules 1.15(a) and (e) (intentional misappropriation), Rules 1.3(a), (b), and (c) (neglect and

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

intentional neglect), Rules 1.4(a) and (b) (failing to communicate), Rule 1.5(b) (failing to provide written fee agreement); Rule 1.16(d) (failing to return client files and refund unearned fees), Rule 8.1(a) (knowingly making false statements to Disciplinary Counsel), Rule 8.1(b) (knowingly failing to respond to Disciplinary Counsel's investigative inquiries), Rule 8.4(c) (engaging in conduct involving dishonesty, deceit, or misrepresentation), and Rule 8.4(d) (serious interference with the administration of justice), and D.C. Bar Rule XI, § 2(b)(3) (failing to respond to a disciplinary order), and recommends that Respondent be disbarred and ordered to pay restitution as a condition of reinstatement.

I. PROCEDURAL HISTORY

The Specification of Charges was filed on December 9, 2020, and served on Respondent on December 18, 2020. Respondent did not file an Answer. Respondent failed to appear at a pre-hearing conference on February 22, 2021, during which the matter was scheduled for a hearing on April 20-23, 2021.

On April 19, 2021, Respondent sent a letter requesting that the hearing be delayed for thirty days. Disciplinary Counsel opposed the motion. The Hearing Committee denied the motion and the hearing began on April 20, 2021, as scheduled. Deputy Disciplinary Counsel Julia L. Porter appeared on behalf of Disciplinary Counsel. Respondent appeared at the hearing, and was not represented by counsel. Due to the COVID-19 pandemic, the hearing was held via video conference, with public access via YouTube livestream.

The hearing was held on April 20-21 and 23, 2021. Disciplinary Counsel called eight witnesses: six of Respondent's former clients who filed disciplinary complaints against him, Azadeh Matinpour (an ODC investigator), and Angela Thornton (an ODC legal assistant). The Committee admitted DCX 1-31, 33-78, and 80-83, and reserved ruling on DCX 32 and 79.[1] Respondent cross-examined most of Disciplinary Counsel's witnesses and testified on his own behalf. Because Respondent did not file an Answer, he was not permitted to call additional witnesses or present non-testimonial evidence. *See* Board Rule 7.7.

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 of Charges. Tr. 662; *see* Board Rule 11.11. In the sanctions phase of the hearing, Disciplinary Counsel submitted DCX 80 through 83, but did not call any witnesses. Respondent testified in mitigation.

Disciplinary Counsel submitted its Proposed Findings of Fact, Conclusions of Law, and Recommendation as to Sanction on May 17, 2021. Respondent did not submit Proposed Findings of Fact, Conclusions of Law, and Recommendation as to Sanction, or otherwise respond to Disciplinary Counsel's post-hearing brief.

[1] "DCX" refers to Disciplinary Counsel's exhibits. "RX" refers to Respondent's exhibits. "Tr." refers to the transcript of the hearing held on April 20-21, 23, 2021. DCX 32 and 79 were offered during the hearing. The Hearing Committee reserved ruling. Tr. 660. We hereby admit those exhibits into evidence.

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 facts sought to be established") (citation and internal quotation marks omitted).

1. Respondent graduated from law school in 2002 and became a member of the Bar of the District of Columbia Court of Appeals on March 7, 2005. DCX 1; Tr. 534, 536 (Respondent).

2. Respondent is licensed only in D.C. He has never been licensed to practice law in Virginia, although he maintained a law office there from 2013 through 2020. Tr. 534, 536-40 (Respondent).

<u>Nathan Davis (DDN 2019-D136)</u>

3. In mid-April 2018, Nathan Davis retained Respondent to represent him against possible criminal charges, a threatened discharge from the United States Navy, and the suspension of his security clearance. DCX 5 at 3; Tr. 96-99, 104-05, 146 (Davis); *see also* DCX 8 at 1 (Respondent admits that the fee he was paid was to cover Davis's representation with respect to the criminal charges, administrative separation hearing, and suspension of security clearance).

4. Respondent provided Davis a fee agreement dated April 16, 2018, that set forth his "flat fee" of $3,500 to investigate the circumstances and advise Davis on the pending and anticipated criminal charges and administrative proceedings before the Navy, including the suspension of his security clearance. DCX 5 at 3-6; Tr. 101-03 (Davis).

5. Respondent represented in his fee agreement that he would deposit the fee into his attorney trust account and transfer the funds to his operating account as work was performed, at the rate of $350/hour for Respondent's time, and $100/hour for his assistant's time. DCX 5 at 4.

6. On April 16, 2018, Davis paid Respondent $3,500 and signed and returned the fee agreement to Respondent. DCX 5 at 7; DCX 8 at 8; DCX 9 at 4; Tr. 102, 105-06 (Davis).

7. On April 18, 2018, Davis's credit card payment of $3,500 was credited to Respondent's D.C. IOLTA or trust account at Bank of America, account number ending in 1807, which Respondent held in the name of "The Law Center." Tr. 357-59 (Matinpour); DCX 74 at 132-33; DCX 75 at 12; DCX 77.

8. Without seeking or obtaining Davis's consent and without having done the work that Davis retained him to do, Respondent withdrew almost all of Davis's funds from the trust account within one day. Tr. 112-14, 122 (Davis). By April 19, 2018, the balance in the trust account was $100. DCX 75 at 12; Tr. 359 (Matinpour).

9. Davis met with Respondent only twice. Their first meeting was shortly after Davis retained Respondent and lasted approximately 30 minutes, possibly up

to an hour. Davis informed Respondent about his situation and they discussed the possible criminal and military proceedings, and his suspended security clearance. Tr. 100-01, 106, 108, 119, 128 (Davis). Respondent falsely testified that the meeting lasted three hours. Tr. 502. Davis had a second meeting with Respondent approximately a month later which lasted 30-60 minutes. During this meeting, Respondent called either the victim in the criminal matter or one of the victim's parents while Davis was in the office. The call lasted approximately five minutes. Tr. 108-10, 120, 137-39, 144-45 (Davis); Tr. 502 (Respondent testified he called parents, not victim).

10. In addition to two meetings in the Spring of 2018, Davis called and exchanged text messages with Respondent. Respondent did not answer or respond to many of Davis's calls and text messages. Tr. 108, 114-15 (Davis: Respondent's responses were "very brief or nonexistent"). Davis was not aware of any work that Respondent was doing in his matters. Tr. 112, 114-15, 117, 126 (Davis); DCX 9 at 1.

11. Respondent told Davis that he would need a lawyer in Florida, where criminal charges were anticipated to be filed. Respondent agreed to refer Davis to a Florida lawyer, but never did. Davis found a Florida lawyer on his own. Tr. 111, 118 (Davis); DCX 9 at 1.

12. By early October 2018, Davis had retained a Florida lawyer who assisted him in turning himself into the police. Davis provided Respondent updates

on his situation, but Respondent did not assist Davis in the criminal matter – which the text messages confirm. DCX 9 at 3-5; Tr. 112, 123-25, 146-47, 152-53 (Davis).

13. Respondent also did not take any steps to assist Davis in lifting the suspension of his security clearance. Davis remained suspended throughout the rest of his military career, which ended in 2020. Tr. 96-97, 128, 143-44, 148, 155-56 (Davis). *But see* Tr. 503, 548-49. Respondent falsely testified that he prepared a written submission relating to the suspension of Davis's security clearance. Tr. 503; *see also* Tr. 548-49 (Respondent did not claim that he had prepared the submission when responding to Davis's disciplinary complaint, and could not recall actually submitting the document on Davis's behalf).

14. Respondent also did not assist Davis in any military proceeding. By the time the military took action against Davis, Davis had terminated Respondent's engagement. Davis hired and paid another lawyer to represent him in the military proceedings. Tr. 148-52 (Davis); Tr. 552 (Respondent admitted he did not provide legal representation to Davis in administrative proceeding).

15. Because Respondent was not assisting him in dealing with either the criminal or military authorities, Davis told Respondent he no longer needed his services and asked Respondent to provide him a refund of the unearned fees. Tr. 115-17, 126, 153-54 (Davis); DCX 5 at 1; DCX 9 at 1.

16. Respondent failed to provide an invoice, as he had promised Davis he would do in October 2018. Tr. 113, 121 (Davis); DCX 9 at 1, 3. Respondent also failed to refund Davis the fees he had not earned. Tr. 126 (Davis). Respondent then

refused to respond to Davis's further requests for a refund. DCX 5 at 1-2; Tr. 116-17 (Davis).

17. In February 2019, Davis filed a disciplinary complaint against Respondent and asked for a refund of the fees he paid. DCX 5; Tr. 116-17, 126 (Davis).

18. In June 2019, Disciplinary Counsel sent Respondent two letters asking him to respond to Davis's complaint. Respondent ignored the first letter (DCX 6), and responded after the second letter, which was sent by certified as well as regular mail (DCX 7), but not until July 24, 2019, about two weeks after the second deadline. DCX 8; Tr. 252-55 (Thornton); Tr. 541-42 (Respondent concedes he hand-delivered his response in the Davis matter along with his responses in the Browne and Morton matters, all of which were delivered on the same day).

19. Respondent's response to Disciplinary Counsel falsely described the services he provided to Davis. Respondent claimed that he had prepared a petition challenging the suspension of Davis's security clearance, but did not produce it. DCX 8 at 1-2. Davis had no memory of ever seeing any petition. Tr. 120; *see* 134-35 (Davis). Respondent claimed he did not submit the petition because Davis advised him that his security suspension had been lifted. DCX 8 at 1-2. This was false, as Respondent knew. *See* Tr. 546 (Respondent admitted that Davis's security clearance remained suspended throughout the representation).

20. In his response, Respondent inflated the time he worked on Davis's matter and produced a newly-created invoice. According to Respondent's invoice,

he had three in-person meetings with Davis lasting a total of 6.8 hours and spent more than three additional hours calling and texting Davis. DCX 8 at 9-11; Tr. 119-20 (Davis: met Respondent two times and neither meeting lasted more than an hour).

21. Respondent never provided the invoice to Davis, as he falsely claimed to Disciplinary Counsel. DCX 8 at 2, 9-11; *see* Tr. 113, 121, 123 (Davis); DCX 9 at 1.

22. The invoice that Respondent produced to Disciplinary Counsel included not only a number of inflated time entries, but a false description of what Respondent had done with Davis's funds. Respondent did not pay himself $3,500 on April 27, 2018 (DCX 8 at 11), but had taken virtually all of Davis's funds by April 19, 2018 – one day after they were deposited in the trust account. DCX 75 at 12; Tr. 359 (Matinpour); *see* Tr. 554-55 (Respondent said he was "sure" he reviewed the invoice before submitting it to Disciplinary Counsel but admitted that he did not know if it bore any relationship to the activity in trust account).

23. In November 2019, Disciplinary Counsel sent Respondent a letter requesting further information about his representation of Davis. Enclosed with the letter was a subpoena for the client file and Respondent's financial records showing his handling of the fees that Davis advanced. DCX 10.

24. Respondent failed to respond to the letter and did not comply with the subpoena after requesting and receiving an extension of time to do so. DCX 11-12. As discussed below, beginning in December 2019, Respondent refused to respond

to Disciplinary Counsel's inquiries in its investigations of the Davis matter and the other client matters.

Joshua Browne (DDN 2019-D152)

25. In late 2015, Joshua Browne called Respondent after reading about his military law experience online. Browne explained to Respondent the circumstances of his 2012 discharge from the Marine Corps and the prior military proceedings against him. At the conclusion of the 30-minute call, Respondent told Browne that he had a good chance of receiving an upgrade of his discharge and quoted him a fee of $4,875. Tr. 23-25, 27-28 (Browne); *see also* DCX 26 at 10.

26. Respondent later emailed Browne a fee agreement for a "flat fee" of $4,875 to "investigate the circumstances and provide written application and petition to the Board of Correction of Military Records (BCMR) to correct military record and discharge." DCX 28 at 4-5. Respondent stated in his fee agreement that he would deposit the fees into his attorney trust account and transfer the funds to his operating account as work was performed. DCX 28 at 5.

27. On December 30, 2015, Browne paid Respondent $4,875 with his debit card. Tr. 27, 31-32 (Browne); DCX 31 at 3. The advance fees were deposited in Respondent's trust account either the next day or at the beginning of January 2016. DCX 75 at 3; Tr. 355-56 (Matinpour).

28. Respondent immediately began to withdraw Browne's entrusted funds without seeking or obtaining Browne's consent to take any portion of the advanced fees before he had earned them. Tr. 52-53, 68, 90 (Browne).

29. By March 30, 2016, the balance in Respondent's trust account fell to $1,045.45, notwithstanding the deposit of more than $60,000 of additional funds in the account between January and March 2016. DCX 75 at 3-4. By December 30, 2016, the balance dropped to $20.29, despite the deposit of more than $240,000 between April and December. DCX 75 at 4-7; Tr. 356-57 (Matinpour).

30. Respondent never sent Browne an invoice or statement indicating he was doing any work, and did not provide Browne a draft petition or any work product. Browne never consented to Respondent taking any of his funds from the trust account prior to performing services for him. Tr. 52-53, 68, 90 (Browne); DCX 26 at 1-2.

31. At the beginning of the representation, Respondent's staff sent Browne a number of forms and other paperwork to complete. Browne provided a detailed narrative and provided the other information and documentation requested including supporting affidavits. Browne submitted all the information and documents to Respondent by March 11, 2016. Tr. 33-37 (Browne); DCX 26 at 2, 5, 10-21, 24-25, 27; DCX 28 at 40-48.

32. Over the next two years, Browne called Respondent's office multiple times for updates. On those occasions when Respondent or his staff responded, they did not provide Browne any substantive information. Instead, they told Browne that his file was on Respondent's desk, Respondent was busy with other matters, or they had confused his matter with that of another client with the same name. Tr. 37-40, 71-73 (Browne); DCX 26 at 1-8; DCX 29.

33. Browne also checked Respondent's online case management system, Clio, but did not find any evidence of work by Respondent. Browne saw only the documents that he had generated and uploaded to the system. Tr. 50-51, 81-82, 88-89 (Browne).

34. By 2017, Browne was following-up some of his calls to Respondent with emails so that he would have a record of his attempts to obtain information. Tr. 40-41 (Browne). On March 8, 2017, Browne emailed Respondent asking about the status of the petition. Respondent's office manager responded two months later on May 18, 2017, thanking Browne for his call the previous day, and saying that he, the office manager, was drafting the statement of facts. On October 3, 2017, Browne again emailed Respondent because he had not heard or received anything. Respondent failed to respond. Tr. 41-44 (Browne); DCX 26 at 2, 22-25; DCX 29. Respondent falsely testified that he sent Browne a petition or draft petition in 2017. Tr. 506-07, 560-61.

35. By 2018, Browne was sending text messages to Respondent as well as calling his office and sending emails. Tr. 44-45 (Browne). Respondent never initiated any communication: to the extent that Respondent or his staff ever spoke to Browne, it was only after Browne had called, emailed, or texted. Even then, Browne received no substantive information. Tr. 42-46 (Browne); DCX 26 at 3-7 (text messages in which Respondent said he would get back to Browne).

36. In April 2018, Respondent's executive assistant emailed Browne to schedule a meeting. Browne responded, but Respondent never scheduled a meeting or met with Browne. Tr. 47-48 (Browne); DCX 26 at 26.

37. Between late 2015 and February 2019, Browne talked to Respondent approximately three times and the third time was in 2019 after Browne demanded a refund. Tr. 77, 89-90 (Browne). Browne is unaware of anything Respondent did to pursue his matter. Tr. 45-47, 49-50, 62 (Browne); DCX 26; DCX 29.

38. In early January 2019, Browne contacted the Virginia State Bar ("VSB") about Respondent only to learn that Respondent was not licensed to practice in Virginia. Tr. 48-49, 57 (Browne); DCX 26 at 29-30.

39. On January 26, 2019, Browne emailed Respondent asking him to return his funds because Respondent had failed to take any action in his matter. DCX 26 at 27. When Respondent failed to respond, Browne sent him a text a couple days later repeating his request for a refund. Tr. 46, 51, 53, 57-58 (Browne); DCX 26 at 2, 7.

40. Respondent replied to Browne's text, saying "[y]our petition is completed and forwarded for you" and that he would "pull your file and call." DCX 26 at 7. But Browne did not hear back from Respondent and never received any work product. Tr. 46-49, 53-54, 57 (Browne); DCX 26 at 8.

41. On February 1, 2019, Browne repeated his request for a refund of his $4,875, minus any amount that Respondent could itemize he had earned. Tr. 57-59, 84 (Browne); DCX 26 at 8, 28. In response, Respondent claimed he would send

Browne a package, but then never did. Tr. 59-60, 62, 82-84 (Browne); DCX 26 at 8-9.

42. In April 2019, Browne filed a disciplinary complaint against Respondent asking for a full refund. DCX 26; Tr. 61-62 (Browne). On June 25, 2019, Disciplinary Counsel sent Respondent a letter enclosing Browne's complaint and asking Respondent to provide a response by July 9, 2019. Disciplinary Counsel also enclosed a subpoena for Browne's file and Respondent's financial records. DCX 27.

43. Respondent submitted a response to that disciplinary complaint on July 24, 2019 – after the deadline – and provided some documents, although not the entire client file and his financial records as directed in Disciplinary Counsel's subpoena. DCX 27-28; Tr. 254-56 (Thornton).

44. In his response, Respondent misrepresented the work he had done for Browne. Respondent claimed he made several requests for Browne's records (DCX 28 at 1) but provided no documentary support for the alleged requests. Respondent had never told Browne that he could not obtain the relevant records; nor did Respondent seek Browne's assistance in getting them. Tr. 49-50, 62-65 (Browne); DCX 29.

45. Respondent sought to excuse his neglect by falsely claiming that he did not learn of the prior military proceedings against him (charges against Browne for dereliction of duty pursuant to Article 92) until sometime later. DCX 28 at 1. Browne, however, had told Respondent about the charges he faced during their

initial conversation and described them in the intake form along with the other related charge for which Browne had been found not guilty. Tr. 63, 66-67 (Browne); DCX 28 at 44-45.

46. Respondent falsely represented to Disciplinary Counsel that he had prepared and sent to Browne a petition or brief in December 2018. DCX 28 at 2; Tr. 44-47, 49, 62, 65-68 (Browne); DCX 29. Respondent had never sent Browne a petition or draft petition. It is highly unlikely that Respondent would have mailed the petition to Browne as all other communications with Browne were electronic. *See, e.g.*, DCX 26 at 3-28; *see also* DCX 79 at 19-24 (Respondent sent petition to another client, Morton, electronically).

47. At the hearing, Respondent suggested that Browne did not receive the purported December 2018 petition because his address changed. Tr. 82-85. But the address that Respondent included on his fabricated cover letters dated December 5, 2018 and February 10, 2019 (which he produced to Disciplinary Counsel but did not send to his client Browne) (DCX 28 at 8, 32) was the same address that Browne included in the 2015 fee agreement (*id.* at 7), the January 2016 intake form (*id.* at 40), Browne's February 2019 text message to Respondent (DCX 26 at 8), and Browne's complaint to Disciplinary Counsel (*id.* at 1); Tr. 87-88 (Browne).

48. Browne first saw the purported petition (which Respondent claims to have prepared in 2018) when Disciplinary Counsel provided it to him as part of Respondent's response. Tr. 49, 65-66, 68 (Browne); DCX 29. Much of the legal discussion in the petition was boilerplate that Respondent also included in the

petition he created for Jon Morton, another client who filed a disciplinary complaint against Respondent in June 2019 (DCX 32). *Compare* DCX 28 at 13-15, 22-23, 27-29, *with* DCX 34 at 9-12, 18, 21-22. The factual sections were merely a restatement of Browne's own written statement submitted in early 2016, and the list of supporting documents were those which Browne had provided to Respondent. Tr. 68-70, 73-74 (Browne); DCX 29. Given Browne's change in circumstances over the course of the representation (two promotions of which Respondent apparently had no knowledge given his lack of communication), the typos in the petition, and the absence of information about Browne's life in the past three to four years, the petition that Respondent provided to Disciplinary Counsel was of no use to Browne. Tr. 68-69, 71 (Browne); DCX 29.

49. Respondent's response to Disciplinary Counsel included other false representations. For example, Respondent claimed he met by phone with Browne to discuss the petition (DCX 28 at 1). He had not. Tr. 71 (Browne); DCX 29. Respondent also attached an invoice he had recently created but never provided to Browne, although he falsely claimed that he had. DCX 28 at 2, 8; *see* Tr. 52-53, 65-66 (Browne). The invoice included entries for work that Respondent had not performed, including alleged meetings that had not taken place. DCX 28 at 9-10; DCX 29; *see* Tr. 65, 71 (Browne). Some of the time entries that Respondent created included the wrong initials for the staff member who emailed standard client forms to Browne – further evidence that the invoice was created after-the-fact and solely in response to Disciplinary Counsel's investigation. *Compare* DCX 28 at 9 (entries

for JB), *with* DCX 26 at 10 (work done on 12/31/2015 was performed by "Tim Mitchell," not "JB" as reflected on Respondent's invoice). *See* Tr. 558-60 (Respondent).

50. Respondent also falsely represented what he had done with the fees that Browne advanced at the beginning of the representation. Respondent claimed that he had not withdrawn any of Browne's funds from his trust account until August 17, 2017, when Respondent paid himself $3,050. Respondent claimed he paid himself the balance of $1,825 on November 10, 2017. DCX 28 at 10. In fact, Respondent took all of Browne's funds in 2016. DCX 75 at 3-7; Tr. 356 (Matinpour); Tr. 562 (Respondent admits invoice inaccurate).

51. In November 2019, Disciplinary Counsel sent Respondent a request for further information and another subpoena for Browne's client file and his financial records showing his handling of the fees that Browne advanced. DCX 30.

52. Respondent failed to respond to Disciplinary Counsel's inquiries and did not comply with the subpoena, even after requesting and receiving an extension of time to do so. DCX 11-16. As discussed below, by December 2019, Respondent was refusing to respond to Disciplinary Counsel's investigative inquiries.

Jon Morton (DDN 2019-D158)

53. In late July 2015, Jon Morton retained Respondent to represent him in proceedings to upgrade his prior military discharge. DCX 32 at 1-2.

54. Respondent's office emailed Morton a fee agreement for a "flat fee" of $4,500 "[t]o investigate the circumstances and provide written application and

petition to the Board of Correction of Military Records (BCMR) to correct military record and discharge." DCX 32 at 3; DCX 79 at 4-10. Respondent represented in his fee agreement that he would deposit the fees into his attorney trust account and transfer the funds to his operating account as work was performed at his hourly rate. DCX 32 at 4.

55. Morton paid Respondent $3,575 with a debit card on July 31, 2015. DCX 32 at 11. Morton's funds were deposited in Respondent's trust account on August 3, 2015, as part of a $4,562.50 deposit. Tr. 350 (Matinpour); DCX 75 at 1; DCX 77.

56. By no later than December 2016, Respondent had taken all Morton's funds for himself. DCX 75 at 7 (balance was $20.29 on 12/30/16); Tr. 350-53 (Matinpour). The invoice that Respondent later provided to Disciplinary Counsel shows that Respondent had done negligible work on Morton's matter in 2015 and throughout 2016 (totaling $1,130), and falsely indicates that Respondent did not withdraw any of Morton's funds from his trust account until May 2017. DCX 34 at 5-6.

57. In August 2015, after paying Respondent, Morton called Respondent's office to check on the status of his matter. Respondent's staff told him that Respondent would get back to him, but Respondent never did. DCX 32 at 2.

58. In 2019, Morton contacted his Congressman about Respondent and was told to file a disciplinary complaint. DCX 32 at 1. In June 2019, Morton filed a disciplinary complaint against Respondent complaining of his lack of

communication for four years. Morton said he was a "victim [of] legal malpractice," and asked for a refund "so that I may still have hope for my discharge situation." *Id.* at 2.

59. The response that Respondent submitted to Disciplinary Counsel in Morton's matter was very similar to the response that he submitted in Browne's matter and delivered on the same day – July 24, 2019. DCX 34; Tr. 255 (Thornton). Respondent contended that the delay in Morton's matter was due to his inability to obtain records, although he did not provide any evidence of his alleged requests for the records. DCX 34 at 1.

60. Respondent's response to Disciplinary Counsel also recounted alleged communications with Morton (DCX 34 at 1-2) that are at odds with Morton's claim that there was virtually no communication between 2015 and 2019. DCX 32 at 1-2.

61. As in his response to Browne's complaint, Respondent claimed he previously had mailed Morton a petition along with an invoice although possibly to the wrong address. Respondent claimed that he had sent them on September 30, 2018, and produced a fabricated cover letter with that date. DCX 34 at 2, 4. This was an incredible statement given that all other communications between Respondent and his office, on the one hand, and Morton, on the other, were electronic, including those on July 21, 2019. DCX 79 at 19-24.

62. In fact, Respondent did not send Morton the petition until July 21, 2019 (DCX 79 at 19-24), three days before Respondent submitted his response to Disciplinary Counsel. DCX 34 at 1. Respondent's representations to Disciplinary

Counsel that he sent the petition and invoice in September 2018 were knowingly false. DCX 34 at 1-23; *see* DCX 32.

63. The invoice that Respondent produced to Disciplinary Counsel in July 2019, reflected that there were significant lapses between Respondent's alleged activities in Morton's matter. For example, Respondent did not record any time between August 2015 and July 2016, and again between July 2016 and May 2017. There were other substantial breaks in Respondent's alleged activity in Morton's matter in and after July 2017. DCX 34 at 5-6.

64. Respondent's invoice falsely represented what Respondent had done with Morton's funds. Respondent claimed that he had not withdrawn any of Morton's $3,575 from the trust account until May 18, 2017, when Respondent paid himself $1,125. Respondent represented that he paid himself the balance of $2,450 on September 28, 2017. DCX 34 at 6. In fact, Respondent had taken all of Morton's funds in 2015 and 2016. Tr. 350-53 (Matinpour); DCX 75 at 1-7 (trust account balance was $20.29 at end of 2016).

65. In November 2019, Disciplinary Counsel sent Respondent a letter requesting further information about his representation of Morton and a subpoena for the client file and his financial records showing his handling of the fees that Morton advanced. DCX 35.

66. Respondent failed to respond to the letter. Respondent also failed to comply with the subpoena after requesting and receiving an extension of time to do so. DCX 11-16. By December 2019, Respondent was refusing to respond to

Disciplinary Counsel's investigative inquiries. *See* Findings of Fact ("FF") 160-80 below.

John Curran (DDN 2019-D315)

67. After serving in the Air Force for 10 years, John Curran went to college, then worked in cancer research for eight years, and in 2009 started medical school. Curran attended medical school under the Navy's Health Profession Scholarship Program and in mid-2014, re-entered the military and started an internship at a Navy Medical Center. In 2018, the Navy told Curran it was discharging him at the end of September 2018, approximately a year before his scheduled discharge date. Tr. 426-28 (Curran).

68. Curran disputed the Navy's reason for the early discharge and sought legal counsel. Curran learned of Respondent through an online search and called him on August 15, 2018. During their 30-minute call, Curran told Respondent about his early discharge and the Navy's intention to charge back to him a portion of his medical education cost on account of the early discharge. Respondent told Curran that it "sounded like a wrongful discharge" and explained how he would contest it. Respondent told Curran about his legal experience in military matters, including working in the Navy JAG Corps. Tr. 428-29, 436-39, 442, 485 (Curran).

69. Respondent quoted Curran a fee of $3,600 to contest the discharge, but said if Curran paid within 24 hours, Respondent would discount his fee by a third. Curran paid Respondent $2,400 that day by credit card. Tr. 430, 439, 442, 490-91, 493 (Curran); DCX 37 at 1, 6.

70. That same day, Respondent emailed Curran a fee agreement providing for a "flat fee" of $3,600 "[t]o investigate the circumstances and provide written request for re-consideration to the U.S. Navy for Administrative Separation." DCX 37 at 3; Tr. 440-41 (Curran). The agreement provided for a one-third discount if paid in full within two days. Respondent represented in his fee agreement that he would deposit the fees into his attorney trust account and transfer the funds to his operating account as work was performed. DCX 37 at 4.

71. Curran's credit card payment of $2,400 was credited to Respondent's trust account on August 17, 2018. DCX 75 at 12. Respondent took the funds for himself on August 21, 2018, without seeking or obtaining Curran's consent and without having done anything to pursue Curran's matter. DCX 75 at 12.; Tr. 457-58 (Curran).

72. On August 21, 2018, Respondent transferred Curran's $2,400 to his operating account, which was overdrawn by $200.14, which left a balance of $25 in the trust account. DCX 75 at 12; DCX 76 at 125; Tr. 360-62 (Matinpour).[2] Respondent then used Curran's funds to pay Respondent's own personal and business expenses. DCX 76 at 125.

73. As Respondent had requested, Curran completed an intake form and uploaded onto Clio certain documents relating to his military service, his medical

[2] Respondent's operating account was overdrawn on a number of other occasions, including in November 2015, June and October 2016, nine months in 2018, seven months in 2019, and in January and June 2020. DCX 76; Tr. 362-63 (Matinpour).

education, and the Navy's decision to discharge him. Tr. 439, 441-42 (Curran); DCX 38 at 1.

74. Respondent did nothing to assist Curran prior to his discharge on September 30, 2018. Curran on his own wrote a response to the Navy's show cause letter. Tr. 430, 476-77, 486 (Curran).[3] Respondent falsely testified that he made a submission to the Navy, but admits he never provided the purported submission to Curran and had no evidence anyone else had done so. Tr. 516, 581-83, 591-92.

75. After their initial call, Curran made several calls and sent emails to Respondent, but Respondent did not, other than as discussed in footnote three, respond or initiate any communication. It was not until November 8, 2018, that Curran was able to get Respondent to speak with him again. Tr. 430, 443-44, 474 (Curran); DCX 37 at 2; DCX 38 at 1. During their second call, Respondent told Curran his approach to challenging the discharge, basically reiterating what they had discussed in August 2018. Respondent described the paperwork he would need and told Curran that he did not need anything more from him. Tr. 430-31, 444-45 (Curran).

76. A few weeks later, Curran received a bill from the Navy for more than $400,000 – the full cost of his medical education. Curran called Respondent several times, and was eventually able to schedule a meeting with Respondent, but Respondent canceled at the last minute. Tr. 429, 431, 446 (Curran); DCX 37 at 2.

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[3] Curran said he spoke to Respondent for a couple of minutes shortly before his discharge, but Respondent merely told him he would get in touch – which Respondent did not do until November 2018. Tr. 443-44 (Curran).

77. On December 19, 2018, Curran met with Respondent in-person for the first time. Respondent repeated what he had previously told Curran on the phone about his discharge and they reviewed the documents that Curran had sent to Respondent in August. Tr. 432, 437, 447-48, 477 (Curran); DCX 37 at 2. Respondent showed Curran a rough draft or incomplete documents relating to his claim of wrongful discharge, and told Curran he still had more work to do. Tr. 447-50 (Curran).

78. Curran also asked Respondent if he would help him with the Navy's bill for his medical education. Respondent told Curran he would assist him, but needed Curran to give him more information. Tr. 432, 447, 480-81 (Curran).

79. Curran on his own investigated the amount the Navy claimed he owed and obtained the relevant documents including the Defense Finance Accounting Service audit and the applicable regulations. Tr. 451-52, 480-81, 488 (Curran).

80. Respondent met with Curran a second and final time on February 23, 2019. Tr. 452 (Curran). A week before their meeting, Respondent demanded that Curran pay him an additional $1,200, claiming that the Navy's medical school expense collection was a separate matter from the initial engagement about Curran's contested discharge. Tr. 433, 453-54, 486-87 (Curran). *But see* Tr. 589 (Respondent admitted that "debt is directly related to the discharge"). Curran was "desperate" and paid Respondent an additional $1,200 fee by credit card on February 16, 2019. Tr. 433, 453-54 (Curran); DCX 37 at 2; DCX 38 at 1, 3, 9. Curran also signed

electronically another fee agreement, but Respondent and his office never provided him a copy and it was not included in his online file. Tr. 478, 487 (Curran).

81. Curran's $1,200 credit card payment was credited to Respondent's trust account on February 19, 2019. Respondent withdrew that $1,200 the next day. DCX 75 at 14; Tr. 363-64 (Matinpour). By March 6, 2019, the balance in the trust account was $508, despite the deposit of an additional $5,950 in credit card payments from Respondent's other clients. DCX 75 at 14. Respondent took Curran's $1,200 without providing any services to Curran and without seeking or obtaining Curran's consent. Tr. 458-59 (Curran).

82. Curran asked Respondent and his office several times to provide him the fee agreement for the collection matter, but Respondent failed to do so. Tr. 454-55, 487 (Curran).

83. At their last meeting on February 23, 2019, Curran provided Respondent the information and documents that he had obtained relating to the debt collection matter, which they discussed. Tr. 452-53, 480-81 (Curran). They also discussed the wrongful discharge matter. Respondent told Curran that he would pursue both matters but needed additional information from Curran. Tr. 433, 456, 486-87, 489 (Curran).

84. Curran provided the information Respondent requested within a couple of weeks. After that, Curran did not hear from Respondent. Tr. 433-34, 456 (Curran); DCX 37 at 2. Curran called Respondent 16 times between March 15 and

July 8, 2019, but Respondent did not return his calls or respond to his messages. Tr. 433-34, 454-55, 461-62 (Curran); DCX 38 at 1.

85. Curran is unaware of anything Respondent did to challenge Curran's discharge or dispute the Navy's related collection matter. Tr. 434-35, 456, 459, 461-63, 468, 487-88 (Curran); DCX 37 at 1-2; *see* Tr. 586, 588, 592 (Respondent admits he never finished or submitted a petition challenging Curran's discharge; Respondent testified he did not tell Curran he would or would not take action to challenge the debt).

86. On July 15, 2019, Curran sent Respondent a letter by email and certified mail describing the history of their interactions, his unsuccessful efforts to communicate with Respondent, and his understanding that "nothing has happened with regard to [his] case." DCX 38 at 1; Tr. 433-34, 460-61 (Curran). Curran provided his contact information and asked Respondent what he could to do to move his matters forward. DCX 38 at 1.

87. Respondent called Curran approximately a week after receiving his letter and promised to send him some documents to review and sign the next day. Curran never heard from Respondent again. Tr. 434, 459-63 (Curran); DCX 36 at 6-7; DCX 37 at 2 ("I was ghosted by my own lawyer.").

88. On August 14, 2019, Curran wrote to Respondent terminating the relationship. Curran complained that there had been no progress on the underlying matter despite Respondent's receipt of $3,600 in fees, and Respondent would not communicate with him. Curran asked Respondent to withdraw (although

Respondent had never submitted anything to the Navy), provide an accounting, refund the unearned fees, and return his documents and his file. Tr. 434-35, 463-64 (Curran); DCX 38 at 2.

89. Respondent did not respond to Curran's letter or further calls. Respondent refused to provide an accounting, return Curran's documents and file, or refund the fees he had not earned. Tr. 435, 464-65, 469 (Curran).

90. On August 17, 2019, Curran filed a disciplinary complaint against Respondent with the VSB because Respondent had taken his money and then abandoned him. Tr. 435-36, 466, 491 (Curran); DCX 36 at 4-7. The VSB informed Curran that it would not take any action because Respondent was not licensed to practice in Virginia, and referred Curran to the D.C. Bar. Tr. 436, 466-67 (Curran); DCX 36 at 2.

91. In October 2019, Curran filed a disciplinary complaint against Respondent in D.C. Tr. 467-68 (Curran); DCX 37.

92. As discussed below, Respondent refused to respond to Disciplinary Counsel's investigative inquiries regarding Curran's complaint. He never provided a written response, despite a Board order directing him to do so. Nor did Respondent provide the client file and his financial records, even after the Court ordered him to do so. FF 168-79.

Joseph Hoffler (DDN 2020-D009)

93. Joseph Hoffler served in the Air Force from 1962 until 1984, when he retired with the rank of lieutenant colonel. Hoffler retired after receiving what he

considered an unjustified letter of reprimand. Tr. 378-79 (Hoffler). Prior to retaining Respondent, Hoffler had challenged the letter of reprimand, including by bringing a civil action that the court dismissed because it had no jurisdiction to rule on the matter. Tr. 380, 414-16 (Hoffler).

94. In November 2018, Hoffler called Respondent about representing him in removing the letter of reprimand and seeking a retroactive promotion before the Special Selection Board ("SSB"). Tr. 379-82 (Hoffler). Respondent told Hoffler that he could represent him and give him a one-third discount of his fee of $4,500 if Hoffler paid him $500 by the end of November 2018, and the balance of the $3,000 fee in monthly installments of $250. Tr. 381-82, 389-91 (Hoffler); DCX 53 at 38.

95. In mid-November 2018, Respondent emailed Hoffler a fee agreement providing for a "flat fee" of $4,500 "[t]o investigate the circumstances and provide a written petition/request to the Air Force Board of Corrections of Military Records (AFBCMR) to correct military record and failure to promote." DCX 53 at 5-6. The fee agreement required Hoffler to make an initial payment of $500, and then pay $250/month. Respondent said he would deposit the fees into his attorney trust account and transfer the funds to his operating account as work was performed. DCX 53 at 6; Tr. 383-84 (Hoffler).

96. Hoffler signed the fee agreement on November 20, 2018, and provided Respondent documents about his matter by uploading them on Clio. Tr. 384-85 (Hoffler); DCX 53 at 7, 10.

97. On November 29, 2018, Respondent emailed Hoffler saying that he had reviewed Hoffler's documents and his written statement. Respondent told Hoffler his approach to challenging the reprimand and seeking review before the SSB. DCX 53 at 15; *see also* Tr. 382 (Hoffler). Hoffler responded on November 29, 2018, and Respondent replied that evening, reiterating his "approach" and telling Hoffler that the one-third discount would expire on November 30th and that if Hoffler paid him $500, he would start work. DCX 53 at 31-32.

98. Respondent sent other emails to Hoffler on November 29, 2018, telling him he wanted to help him on his case and the discount extended only one more day. DCX 53 at 36; *see also* DCX 53 at 38 (Hoffler's December 11, 2018 email to Respondent confirming payment and thanking Respondent for taking his case and for saying he would "aggressively fight to protect [Hoffler's] rights"). Respondent falsely testified that he told Hoffler he had a very difficult case and that he was not confident about it because it was so old. Tr. 511, 579.

99. On November 30, 2018, Hoffler paid Respondent $500 by debit card. Tr. 385 (Hoffler); DCX 54 at 1, 8. For the next nine months, Hoffler paid Respondent $250 at the beginning of each month for a total of $2,750. Tr. 389-90 (Hoffler); DCX 54.

100. The fees Hoffler advanced were deposited in Respondent's trust account. Tr. 365-66 (Matinpour); DCX 77. Respondent withdrew Hoffler's funds either the day they were deposited in the trust account or shortly thereafter. Tr. 366-67 (Matinpour). Hoffler's initial $500 payment was deposited in Respondent's trust

account on December 3, 2018. Respondent withdrew it the same day, leaving a balance of $45. DCX 75 at 13.

101. Respondent also took the $250 monthly payments that Hoffler made between January and the beginning of September 2019. The balance in Respondent's trust account was less than $160 in January and February 2019, and by September 18, 2019, after Hoffler had paid Respondent $2,750, the balance in the trust account was less than $100. DCX 75 at 13-16. The bank records show that in most instances, Respondent withdrew the $250 monthly payments within days after they were deposited in his trust account, if not the same day they were deposited. *Id.*

102. Respondent never told Hoffler he was taking his funds or provided him any statement or other documents showing that he had done any work in his matter. Hoffler never agreed that Respondent could take any of the fees he advanced and was unaware of any work that Respondent performed. Tr. 390, 392, 413 (Hoffler).

103. Hoffler provided Respondent numerous documents about his matter, including ones relating to his past challenges of the reprimand and the earlier civil action. Tr. 385-86, 407-08, 410-11, 415 (Hoffler); DCX 53 at 2, 8-10, 17-30. When Respondent did not contact him to discuss the information in the documents, Hoffler became concerned and he started calling Respondent on a weekly basis. Tr. 386-87, 390, 403 (Hoffler).

104. Most of Hoffler's calls and requests for information went unanswered. When Hoffler was able to reach someone, it was Respondent's office manager. She

told Hoffler that Respondent was busy or working at home and that Respondent would call him back. Respondent never did. Tr. 386-88 (Hoffler); DCX 53 at 2. Hoffler also scheduled three or four phone meetings with Respondent, but Respondent missed all of them. Tr. 387-88, 404 (Hoffler); DCX 52 at 6; DCX 53 at 41.

105. The few times that Hoffler communicated with Respondent, Respondent claimed he was busy and said that Hoffler's case was in his queue. Tr. 388 (Hoffler). Respondent did not provide Hoffler any substantive information, and refused to respond to Hoffler's subsequent requests for information. Tr. 388, 390, 393, 414 (Hoffler); DCX 52 at 6; DCX 53 at 2. Respondent falsely testified that he had an hour-long call with Hoffler in June or July 2019 and told him there was no evidence to support his claim of "racial inequality." Tr. 513, 574-75.

106. On September 3, 2019, Hoffler emailed Respondent about the lack of communication and his current inability to reach anyone in Respondent's office. Hoffler also said that he had not received anything by email to review, as Respondent had said he would. DCX 53 at 46. Respondent failed to respond. He also failed to provide any paperwork for Hoffler to review. Tr. 393-95 (Hoffler); DCX 52 at 6. Tr. 513, 576-78. Respondent falsely testified that he told Hoffler he would get back to him in October; Respondent also falsely testified that he prepared a petition and had his assistant send it to Hoffler after Hoffler discharged him. Tr. 513, 576-78.

107. Because Respondent never performed the work that Hoffler paid him to do, Hoffler stopped paying Respondent after September 2019. It was "obvious"

to Hoffler that Respondent had "abandoned [his] case." DCX 52 at 4, 6; Tr. 393-95, 397 (Hoffler).

108. By October 2019, Hoffler had discharged Respondent and asked him to return his funds. Respondent did not respond or refund the fees he was advanced – all of which he had taken without Hoffler's knowledge or consent. Tr. 392-96, 413 (Hoffler); DCX 52 at 6.

109. On October 21, 2019, Hoffer filed a disciplinary complaint against Respondent with the VSB. Tr. 396-97 (Hoffler); DCX 52 at 4-6. Because Respondent was not licensed to practice law in Virginia, the VSB told Hoffler it was dismissing his complaint, and VSB referred Hoffler to the D.C. Bar. DCX 52 at 2-3.

110. Respondent sent Hoffler an email or text after learning of his disciplinary complaint in Virginia, falsely stating that he had sent documents to Hoffler. DCX 53 at 2, 39; Tr. 399-400 (Hoffler). Respondent had never sent any documents to Hoffler, as Hoffler confirmed in an email of December 8, 2019. DCX 53 at 41; Tr. 395-96, 400 (Hoffler). Hoffler again asked Respondent to refund his $2,750 for which he had not received any services or paperwork. DCX 53 at 41; *see also* Tr. 400-01 (Hoffler). Respondent failed to respond. Respondent also ignored Hoffler's December 17, 2019 and January 1, 2020 emails repeating his request for a refund. DCX 53 at 43, 45; Tr. 401-03 (Hoffler).

111. On January 21, 2020, Hoffler filed a disciplinary complaint against Respondent in D.C. because he had taken Hoffler's money "and did nothing but hide

from [Hoffler].” DCX 53 at 2; *see* Tr. 397-98, 402-03 (Hoffler: Respondent did not do anything to assist him).

112. On January 22, 2020, Disciplinary Counsel sent a letter and email to Respondent enclosing Hoffler’s complaint and asking him to respond to the allegations in the complaint by February 3, 2020. DCX 55. Respondent ignored Disciplinary Counsel’s letter and the follow-up letter sent on February 5, 2020, enclosing a subpoena for Hoffler’s file and Respondent’s financial records. DCX 56-57.

113. As discussed below, Respondent refused to respond to Disciplinary Counsel’s investigative inquiries regarding Hoffler’s complainant. Respondent never provided a response to the disciplinary complaint and, as of the time of the hearing in this matter, has refused to turn over the client file and his financial records.

Terrence Ray (DDN 2020-D087)

114. Terrence Ray joined the Army in 1990 when he was 18 or 19 years old, and retired in 2014. In 2010, the Army brought an Article 15 proceeding against Ray for allegedly driving recklessly or under the influence the previous year while he was stationed in Germany. Ray was demoted and never received the promotion he expected. Tr. 161-62 (Ray); DCX 78 at 3-6.

115. In April 2012, Ray hired Respondent to represent him in challenging the Army’s decision to reduce his rank and pay. In their initial conversation, which was over the phone, Ray told Respondent about the events leading to his demotion

and the Army's failure to give him a hearing. Respondent responded that it was "a pretty simple case" and that he could represent Ray. Tr. 162-64, 167-68, 176 (Ray).

116. Respondent gave Ray a fee agreement that provided for a flat fee of $1,500, which Ray paid in three installments in 2012. Tr. 164-66, 168, (Ray); DCX 59 at 28-31

117. On September 16, 2013, Respondent submitted a petition to the Army Review Board to correct Ray's military record. DCX 59 at 41-50; Tr. 174 (Ray).

118. After learning that the Army denied the petition, Ray talked with Respondent who agreed to file an appeal or seek further review. However, when Ray met again with Respondent, Respondent showed him the same papers with the same mistakes that he had submitted before. Tr. 174-76, 196, 202, 204-05 (Ray). Ray became concerned that Respondent was not focused on the Army's failure to give him a hearing – which Ray believed was his best chance of getting relief. Tr. 176-77, 205-06 (Ray).

119. As the representation continued, Ray had increasing difficulty communicating with Respondent. Respondent did not initiate any communication and failed to return Ray's calls. Respondent also failed to appear for scheduled meetings. For much of the representation, Ray was in the dark as to what, if anything, Respondent was doing. Tr. 169-72, 201-03 (Ray).

120. In September 2015, Respondent prepared a complaint challenging the Army's Article 15 proceeding and seeking back pay for Ray. Tr. 177-78 (Ray); DCX 78 at 3.

121. Respondent filed the complaint in the United States Court of Federal Claims on September 29, 2015, although Respondent was not a member of that court's bar – something he never disclosed to Ray. Tr. 179 (Ray); DCX 78 at 2. Instead, Respondent told Ray that he could bring in another lawyer to work on the case, but it would cost Ray $10,000. Ray was unwilling to pay another lawyer for something that Respondent said he would do. Tr. 170-71, 196-97 (Ray). Ray, however, was willing to pay Respondent additional fees, but there was never an agreement as to what additional fees Respondent would charge. Tr. 188-89, 203 (Ray); *see* DCX 59 at 11 (Ray told an investigator from the VSB that Respondent said he would take a percentage of any recovery as an additional fee).

122. After he filed the complaint with the Federal Claims Court, Respondent consented to extensions for the government to respond in November 2015, and again in January 2016. DCX 78 at 2. Respondent told government counsel and the court that Ray would be filing an amended complaint. DCX 78 at 11, 13. Respondent, however, never prepared or filed an amended complaint, nor did Respondent take any other action to pursue Ray's claims. Tr. 182-83 (Ray); *see* DCX 59 at 3-5; *see* DCX 60 at 1-2.

123. In May 2016, Respondent consented to the government's motion to dismiss the action without prejudice. DCX 78 at 2. On May 26, 2016, Respondent emailed government counsel falsely stating that Ray agreed to dismiss the action. DCX 78 at 17. In fact, Respondent had never discussed the dismissal with Ray, and

Ray never agreed to the dismissal. Tr. 181-82, 193-94 (Ray). At the hearing in this matter, Respondent again falsely claimed Ray agreed to dismiss case. Tr. 568.

124. As years passed, Ray lost trust in Respondent. Ray went to Respondent's office, which moved from one city in Virginia to another without notice, to try to catch Respondent in his office and ask him about his case. Ray brought his fiancée so he would have a witness to his communications with Respondent. During the few times Ray found Respondent, Respondent assured Ray that he was pursuing his matter. But Ray did not know what Respondent was doing and Respondent did not initiate any communication. Tr. 169-72, 204-05 (Ray: "the conversation was very slim to none").

125. By early 2018, Ray had decided to retain another lawyer. Ray asked Respondent to return his file so he could hire someone else. When Respondent failed to provide his file, Ray filed a disciplinary complaint against Respondent with the VSB. Tr. 184, 187, 191 (Ray); DCX 59. Ray complained about the lack of progress in his case, that he had done much of the leg work himself (including calculating his backpay), and that Respondent failed to communicate. Ray said that in his meetings with Respondent, Respondent showed him the same error-filled documents. DCX 59 at 5; *see* Tr. 169-71 (Ray). When he filed the Virginia disciplinary complaint against Respondent, Ray did not know the status of his legal matter. Tr. 186-87, 190-91 (Ray).

126. A few months before complaining to the VSB, Ray began to communicate with Respondent by text messages so he would have a record of what

was said. They continued to exchange texts while the Virginia disciplinary complaint was pending. Tr. 189-90, 203 (Ray); DCX 59 at 17-26.

127. Upon learning of the Virginia disciplinary complaint, Respondent contacted Ray and scheduled a meeting. Respondent told Ray he would pursue his matter by taking a different tack. Tr. 172, 183, 186-89, 193 (Ray); *see* DCX 59 at 21-22 (Respondent's text messages of August 13 and 15, 2018); *see also* Tr. 566 (Respondent: after Ray threatened a disciplinary complaint, he agreed to pursue matter). Ray agreed to leave his file with Respondent because he was running out of time, Respondent already was familiar with his matter, and Respondent said he would pursue his matter. Tr. 172, 185, 187-88, 199-200 (Ray).

128. In August 2018, Respondent told the VSB that he was filing an appeal with the Army Review Board and "currently working on this appeal for Mr. Ray." DCX 59 at 7; *see* Tr. 571-73 (Respondent could not say whether he prepared or filed the appeal).

129. The VSB dismissed Ray's disciplinary complaint. Based on Respondent's representations, the VSB found that Ray's matter was still pending and awaiting decision.[4] DCX 59 at 1. It is unclear what Respondent claimed was still pending because the federal court action was dismissed more than two years earlier and there is no evidence Respondent filed an amended complaint or any appeal. *See* Tr. 190-93 (Ray).

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[4] It is not clear in the record why the VSB investigated this complaint, but not the others (due to the fact that Respondent was not a members of the VSB). This issue is not material to any of the matters before the Hearing Committee.

130. After dismissal of Ray's Virginia disciplinary complaint, Respondent would not communicate with Ray. Respondent did not respond to calls or text messages, and he failed to take any action to pursue Ray's matter. Tr. 170, 172, 183, 185, 188, 191-93 (Ray); DCX 60 at 2.

131. In March 2020, Ray filed a D.C. disciplinary complaint against Respondent. DCX 60. Ray had not heard from Respondent in more than a year and he did not know the status of his case. Tr. 192-93 (Ray). Ray reiterated his claims about Respondent's lack of communication, failure to return calls, missing scheduled appointments, moving his office without notice, and presenting the same erroneous documents without corrections or new arguments. DCX 60 at 1-2.

132. By the time Ray filed his second disciplinary complaint against Respondent, Ray had little hope of overturning the Army's decision given the passage of time. *See* Tr. 188 (Ray); *see also* Tr. 184 (When Ray called another lawyer, he still "had options," but "knew [he] didn't have much time left"). Respondent has never returned Ray's documents or file. Tr. 193 (Ray).

133. On April 21, 2020, Disciplinary Counsel sent a letter and email to Respondent enclosing Ray's disciplinary complaint and asking him to respond to the allegations in the complaint by May 1, 2020. DCX 61. Respondent refused to respond to Disciplinary Counsel's investigative inquiries regarding Ray's complaint. Respondent never filed a response to the complaint and refused to provide his client file and financial records, notwithstanding follow-up letters and his receipt of a subpoena and Court order enforcing it. DCX 62-66.

Romel Velasco (DDN 2020-D119)

134. By February 2020, Disciplinary Counsel was investigating Respondent in five separate matters. Respondent had notice of all the matters and submitted initial responses in the first three matters, albeit with false representations. By December 2019, Respondent was refusing to respond to Disciplinary Counsel's investigative inquiries. He was not, however, turning away potential clients. To the contrary, he took on additional clients and collected advance fees from them, including Romel (aka Rico) Velasco.

135. Velasco joined the Marine Corps in 2013, when he was 17 years old. He was discharged in 2018, following a court martial. Tr. 210-11 (Velasco).

136. By early 2020, Velasco was seeking legal representation to challenge the court martial and his discharge. Velasco learned of Respondent and his experience in military matters doing an online search. Velasco provided his contact information to Respondent through his website. Tr. 211-12 (Velasco).

137. On February 5, 2020, Respondent called Velasco to discuss representation. During a call lasting 30 to 45 minutes, Velasco explained his situation to Respondent and his desire to correct his military record and upgrade his discharge. Respondent told Velasco that he did not think he could get the court martial overturned but said he could help, touting his credentials, including working for JAG. Respondent told Velasco his fee was $6,000 (though both agreed to a fee of $7,000, as described in FF 138), but if Velasco paid him immediately, he would give him a 50% discount – Velasco would pay $3,000 upfront, plus an additional

$500 when Respondent filed the petition on his behalf. Tr. 213-15 (Velasco); DCX 67 at 3-4.

138. Shortly after their call, Respondent emailed Velasco a fee agreement dated February 5, 2020, that provided for a "flat fee" of $7,000 "[t]o investigate the circumstances and provide a written petition/request to the Board of Corrections of Military Records (BCMR) or Discharge Review Board (DRB) to correct military record and discharge, and a written request to the Judge Advocate General (JAG) for review by the Court of Appeals of the Armed Forces (CAAF)." Tr. 214, 216-17 (Velasco); DCX 67 at 7-11. Respondent's fee agreement provided that if Velasco paid $3,000 within five days of the consultation, he "will receive the 50% [discount] if he pays the remaining $500 prior to the submission to the Board." DCX 67 at 8; Tr. 217

139. On February 5, 2020, Velasco paid Respondent $3,000 by credit card. Tr. 218 (Velasco); DCX 67 at 12. On February 7, 2020, the $3,000 payment was credited to Respondent's trust account. DCX 75 at 18; Tr. 369 (Matinpour).

140. Without seeking or obtaining Velasco's consent and without doing the work Velasco retained him to do, Respondent withdrew almost all of Velasco's funds from the trust account the same day as the deposit. DCX 75 at 18 (Respondent withdrew $2,800 on February 7, and the balance fell to $975). By March 2, 2020, the balance of Respondent's trust account fell to $715, and by April 24, 2020, the balance was $565. DCX 75 at 18; Tr. 369 (Matinpour).

141. Velasco never consented to Respondent's taking any of the fees he had advanced, and would not do so until Respondent completed the agreed-upon work, which Respondent never did. Tr. 229-30 (Velasco).

142. After receiving Velasco's payment, Respondent had his office manager send Velasco forms to complete and sign, which Velasco did and then uploaded to Respondent's online Clio system within 48 hours. Tr. 214-18, 234 (Velasco).

143. In and after February 2020, Velasco called and sent text messages to Respondent to learn the status of his matter. Respondent did not respond to Velasco's calls and texts and did not communicate with him. Tr. 219, 227-28 (Velasco); DCX 67 at 3-4.

144. At some point, Velasco was unable to leave messages on Respondent's office phone. Velasco continued to call and text Respondent on his cell phone, but Respondent did not answer Velasco's calls or meaningfully respond to his text messages. Tr. 219-20, 227-28 (Velasco); DCX 67 at 4.

145. On May 5, 2020, Velasco sent Respondent a text saying he would sue him for malpractice. Respondent responded by text saying he would call Velasco on Thursday. Respondent did not call Velasco or initiate any communication with Velasco thereafter. Tr. 220-22, 228-29 (Velasco); DCX 67 at 4.

146. After waiting two weeks and having not heard from Respondent, Velasco called Respondent on May 26, 2020, and was able to leave a voice mail message. Velasco told Respondent he would take legal action against him. Respondent responded, saying he would call Velasco the following morning, but

then never did. DCX 67 at 4; *see* Tr. 228-29 (Velasco); *see also* Tr. 526-27, 596, 598 (Respondent admitted he contacted Velasco after he threatened a disciplinary complaint).

147. On June 1, 2020, Velasco filed a D.C. disciplinary complaint against Respondent. Velasco initially had complained to the VSB, but was told that Respondent was not licensed in Virginia. Tr. 221, 224 (Velasco); DCX 67 at 2-3.

148. Velasco complained about his many unsuccessful efforts to communicate with Respondent and sought a full refund because Respondent had failed to pursue his matter. DCX 67 at 1-5; Tr. 229-30 (Velasco).

149. On June 10, 2020, Disciplinary Counsel sent Respondent a letter enclosing Velasco's disciplinary complaint and asking Respondent to respond to the allegations. Disciplinary Counsel also enclosed a subpoena directing Respondent to produce a copy of the client file and related financial records by June 24, 2020. Disciplinary Counsel sent the letter with enclosures to Respondent by regular and certified mail and by email on June 10, 2020. DCX 68.

150. Respondent did not respond to the letter of inquiry or the subpoena by the due date, or request more time to do so. Tr. 272-73 (Thornton).

151. Respondent, however, communicated with Velasco after June 10, 2020. After receiving Velasco's disciplinary complaint, Respondent called Velasco and asked to meet with him. They met a short time later for approximately an hour. This was their first and only meeting. Tr. 222-26, 229, 237 (Velasco originally testified

that the meeting was in May, but corrected his testimony because the meeting occurred a couple weeks after he filed the disciplinary complaint).

152. At their meeting, Respondent asked Velasco to reverse the credit card refund previously requested. Velasco agreed to do so because he thought Respondent would now pursue his matter. Tr. 235-36 (Velasco); *see also* Tr. 528 (Respondent); DCX 76 at 188 ($3,000 debited on 6/23/20, then credited back to Respondent's operating account on 6/29/20 by credit card processor). Respondent also told Velasco to recant or withdraw his disciplinary complaint, and falsely denied that anyone else had complained about him. Tr. 222, 225, 231 (Velasco: when Respondent scheduled meeting, he admitted that ODC had contacted him); Tr. 527-28 (Respondent falsely denied knowing that Velasco had filed a complaint against him).

153. Velasco gave Respondent his original records, including the records from the court martial, which Respondent reviewed during their meeting. Respondent showed Velasco a one- or two-page draft that he prepared that would be part of the petition package. Tr. 222-24, 231, 236-37, 241-42 (Velasco).

154. In the weeks that followed, Respondent never provided Velasco the promised package, and never communicated with him. Tr. 225-26, 231-32, 239, 242 (Velasco).

155. On June 26, 2020, shortly after meeting with Velasco, Respondent emailed Disciplinary Counsel claiming that he had just received the certified mail package containing Disciplinary Counsel's letter, Velasco's complaint, and the

subpoena. DCX 69. In fact, Respondent had received the documents weeks earlier by email and by regular mail. DCX 70.

156. Respondent told Disciplinary Counsel that Velasco would be withdrawing his disciplinary complaint. DCX 69. Disciplinary Counsel responded that Velasco had not sought to withdraw his complaint, but even if he did, Disciplinary Counsel still would investigate the allegations. Disciplinary Counsel asked Respondent to provide a response to the allegations in the complaint and comply with the subpoena. DCX 70.

157. Respondent replied, saying he would put together Velasco's records. DCX 71. However, Respondent never submitted a response or provided his client files and financial records. Tr. 271-73 (Thornton). Respondent also never communicated with Velasco or provided him a draft petition as he promised. Tr. 231-32, 239 (Velasco). Respondent falsely testified that he sent the petition to Velasco after the June meeting. Tr. 599.

158. Velasco still wants to challenge his discharge, but needs his original documents (Tr. 232, 243 (Velasco)) – documents Respondent has refused to return to Velasco or provide to Disciplinary Counsel, even after receiving a subpoena directing him to do so (DCX 68); after the Court order of July 30, 2020 suspending him from practicing law and requiring him to notify clients of his suspension and return their files and documents and refund unearned fees (DCX 49-51); and after being served with another Court order on September 18, 2020 ordering him to

produce Velasco's file to Disciplinary Counsel (DCX 64-66); *see* Tr. 233 (Velasco: Respondent never told him of his suspension).

<u>Respondent's Failure to Respond (All Matters)</u>

159. In November 2019, Disciplinary Counsel sent Respondent letters in the Davis, Browne, and Morton matters requesting additional information and enclosing subpoenas for the client files and Respondent's financial records reflecting his receipt and handling of the fees the clients advanced. DCX 10; DCX 30; DCX 35; Tr. 256-60 (Thornton).

160. Respondent requested and was given an extension until December 9, 2019, to submit his responses and the requested documents, but then failed to do so. DCX 11; DCX 12.

161. On December 18, 2019, Disciplinary Counsel sent Respondent a follow-up letter in the Davis, Browne, and Morton matters enclosing additional copies of the subpoenas and asking him to respond. Disciplinary Counsel sent the letter and subpoenas to Respondent by regular and certified mail to his home and office addresses and by email. DCX 12.

162. On December 20, 2019, Respondent emailed Disciplinary Counsel claiming that he "was assured" by an unidentified person that documents would be mailed and he would "rectify this immediately." DCX 13. Thereafter, Respondent failed to provide any responses or documents, even after Disciplinary Counsel sent him another reminder on January 2, 2020, which he acknowledged receiving. DCX 14-15; Tr. 258-62 (Thornton).

163. On January 13, 2020, Disciplinary Counsel filed a motion with the Court to enforce the subpoenas directing Respondent to provide the client files for Davis, Browne, and Morton and his financial records relating to the funds he received from these clients. Disciplinary Counsel sent the motions and attachments to Respondent by email and mail. DCX 16.

164. Respondent did not respond to the motion. Tr. 262-63 (Thornton).

165. On January 29, 2020, the Court granted the motion to enforce the subpoenas in the Davis, Browne, and Morton matters and directed Respondent to comply with the subpoenas within 10 days. DCX 17. Disciplinary Counsel emailed the order to Respondent that day. DCX 17 at 3.

166. Respondent refused to comply with the Court order. Tr. 263-64 (Thornton).

167. In the interim, Curran and Hoffler had filed D.C. disciplinary complaints against Respondent. On January 22, 2020, Disciplinary Counsel sent letters to Respondent in the Curran and Hoffler matters requesting him to respond to the allegations in the complaints. DCX 39; DCX 55. Respondent failed to respond in both matters. Tr. 264-65, 267 (Thornton).

168. On February 5, 2020, Disciplinary Counsel sent Respondent follow-up letters in the Curran and Hoffler matters asking him to respond to the allegations in the clients' complaints and enclosing subpoenas for the client files and Respondent's financial records. Disciplinary Counsel not only mailed the February 5, 2020,

packages to Respondent's home and work addresses, but emailed them to Respondent's two email accounts. DCX 40; DCX 56.

169. Respondent did not respond to Disciplinary Counsel's letters or provide any documents in response to the subpoenas. Tr. 265, 267 (Thornton).

170. On February 7, 2020, Respondent sent an email to Disciplinary Counsel relating to his failure to respond to the subpoenas in the three earlier matters (Davis, Browne, and Morton), falsely claiming that "I thought I sent this to you." DCX 18. Disciplinary Counsel responded that same day, stating that Respondent had failed to respond to the subpoenas in any of the five matters under investigation and asking him to provide information about the bank account into which he deposited the clients' funds. *Id.* Respondent did not respond.

171. On February 25, 2020, Disciplinary Counsel filed two motions with the Board – one asking for an order directing Respondent to respond to the allegations in the Curran complaint, and the second asking for an order directing Respondent to respond to the allegations in the Hoffler complaint. DCX 41; DCX 57.

172. On February 25, 2020, Disciplinary Counsel also filed a motion with the Court to enforce the subpoenas for the Curran and Hoffler client files and Respondent's financial records relating to the funds he received from these two clients. DCX 42.

173. Respondent did not respond to the two motions filed with the Board. Tr. 265-66, 267-68 (Thornton). Respondent also failed to respond to the motion to the Court to enforce the subpoenas. Tr. 269 (Thornton).

174. On March 11, 2020, the Court granted the motion to enforce and directed Respondent to comply with the subpoenas in the Curran and Hoffler matters. DCX 43.

175. On March 13, 2020, the Board issued two orders, one directing Respondent to provide a response to Disciplinary Counsel's written inquiry in the Curran matter, and another directing him to provide a response in the Hoffler matter. The Board Office mailed and emailed the Board orders to Respondent. DCX 44; DCX 58.

176. On March 18, 2020, a process server personally served Respondent with a letter from Disciplinary Counsel as well as the Court orders enforcing the subpoenas in the first five matters (Davis, Browne, Morton, Curran, and Hoffler), Disciplinary Counsel's earlier letters and subpoenas in each of the five matters, and the Board orders in the Curran and Hoffler matters together with Disciplinary Counsel's earlier letters in those two matters and the complaints of Curran and Hoffler. DCX 19-20.

177. After receiving the package, Respondent emailed Disciplinary Counsel on March 18, 2020, requesting an extension until March 30, 2020. DCX 21. *But see* DCX 24 (on September 3, 2020, Respondent falsely represented to Disciplinary Counsel that he believed the earlier package related to his child custody matter).

178. Disciplinary Counsel agreed to an extension until March 30th, and asked Respondent to provide information about the bank account into which he deposited the client payments. DCX 22. Respondent failed to provide any

information about his bank account. He also failed to respond to the complaints or provide documents responsive to the subpoenas. Tr. 266, 269 (Thornton); *see also* Tr. 263-64 (Thornton); Tr. 337, 371 (Matinpour).

179. Instead, on March 30, 2020, Respondent sent another email claiming that he was scanning documents to send to Disciplinary Counsel. DCX 23. Respondent never provided any documents on March 30, 2020, or any time thereafter. Tr. 269 (Thornton).

180. By April 2020, Disciplinary Counsel had received Ray's disciplinary complaint, which it sent to Respondent on April 21, 2020, requesting a response by May 1, 2020. DCX 61. Respondent did not respond by the deadline or seek additional time to do so. Tr. 270 (Thornton).

181. On July 9, 2020, Disciplinary Counsel sent Respondent another letter asking him to respond to Ray's disciplinary complaint and enclosing a subpoena for the client file and Respondent's financial records. DCX 62. Respondent did not respond or seek additional time to do so. Tr. 270-71 (Thornton).

182. In the interim, Disciplinary Counsel filed a motion with the Board requesting permission to petition the Court to suspend Respondent for failure to comply with the Board orders in the Curran and Hoffler matters. DCX 46 at 6. Respondent did not respond to the motion and, on May 7, 2020, the Board granted the motion and directed Disciplinary Counsel to file a petition with the Court. DCX 46 at 6-7; Tr. 274-75 (Thornton).

183. On May 8, 2020, Disciplinary Counsel filed a petition with the Court to suspend Respondent for his failure to comply with Board orders. DCX 46. Respondent did not respond to the motion. Tr. 274-75 (Thornton).

184. While Disciplinary Counsel's motion to suspend Respondent was pending, Disciplinary Counsel received Velasco's complaint against Respondent in June 2020. DCX 67.

185. Respondent failed to convince Velasco to withdraw his complaint and then refused to cooperate with Disciplinary Counsel. He failed to respond to Disciplinary Counsel's June 10, 2020 letter and subpoena for Velasco's client file and Respondent's financial records. DCX 68; Tr. 271-73 (Thornton).

186. On June 26, 2020, Disciplinary Counsel asked Respondent to respond to Velasco's complaint and reminded him of the May 8, 2020 motion pending before the Court seeking his suspension for failing to respond in other matters. DCX 47. Respondent falsely claimed he had not seen the motion. DCX 47. Disciplinary Counsel emailed him the motion and attachments again. DCX 48. Respondent failed to respond to the motion and continued to refuse to respond to Disciplinary Counsel's investigative inquiries regarding the complaints filed by Velasco and other clients. Tr. 272-76 (Thornton); *see also* Tr. 261, 265-68 (Thornton).

187. On July 27, 2020, Disciplinary Counsel filed a motion with the Court to enforce the subpoenas in the Ray and Velasco matters. DCX 63. Respondent did not respond to the motion. Tr. 273 (Thornton).

188. On July 30, 2020, the Court suspended Respondent on an interim basis for his failure to respond in the Curran and Hoffler matters. DCX 49. The Court and Disciplinary Counsel emailed the order to Respondent. DCX 49 at 3-4. Disciplinary Counsel also mailed a copy to Respondent the following day. DCX 50.

189. Respondent failed to comply with the Court's order of suspension. He failed to notify his clients about his suspension and he failed to return documents, files, and unearned fees to his clients. Respondent also failed to file the required affidavit with the Court, after receiving a reminder from Disciplinary Counsel. DCX 51; Tr. 275-76 (Thornton); Tr. 606-07 (Respondent).

190. Respondent knew about the Court order suspending him and his obligation to advise his clients of his suspension. DCX 24; Tr. 370-71 (Matinpour). Respondent, however, intentionally flouted the Court's order by continuing to hold himself out as a lawyer to clients into 2021. DCX 81-83.

191. After July 2020 and through at least February 2021, Respondent exchanged emails and text messages with at least three clients about their legal matters notwithstanding his suspension. In the emails and texts, Respondent gave some clients false excuses for his failure to pursue their matters, including that he was busy with hearings (DCX 81 at 1), that he would provide them a draft in the future (DCX 81 at 5, 8), or that he sent the client a draft when he had not (DCX 83 at 1-4). Respondent scheduled phone meetings with another client who wanted an update, but it is unclear if Respondent ever called or provided a truthful update. DCX 82.

192. On September 18, 2020, after the Court suspended Respondent, it issued an order granting Disciplinary Counsel's motion to enforce the subpoenas in the Ray and Velasco matters. DCX 64. The Court and Disciplinary Counsel emailed the order to Respondent. DCX 64-65. Disciplinary Counsel also mailed a copy to Respondent. DCX 66.

193. Respondent refused to comply with the Court order. He has never provided the client files or his financial records. Tr. 274 (Thornton).

194. As of the date of the hearing, Respondent has failed to submit written responses in the Curran, Hoffler, Ray and Velasco matters. Respondent continues to be in violation of the Court orders directing him to provide the client files and financial records in all seven matters. Tr. 371-72 (Matinpour); Tr. 608 (Respondent).

195. Respondent failed to cooperate with the D.C. Bar's Clients' Security Fund ("Fund"). The Fund sent Respondent notices of his clients' applications for reimbursement and asked him to respond if he disputed their claims. DCX 80; Tr. 605-06 (Respondent said he did not open the letters, although the Fund also emailed them to Respondent). The Fund later reimbursed the clients for the funds they paid Respondent for services that he never provided, and notified Respondent that he owed the Fund the amounts paid. At the hearing, Respondent refused to acknowledge his obligation to reimburse the Fund, claiming he would appeal the Fund's decision to pay his clients. Tr. 666 (Respondent).

III. CONCLUSIONS OF LAW

A. **Respondent's Motion to Dismiss Should Be Denied**

On April 20, 2021, Respondent filed a motion to dismiss the Specification of Charges, arguing that ¶¶ 21, 41, 60, 94, 122, 140, and 163 of the Specification of Charges lacked specificity and failed to provide notice "of what action [he] must defend [him]self against." These are the "charging" paragraphs in each count, identifying the Rule violations allegedly violated by the facts set forth in the preceding paragraphs.

Respondent's motion was untimely. Board Rule 7.14(a) provides that a motion must be filed within seven days of the deadline for filing an Answer. As Respondent's Answer was due on January 7, 2021 (*see* Board Rule 7.5), and he did not file the motion until the first day of the hearing (April 20, 2021) more than four months later, the motion should be denied as untimely.

Even if timely filed, the motion lacks merit. The Court has held that due process is satisfied when "the Specification of Charges gave respondent notice of the specific rules she allegedly violated, as well as notice of the conduct underlying the alleged violations." *In re Winstead*, 69 A.3d 390, 397 (D.C. 2013). Here the Specification of Charges set forth the facts that allegedly violated the charged Rules, thus satisfying the *Winstead* standard. Respondent does not seriously contend otherwise. Indeed, he noted at the hearing that he filed the motion "just to note it for the record." Tr. 17-19.

For the foregoing reasons, we recommend that the motion be denied. *See* Board Rule 7.16(a).

B. Disciplinary Counsel Proved that Respondent Violated Rule 1.15(a) and 1.15(e) by Engaging in Intentional Misappropriation

Misappropriation is "any unauthorized use of [a] client's funds entrusted to [the lawyer], including not only stealing but also unauthorized temporary use for the lawyer's own purpose, whether or not [the lawyer] derives any personal gain or benefit therefrom." *In re Nave*, 197 A.3d 511, 514 (D.C. 2018) (per curiam) (alterations in original) (quoting *In re Anderson*, 778 A.2d 330, 335 (D.C. 2001)).

"The three elements of misappropriation are (1) that client funds were entrusted to the attorney; (2) that the attorney used those funds for the attorney's own purposes; and (3) that such use was unauthorized." *In re Harris-Lindsey*, 242 A.3d 613, 620 (D.C. 2020) (citing *In re Travers*, 764 A.2d 242, 250 (D.C. 2000)). Funds are "entrusted" when the lawyer is "imbued with authority to prevent their unauthorized use." *Id.* at 624 (applying holding prospectively); *see Anderson*, 778 A.2d at 335.

Misappropriation is essentially a *per se* offense and does not require proof of improper intent. *See Anderson*, 778 A.2d at 335. Thus, an attorney commits "unauthorized use" when either "the client did not consent to the attorney's use of the funds" or "the funds or assets were accessed without required prior approval by a court" where required. *Harris-Lindsey*, 242 A.3d at 626 (applying holding regarding court approval prospectively). It occurs where "the balance in [the attorney's] trust account falls below the amount due the client [or third party]." *In*

re Ahaghotu, 75 A.3d 251, 256 (D.C. 2013) (alteration in original) (internal quotation marks and citations omitted). Thus, "when the balance in [a] [r]espondent's . . . account dip[s] below the amount owed" to the respondent's client or clients, misappropriation has occurred. *In re Chang*, 694 A.2d 877, 880 (D.C. 1997) (per curiam) (appended Board Report) (citing *In re Pels*, 653 A.2d 388, 394 (D.C. 1995)). This is the case even when the attorney has sufficient cash in hand in other accounts to cover the shortage. *See Pels*, 653 A.2d at 394.

Relevant to the allegations here, 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, citing the Rule 1.0 definition of informed consent, stated "[i]nformed consent [is] . . . the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct." *Id.* at 1206. Citing *In re Sather*, 3 P.3d 403, 413 (Col. 2000) (en banc), the Court held that an

> attorney must expressly communicate to the client verbally and in writing that the attorney will treat the advance fee as the attorney's property upon receipt; that the client must understand the attorney can keep the fee only by providing a benefit or providing a service for which

> the client has contracted; that the fee agreement must spell out the terms of the benefit to be conferred upon the client; and that the client must be aware of the attorney's obligation to refund any amount of advance funds to the extent that they are unreasonable or unearned if the representation is terminated by the client. *In re Sather*, 3 P.3d at 413. We agree, and add that the client should be informed that, unless there is agreement otherwise, the attorney must, under Rule 1.15([e]), hold the flat fee in escrow until it is earned by the lawyer's provision of legal services.

Mance, 980 A.2d at 1206-07. 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.

Second, Disciplinary Counsel must establish whether the misappropriation was intentional, reckless, or negligent. *See Anderson*, 778 A.2d at 336-37. 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 (alteration in original) (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." (citation 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. *See In re Gray*, 224 A.3d 1222, 1232 (D.C. 2020) (per curiam).

Finally, where Disciplinary Counsel establishes the first element of misappropriation (unauthorized use), but fails to establish that the misappropriation was intentional or reckless, "'then [Disciplinary] Counsel proved no more than simple negligence.'" *Anderson*, 778 A.2d at 338 (quoting *In re Ray*, 675 A.2d 1381, 1388 (D.C. 1996)).

Disciplinary Counsel argues that Respondent intentionally misappropriated the funds of five clients – Davis, Browne, Curran, Hoffler, and Velasco – when he intentionally took the fees that they advanced without their consent and without performing the agreed-upon legal services.

Based on overwhelming evidence submitted at the hearing – most of which was uncontested and remains unrebutted – the Committee finds that Disciplinary Counsel has met its burden of demonstrating, by clear and convincing evidence, that

Respondent repeatedly misappropriated funds from the clients at issue. *See supra* at FF 8, 27-29, 71-72, 81, 100-02, 139-41. At the hearing, Respondent did not contest, and essentially conceded, that he withdrew advanced fees prior to performing work for most of the disciplinary complainants at issue. *See, e.g.*, Tr. 547-49 (Respondent did not contest that, in response to Davis's complaint, Respondent did not mention preparing or sending out a response to the notice of intent to revoke), Tr. 552 (Respondent admitting to not providing legal representation regarding "any sort of administrative process"), Tr. 561 (Respondent did not provide Browne a petition in 2017), Tr. 413 (Respondent did not contest Hoffler's testimony: That Respondent never mentioned he was taking all the money as Hoffler was paying him), Tr. 585-87 (Respondent took the entire $2,400 Curran had given him, but did not file a BCMR petition), Tr. 594 (Respondent took the $3,000 Velasco payment on the same day Respondent received it). Indeed, the record here establishes a grave pattern or practice under which Respondent fraudulently misappropriated funds from clients under false pretenses. *See, e.g.*, FF 22, 49-50 (describing Respondent's falsified invoices).

Respondent misappropriated the funds of five clients – Davis, Browne, Curran, Hoffler, and Velasco – when he took the fees that they advanced without their consent and without performing the agreed-upon legal services. Rule 1.15(a) requires a lawyer to hold client funds separate from the lawyer's own funds and to safeguard those funds. Rule 1.15(e) mandates that when a client advances unearned fees, the attorney must treat the advanced funds as client property until earned –

unless the client gives informed consent to a different arrangement. In *Mance*, 980 A.2d 1196, the Court held that pursuant to Rule 1.15(e), "money paid by a client as a flat fee for legal services remains the client's property, and counsel may not treat any portion of the money otherwise until it is earned, unless the client has agreed otherwise." 980 A.2d at 1199. Thus, wherever the record shows that Respondent withdrew any part of the flat fees that his clients paid him – before he earned the fee *and* without the client's informed consent – Respondent committed misappropriation. *Id.* at 1200-02.

Here, the record is clear, convincing, and uncontested: Respondent misappropriated the funds of the five clients at issue. Respondent took all or almost all the fees of Davis, Curran, Hoffler, and Velasco within days of receiving them. *See supra* at FF 8, 71-72, 81, 100-02, 139-41. Respondent also misappropriated all of Browne's funds after just a few months into a three-year representation. FF 27-29. None of these five clients consented to Respondent's taking any portion of the fees they advanced before earning those fees. FF 8, 30, 71, 81, 102, 140-41.[5] Nor did Respondent earn the fees at the time he took them – he provided the clients with none of the legal services for which they advanced him fees, and they had received no benefit from his representation at the time he took the advanced fees. *See supra* at FF 12-15, 17, 37, 42, 74, 85-91, 105-09, 146-48, 154.

[5] Rule 1.0(e) defines "informed consent" as "the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct."

All five clients advanced fees to Respondent based on his promise to provide legal services in their matters – usually the filing of a petition or other written submission, and then subsequent representation of the client in the instituted matter. Respondent promptly helped himself to all the clients' funds without having done any of the work described in his engagement letters. Whatever time Respondent may have spent on the clients' matters *after* his misappropriations does not remedy the misappropriations, nor were those services of any benefit to his clients because Respondent never completed any work product to make the necessary filings he had agreed to perform.

Nor does the record show informed consent for Respondent taking any of the advanced fees at issue. Respondent never provided his clients any information about when and on what basis he took their advanced fees, so Respondent has no possible claim – and indeed, offers none – that he obtained any client's consent before helping himself to their advanced funds. Instead, the record demonstrates Respondent's usual *modus operandi* was to take the advanced fees and then avoid communicating with his clients and abandon their matters, leading all of the clients in these matters to file disciplinary complaints seeking refunds.

Respondent's misappropriations were intentional. The speed with which Respondent took the funds, by transferring them from his trust account to his operating account, shows that he intended to treat the funds as his own as soon as possible, and did so. Respondent immediately used the advance fees that Davis, Curran, Hoffler, and Velasco paid by transferring them to his operating account and

then using them to pay his personal and business expenses. Respondent used a portion of Curran's $2,400 payment to cover previous expenditures that had caused his operating account to be overdrawn. *See supra* at FF 72. Respondent took all of Browne's funds very early in that representation – long before Respondent's after-the-fact invoice purported to show his preparing a petition. FF 28-29; DCX 28 at 9-10.

Respondent's intent to treat his clients' funds as his own and for which he would not be accountable is further demonstrated by his failure to tell his clients when and on what basis he was taking their advanced funds. He never communicated with clients about their funds after they were deposited in his trust account. Respondent failed to produce any materials in response to Disciplinary Counsel's subpoenas and subsequent Court orders in the Curran and Hoffler matters. The fictitious invoices that Respondent produced in the Davis and Browne matters provide further evidence of the intentional nature of Respondent's misappropriations. The purported invoices were never received by either of the clients to whom they were ostensibly directed. *Supra* at FF 21 (Davis never received alleged invoice), 49 (Browne never received alleged invoice). And these documents falsely describe work that Respondent never performed on their matters when he withdrew the funds (FF 22, 49-50) – compelling evidence that Respondent knew he had no authority to take all the funds when he did.

Respondent's other actions confirm that the misappropriations at issue were intentional – not an accident, nor even reckless. Indeed, the entire record

demonstrates a dismaying pattern or practice of Respondent's misappropriation of client funds. And when the clients at issue demanded a refund, Respondent did not provide them an accounting, nor did he disclose that he had taken all their money at the beginning of the representation, nor did he attempt to tell his clients that that he had provided them the agreed legal services that would justify his taking and keeping their funds. Instead, Respondent typically avoided communicating with his clients, ignoring their inquiries until they had some leverage over him – via a pending disciplinary complaint or otherwise. When thus cornered, Respondent would offer excuses to his clients and further promises to work on their matters and send them something to review, but then fail to do so. FF 16, 39-41, 87, 106, 110, 131, 147, 154-55. In response to Disciplinary Counsel's investigations, Respondent refused to turn over client files showing the work – or more accurately, the lack of work – that he performed on the matters at issue. If Respondent had done the work to earn the fees, he would certainly have provided the files to prove it. From his refusal to produce client files, we make the permissible and compelling inference that Respondent knew he had not done the work and had no authority to take his clients' funds, particularly given the timing of the misappropriations at issue.

In sum, the largely uncontested record here demonstrates Respondent repeatedly and intentionally took client advanced funds without their knowledge and consent and before he did any work to earn them. Respondent's misappropriations are far more corrupt than those of other lawyers who on isolated occasions took entrusted funds prematurely but ultimately performed services entitling them to fees

in the amounts paid. *See In re Bach*, 966 A.2d 350 (D.C. 2009) (Court disbarred Bach for taking funds from conservatorship account to pay his fees without prior authority; Probate Court later found that Bach was entitled to fees in the amount taken). Respondent never earned the funds he misappropriated from the five clients because he abandoned their matters – often at the very outset – and failed to provide the agreed-upon services.

C. Disciplinary Counsel Proved that Respondent Violated Rule 1.3(a), 1.3(b)(1) and 1.3(c) by Intentionally Neglecting His Clients' Matters

Rule 1.3(a) states that an attorney "shall represent a client zealously and diligently within the bounds of the law." "Neglect 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*")). 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*, Board Docket No. 10-BD-073, at 17 (BPR July 31, 2012), *adopted in relevant part*, 70 A.3d 1189, 1191 (D.C. 2013) (per curiam); *see also In re Lewis*, 689 A.2d 561, 564 (D.C. 1997) (per curiam) (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").

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 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), *adopted in relevant part*, 962 A.2d 922, 923-24 (D.C. 2009) (per curiam).

Rule 1.3(b)(1) provides that a lawyer shall not intentionally "[f]ail 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, 1136 (citations and internal quotation marks omitted). "Neglect of a client's matter, often through procrastination, can 'ripen into . . . intentional' neglect in violation of Rule 1.3(b) 'when the lawyer is aware of his neglect' but nonetheless continues to neglect the client's matter." *In re Vohra*, 68

A.3d 766, 781 (D.C. 2013) (appended Board Report) (quoting *In re Mance*, 869 A.2d 339, 341 n.2 (D.C. 2005) (per curiam)). "Knowing 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.*, *In re Speights*, 173 A.3d 96, 101 (D.C. 2017) (per curiam). 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."

Disciplinary Counsel argues that Respondent violated Rule 1.3(a), 1.3(b)(1) and 1.3(c) in that he knowingly abandoned all seven clients at issue. At the hearing, Respondent cross-examined his former clients in an unsuccessful attempt to elicit testimony that he had actually performed valuable legal work. *See, e.g.*, Tr. 75-87, 127-43, 195-200, 233-38, 240-41, 406-13, 470-85. The record is ample in this case that Respondent persistently and repeatedly failed to fulfill duties owed to each of the clients testifying in this matter, over extended periods of time. *See, e.g.*, Tr. 45-

50, 52-53, 112-13, 123-25, 143-44, 169-72, 184-85, 187, 190-92, 227-30, 239, 242, 386-88, 393-95, 432-34, 460-64; *see also* FF 58, 63.

In each of the matters at issue, Respondent violated all three paragraphs of Rule 1.3. Respondent met Davis a couple of times but never took any steps to assist him in his matters. Respondent did not – indeed, could not – represent Davis in the underlying criminal matter in Florida, because Respondent is not licensed to practice law in that state. Davis later found a Florida lawyer on his own, and she represented him on that matter. Respondent never assisted Davis with his suspended security clearance or with the related military proceedings. FF 11-15. Because Respondent did not respond to Davis's inquiries or provide him assistance, Davis discharged Respondent and requested a refund. As Davis explained:

> The services and tasks that Mr. Morris performed were of absolutely no use. If I would have never walked in to Mr. Morris' office everything would still be the same on my end, I would just have a little more money. Mr. Morris succeeded in nothing but wasting everyone's time involved. When it came to performing actions that may have some kind of impact Mr. Morris would never follow through.

DCX 9 at 1. Respondent was aware of his neglect: Davis made repeated attempts to reach him, which Respondent mostly ignored.

Respondent neglected and intentionally failed to pursue the matters of both Browne and Morton for years. FF 32-34, 37-41, 56-58. Respondent did not prepare petitions for them until receiving their disciplinary complaints in July 2019 – years after receiving and taking for himself the fees that Morton paid in July 2015, and Browne paid in late December 2015. The petition that Respondent prepared for Browne in July 2019 was of no use to Browne because it did not reflect his current

status, had typos, and merely restated the information Browne had provided three and a half years earlier. FF 31, 46, 48. Although Morton apparently accepted the petition that Respondent sent him on July 21, 2019, his doing so did not excuse Respondent's neglect and intentional failure to pursue his matter throughout the preceding four years. FF 58, 62-63.

Despite repeated calls from Curran, Respondent failed to take any action to challenge his discharge or contest the Navy's related collection efforts. Respondent knew about Curran's many efforts to reach him and, after receiving Curran's certified letter, Respondent told him he would pursue his matters. FF 86-87. But lapsing back into his standard pattern, Respondent then failed to do anything and refused to communicate with Curran again. FF 87-89.

Hoffler had a very similar experience. Hoffler repeatedly called Respondent, but Respondent refused to return most of his calls. FF 103-05. Even after Hoffler demanded a refund, Respondent failed to do anything and refused to respond or communicate with Hoffler. FF 108-110.

Ray hired Respondent in 2012, and Respondent did some work in the early years, but then stopped pursuing Ray's matter. Respondent did not tell Ray what he was doing or that he had stopped pursuing his matter by mid-2016. FF 123-24. Instead, Respondent falsely told Ray and the VSB that he was pursuing an appeal when he fact he was doing nothing. Respondent then refused to communicate further with Ray. FF 127-30.

After Velasco paid Respondent, he did not hear from him even after calling and texting Respondent. Only after Velasco threatened him with legal action and then filed a disciplinary complaint did Respondent return his client's calls. FF 143-48, 151. But even then, Respondent did not follow through: he made empty promises to Velasco and then stopped communicating with him and abandoned his matter. FF 151-54.

D. Disciplinary Counsel Proved that Respondent Violated Rule 1.4(a) and 1.4(b) by Repeatedly Failing to Communicate with Clients

Rule 1.4(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." Under Rule 1.4(a), an attorney must not only respond to client inquiries, but must also initiate contact to provide information when needed. *See, e.g.*, *In re Robbins*, 192 A.3d 558, 564-65 (D.C. 2018) (per curiam); *In re Bernstein*, 707 A.2d 371, 376 (D.C. 1998); *see also In re Hallmark*, 831 A.2d 366, 374 (D.C. 2003) (citing Rule 1.4, cmt.[1]). The purpose of this Rule is to enable clients to "participate intelligently in decisions concerning the objectives of the representation and the means by which they are to be pursued." Rule 1.4, cmt. [1]. In determining whether Disciplinary Counsel has established a violation of Rule 1.4(a) the question is whether Respondent fulfilled his client's reasonable expectations for information. *See In re Schoeneman*, 777 A.2d 259, 264 (D.C. 2001) (citing Rule 1.4, cmt. [3]). Attorneys are obligated to respond to client requests for information even when there are no new developments to report. *See In re Lattimer*, 223 A.3d 437, 442-43 (D.C. 2020) (per curiam).

Similarly, Rule 1.4(b) states than an attorney "shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation." This Rule provides that the attorney "must be particularly careful to ensure that decisions of the client are made only after the client has been informed of all relevant considerations." Rule 1.4, cmt. [2]. The Rule places the burden on the attorney to "initiate and maintain the consultative and decision-making process if the client does not do so and [to] ensure that the ongoing process is thorough and complete." *Id*.

Disciplinary Counsel argues that Respondent failed to communicate with all seven clients, despite their efforts to reach him for months, if not years. Specifically, Disciplinary Counsel argues that Respondent violated his obligations under Rule 1.4(a) and (b) when he failed to keep his clients reasonably informed about their matters, failed to comply with reasonable requests for information, and failed to explain matters so that the clients could make informed decisions about the representations. At the hearing, Respondent cross-examined testifying clients in an unsuccessful attempt to gain their admissions that he had contacted them on at least one or two occasions during the representations at issue. *See, e.g.*, Tr. 75-78, 89-90 (Browne testifying on redirect about his testimony on cross-examination), 131-34, 240, 406-08, 472-74; *see also* FF 57-58.

In most instances, the only communications Respondent appears to have initiated were the initial contacts to pitch the clients about hiring him as their lawyer and paying him a flat fee immediately. Respondent offered most of these clients

supposedly "discounted" fees if they paid him within 24 hours or a matter of days. After receiving the clients' funds, Respondent rarely communicated with them thereafter unless he was facing a disciplinary complaint. The record is replete with scores of unanswered clients calls, emails, and texts. When his clients were able to reach Respondent, his communications were often not substantive: he merely repeated what he had said before, promised to get back to the client, or said he would provide the client some written work product for review, but then never did. Respondent would then again fail to communicate with his clients and ignore their calls, emails, or texts.

Respondent repeatedly violated his obligations under Rule 1.4 in each of the client matters, and many of these violations went on for years. Indeed, the disciplinary complaints that the clients filed provide clear and convincing evidence of Respondent's failure to communicate. In the disciplinary complaints, the clients certified the truth of their statements relating to their interaction – or lack of interaction – with Respondent, including his failure to respond to their numerous calls and efforts to obtain updates. DCX 5, 26, 32, 37, 53, 60, 67. The clients did not know the status of their matters or what work Respondent had done because he refused to communicate and had a practice of "ghosting" clients after receiving and taking their advance fees. *See* FF 87.

E. <u>Disciplinary Counsel Proved that Respondent Violated Rule 1.5(b) in the Curran Matter</u>

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." The writing a lawyer is required to give a client must address not only the basis or rate of the fee and the scope of the lawyer's representation, but also the expenses for which the client will be responsible.

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

While a writing is required, "[u]nless there are unique aspects of the fee arrangement, the lawyer may utilize a standardized letter, memorandum, or pamphlet explaining the lawyer's fee practices, and indicating those practices applicable to the specific representation." Rule 1.5 cmt. [2]. For example, a lawyer's hourly rate publication should "explain applicable hourly billing rates . . . and indicate what charges (such as filing fees, transcript costs, duplicating costs, long-distance telephone charges) are imposed in addition to hourly rate charges." *Id.*

Disciplinary Counsel argues that Respondent violated Rule 1.5(b) when he failed to provide Curran a written fee statement for the additional $1,200 he charged in February 2019. Respondent produced no contrary evidence – no written fee statement for the matter at issue – during the proceeding.

Disciplinary Counsel proved by clear and convincing evidence that Respondent violated Rule 1.5(b) by failing to provide Curran a written fee agreement for the additional $1,200 he charged in February 2019. Curran had retained Respondent in August 2018 to contest his early discharge, but Respondent contended that the Navy's subsequent collection action was not sufficiently related to the discharge matter. FF 80. Respondent had not "regularly" represented Curran otherwise, and his August 2018 fee agreement did not provide Curran with the information needed to understand the basis or rate of the additional fee that Respondent charged him, and what additional work it covered. Respondent was required to provide Curran with a written agreement to memorialize the terms of the representation. Curran admitted he signed something electronically and believed it was a fee agreement, but Respondent never gave him a copy. Respondent and his firm then ignored Curran's repeated requests for a fee agreement or written statement relating to the $1,200. FF 80-82. Respondent's failure to provide Curran with a fee agreement or other writing setting forth the engagement's terms violated Rule 1.5(b).

F. **Disciplinary Counsel Proved that Respondent Violated Rule 1.16(d) by Failing to Return Client Files and Documents and Failing to Refund Unearned Fees**

Rule 1.16(d) provides:

> 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 giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled, and refunding any advance payment of fee or expense that has not been earned or incurred. The lawyer may retain papers relating to the client to the extent permitted by Rule 1.8(i).

Furthermore, "'a client should not have to ask twice' for [her] file." *In re Thai*, 987 A.2d 428, 430 (D.C. 2009) (per curiam) (quoting *In re Landesberg*, 518 A.2d 96, 102 (D.C. 1986)). Comment [9] to Rule 1.16 further states that even if a lawyer has been unfairly discharged, "a lawyer must take all reasonable steps to mitigate the consequences to the client."

Failure to refund any unearned portion of a fee violates Rule 1.16(d). *See, e.g.*, *In re Samad*, 51 A.3d 486, 497 (D.C. 2012) (per curiam) (finding a violation where the respondent claimed that he did some work on the case, but did not "suggest that he earned the entire flat fee or that he returned any portion of the fee"); *In re Carter*, 11 A.3d 1219, 1222-23 (D.C. 2011) (per curiam) (finding a violation of Rule 1.16(d) where the attorney failed to pay an ACAB award for unearned fees); *In re Kanu*, 5 A.3d 1, 2, 10 (D.C. 2010) (finding a violation of Rule 1.16(d) where the attorney failed to abide by a clause in her retainer agreement promising a refund if she failed to meet her clients' objectives).

Disciplinary Counsel argues that Respondent violated Rule 1.16 when, at the end of the representation, he failed to surrender papers and property to his clients and refund the advance payment of fees that he had not earned. Respondent does not appear to dispute any of Disciplinary Counsel's submitted evidence on this issue.

Respondent violated Rule 1.16 when, at the end of the representation, he failed to surrender papers and property to his clients and refund the advance payment of fees that he had not earned. In five of the six matters in which Disciplinary Counsel charged Respondent with violating Rule 1.16(d), Respondent never earned the fees the clients paid him because he never provided the agreed-upon services.[6] Respondent sought to justify his retention of the clients' funds, which Respondent had misappropriated at the beginning of the representation, by claiming that he spent time working on the client matters. But a flat fee "is earned 'only to the degree that the attorney actually performs the agreed-upon services.'" *Mance*, 980 A.2d at 1202 (citation omitted).[7] Respondent failed to perform the services he agreed to in the

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[6] Disciplinary Counsel charged Respondent with violating Rule 1.16(d) in all but the Morton matter, DDN 2019-D158. In the Ray matter, Disciplinary Counsel charged a Rule 1.16(d) violation based on Respondent's failure to return Ray's files and documents, but not his failing to provide Ray a refund.

[7] The lawyer and the client may agree that the lawyer is deemed to have earned some or all of the fees at certain milestones during the representation, but:

> [s]uch an agreement must bear a reasonable relationship to the anticipated course of the representation and must avoid excessive "front-loading." A written agreement or a writing evidencing the agreement is strongly recommended but not mandatory. In the absence of any agreement with the client regarding milestones by which the lawyer will have earned portions of the fixed fee, the lawyer will have the burden to establish that whatever funds have been transferred to the lawyer's operating account have been earned.

Davis, Browne, Curran, Hoffler, and Velasco matters. He thus did not earn the fees and was required to refund them when the clients fired him and requested a refund either directly from Respondent or when they filed a disciplinary complaint requesting a refund. *See* FF 15-17, 39-42, 88-91, 108-11, 147-48, 152, 154 (all five clients requested refunds because Respondent did not do the work for which he was retained).

Respondent engaged in additional violations of Rule 1.16(d) when he failed to return client files and documents after the clients fired him. The clients were entitled to these files and documents. Some of the clients requested their documents before filing disciplinary complaints, but never received them. *See, e.g.*, FF 88, 125. Velasco provided Respondent his original documents after filing a disciplinary complaint based on Respondent's promise that he would pursue his matter. Respondent reneged on his promise, and then failed to return the original materials that Velasco needs to pursue his matter. FF 152-54, 157-58.

Respondent also failed to return or deliver the files of the other clients despite requests that he do so, subpoenas from Disciplinary Counsel which the Court enforced (FF 165, 174, 192), and the Court's order of suspension (FF 188) requiring him to not only provide notice to his clients, but return their documents and refund unearned fees. Respondent's failure to deliver the client files and documents, which

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D.C. Bar Legal Ethics Opinion 355 (June 2010).

None of the five clients agreed that Respondent could take any portion of their funds, much less all the fees they advanced, without doing the work. Respondent failed to provide the clients any work product or other documentation to earn the fees, and he failed to do anything that provided the clients any benefit.

continued as of the date of the hearing, demonstrates by clear and convincing evidence Respondent's willful violation of Rule 1.16(d).

G. **Disciplinary Counsel Proved that Respondent Violated Rules 8.1(a), 8.4(c), and 8.4(d) by Engaging in Dishonest Conduct and Making Knowingly False Statements in Connection with Disciplinary Matters**

Rule 8.1(a) provides that "a lawyer . . . in connection with a disciplinary matter, shall not . . . [k]nowingly make a false statement of fact[.]" The Rule requires Disciplinary Counsel to prove by clear and convincing evidence that Respondent "knowingly" made a false statement. The Terminology section of the Rules defines "knowingly" as "actual knowledge of the fact in question" which "may be inferred from the circumstances." Rule 1.0(f). 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." *Id.*

Disciplinary Counsel charges Respondent with a violation of Rule 8.4(c) (engaging in conduct involving dishonesty, deceit, or misrepresentation). The Court has held that each of these terms encompassed within Rule 8.4(c) "should be understood as separate categories, denoting differences in meaning or degree." *In re Shorter*, 570 A.2d 760, 767 (D.C. 1990) (per curiam). Each category requires proof of different elements. *See In re Romansky*, 825 A.2d 311, 315 (D.C. 2003).

Dishonesty is the most general of these categories. It includes "not only fraudulent, deceitful or misrepresentative conduct, but also 'conduct evincing a lack

of honesty, probity or integrity in principle; a lack of fairness and straightforwardness.'" *Samad*, 51 A.3d at 496 (quoting *Shorter*, 570 A.2d at 767-68)). The Court holds lawyers to a "high standard of honesty, no matter what role the lawyer is filling," *In re Jackson*, 650 A.2d 675, 677 (D.C. 1994) (per curiam) (appended Board Report), because "[l]awyers have a greater duty than ordinary citizens to be scrupulously honest at all times, for honesty is 'basic' to the practice of law." *In re Hutchinson*, 534 A.2d 919, 924 (D.C. 1987) (en banc).

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

including their credibility at the hearing, is relevant to a determination of intent. *See In re Ekekwe-Kauffman*, 210 A.3d 775, 796-97 (D.C. 2019) (per curiam).

Deceit is the "'suppression of a fact by one who is bound to disclose it, or who gives information of other facts which are likely to mislead . . . .'" *Shorter*, 570 A.2d at 767 n.12 (citation omitted). To establish deceit, the respondent must have knowledge of the falsity, but it is not necessary that the respondent have intent to deceive or defraud. *In re Schneider*, 553 A.2d 206, 209, 211 (D.C. 1989) (finding deceit where attorney intentionally submitted false travel expense forms but did not intend to deceive the client or law firm and there was no personal gain); *see also Shorter*, 570 A.2d at 767 n.12.

Misrepresentation is a "'statement . . . that a thing is in fact a particular way, when it is not so.'" *Shorter*, 570 A.2d at 767 n.12 (citation omitted); *see also Schneider*, 553 A.2d at 209 n.8 (misrepresentation is element of deceit). Misrepresentation requires active deception or a positive falsehood. *See Shorter*, 570 A.2d at 768. The failure to disclose a material fact also constitutes a misrepresentation. *In re Outlaw*, 917 A.2d 684, 688 (D.C. 2007) (per curiam) ("'Concealment or suppression of a material fact is as fraudulent as a positive direct misrepresentation.'" (citations omitted)); *see, e.g.*, *In re Scanio*, 919 A.2d 1137, 1139-41, 1142-44 (D.C. 2007) (respondent failed to disclose that he was a salaried employee when he made a claim for lost income to insurance company measured by lost hours multiplied by billing rate); *Reback II*, 513 A.2d at 228-29 (respondents

neglected a claim, failed to inform client of dismissal of the case, forged a client's signature onto second complaint, and had the complaint falsely notarized).

As with dishonesty, Disciplinary Counsel does not need to establish that a misrepresentation was deliberate, only that it was made with "reckless disregard for the truth." *In re Brown*, 112 A.3d 913, 916, 918 (D.C. 2015) (per curiam); *see, e.g.*, *In re Jones-Terrell*, 712 A.2d 496, 499 (D.C. 1998) ("Even if they were, at least in part, attributable to Respondent's haste in preparing the petition, the false statement and omissions were of such significance to the issues before the court that we believe her conduct was at least reckless and sufficient to sustain a violation of the rule." (quoting Board Report)).

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

Disciplinary Counsel argues that Respondent violated Rule 8.1(a), 8.4(c), and 8.4(d) in that he submitted knowingly false responses to Disciplinary Counsel's inquiries into the Davis, Browne, and Morton complaints. Disciplinary Counsel argues that Respondent's responses constituted deceit, misrepresentation, and dishonesty. As with the other Rule violations at issue in this proceeding, Respondent has offered little or nothing of substance to rebut the substantial record supporting Disciplinary Counsel's charges.

On July 24, 2019, Respondent submitted responses to the complaints that Davis, Browne, and Morton filed with Disciplinary Counsel. In his responses, Respondent falsely represented the extent of his communications with the complaining clients and the work he had allegedly done on their behalf. FF 18-20, 43-49, 61-62. Respondent provided to Disciplinary Counsel fake invoices for each of the three clients – false records that Respondent did not create in the ordinary course of business, but only in response to the disciplinary inquiries – that inflated his time, misrepresented what he had done, and falsely stated how he had handled client funds. FF 20-22, 49-50, 63-64. In the Browne and Morton matters, Respondent also attached petitions that he had not prepared in the ordinary course, but only in response to the disciplinary inquiries – although Respondent falsely represented to Disciplinary Counsel that he had sent the petitions and invoices to his respective clients several months before they filed their disciplinary complaints. FF 46-49, 61-62. His contentions were not merely incredible, but implausible and

knowingly false. Disciplinary Counsel proved by clear and convincing evidence Respondent's violations of Rule 8.1(a) as well as Rule 8.4(c).

Respondent's misrepresentations to Disciplinary Counsel and the information he omitted in his responses were deliberate and knowing – not inadvertent. Respondent had not met and communicated with Davis several times for more than nine hours, as he falsely claimed. FF 20. He also never prepared nor submitted anything to contest Davis's suspended security clearance. FF 19. Nor did Respondent ever provide invoices to Davis, as he falsely claimed. FF 21.

In response to Disciplinary Counsel's investigation, Respondent falsely represented (a) work performed in the Browne and Morton matters, (b) time he allegedly spent including meetings with clients, and (c) when he created petitions and invoices that he attached to his responses to their disciplinary complaints. Respondent never sent to his clients the petitions and invoices that he provided to Disciplinary Counsel, as the clients' disciplinary complaints made clear. FF 46-49, 61-63. Browne first saw the purported petition and invoices that Respondent claimed were prepared for him when he received copies from Disciplinary Counsel as part of Respondent's response. Respondent sent the petition, but not the phony invoice, to Morton on July 21, 2019, three days before Respondent submitted his response to Disciplinary Counsel. FF 61-62. Respondent does not dispute that the representations he made in the invoices were false and bore no relationship to the bank records for his trust account – facts he concealed from Disciplinary Counsel. *See* Tr. 554-55; FF 50 (citing Tr. 562: Respondent admits invoice inaccurate).

Respondent's dishonest responses to Disciplinary Counsel also violated Rule 8.4(d), because Respondent's knowing false statements, even though not believed, satisfied all three elements of the *Hopkins* test.

> [A] Rule 8.4(d) violation does not require an interference with judicial decision making "that causes the court to malfunction or make an incorrect decision." . . . All that Rule 8.4(d) requires is conduct that "taints" the process or "*potentially* impact[s] upon the process to a serious and adverse degree."

Uchendu, 812 A.2d at 941 (emphasis in original) (quoting *Hopkins*, 677 A.2d at 60-61). Respondent aggravated his dishonesty by never correcting his false representations, repeating some of his false statements under oath at the hearing (FF 9, 34), and giving false testimony about his interaction with many of the clients (FF 74, 98, 105-06, 123, 152, 157).

H. Disciplinary Counsel Proved that Respondent Violated Rules 8.1(b) and 8.4(d), and D.C. Bar R. XI, § 2(b)(3) in His Failure to Respond to Disciplinary Counsel's Investigative Inquiries

Rule 8.1(b) provides that "a lawyer . . . in connection with a disciplinary matter, shall not . . . fail to disclose a fact necessary to correct a misapprehension known by the lawyer . . . to have arisen in the matter, or knowingly fail to respond reasonably to a lawful demand for information from . . . [a] disciplinary authority . . . ." Thus, a knowing failure to respond to a request from Disciplinary Counsel regarding a disciplinary complaint constitutes a violation of Rule 8.1(b). *See, e.g.*, *In re Lea*, 969 A.2d 881, 888 (D.C. 2009). Note that "Rule 8.1(b) specifically addresses the requirement of responding to [Disciplinary] Counsel as opposed to the more general requirements of Rule 8.4(d)." *In re Rivlin*, Bar Docket Nos. 436-96 *et*

al., at 38 n.20 (BPR Oct. 28, 2002), *recommendation adopted*, 856 A.2d 1086 (D.C. 2004) (per curiam).

Failure to respond to Disciplinary Counsel's inquiries and orders of the Court also constitutes a violation of Rule 8.4(d). Rule 8.4, cmt. [2]; *see, e.g.*, *In re Edwards*, 990 A.2d 501, 524-25 (D.C. 2010) (appended Board Report) (failure to respond to Disciplinary Counsel's inquiry); *Carter*, 11 A.3d at 1223 (failure to respond to notices of an investigation from Disciplinary Counsel, and failure to comply with Board and Court orders requiring compliance with Disciplinary Counsel's investigation); *In re Askew*, Board Docket No. 12-BD-037 (BPR July 31, 2013), appended HC Rpt. at 22-23 (May 22, 2013) (failure to comply with Court orders requiring her to file a brief and to turn over client files), *recommendation adopted in relevant part*, 96 A.3d 52 (D.C. 2014) (per curiam).

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

Disciplinary Counsel argues that after "providing tardy responses with false information in the Davis, Browne and Morton matters," Respondent stopped responding to its inquiries, subpoenas, Board orders, and Court orders. ODC Br. at 71-72. Respondent does not contest the facts on these charges, and offered no substantive explanation at the hearing. Tr. 532-33, 676-77 (Respondent claims he became overwhelmed with the investigation and other personal demands).

Evidence of Respondent's failure to cooperate in Disciplinary Counsel's investigations is overwhelming and undisputed. After providing untimely responses

with false information in the Davis, Browne, and Morton matters, Respondent refused to cooperate further. Indeed, the unrebutted record demonstrates Respondent's myriad violations of Rules 8.1(b) and 8.4(d) which continued through the date of the hearing. Respondent knew about all of the investigations at issue, having received numerous letters, emails, motions, and Court orders in each of them. Disciplinary Counsel personally served Respondent with a number of the documents, including Board and Court orders, and repeatedly reminded Respondent of the outstanding requests for information and documents and his obligations to respond. *See, e.g.*, FF 176-81. Respondent made paltry excuses and, on a few occasions, promised to provide responses or documents while sometimes falsely claiming that he believed they already were sent. As of the date of the hearing, Respondent still had not complied with Disciplinary Counsel subpoenas, the Board orders, and the Court orders, including the Court order suspending him from practicing law. Respondent's failure to comply with the Board and Court orders also violates D.C. Bar Rule XI, § 2(b)(3).

IV. RECOMMENDED SANCTION

Disciplinary Counsel has asked the Hearing Committee to recommend that Respondent be disbarred because he engaged in intentional misappropriation. Disciplinary Counsel also argues that Respondent's reinstatement should be conditioned on proof that he has made restitution to his clients or the Clients' Security Fund, with interest at the legal rate.

During the hearing, Respondent acknowledged that he was not as attentive as he should have been to the "business side" of his practice, and recognized that he would be sanctioned but asked that he not be disbarred, citing his passion to try to help as many people as he could. Tr. 675-78. For the reasons described below, we recommend that Respondent be disbarred.

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.*, *Hutchinson*, 534 A.2d at 924; *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; *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)); *Chapman*, 962 A.2d at 924. 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.'" (alteration in original) (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*, 579 A.2d at 191. The Court recognized that extraordinary circumstances are present when a respondent is entitled to mitigation under *In re Kersey*, 520 A.2d 321, 326 (D.C. 1987), but the Court warned that

"mitigating factors of the usual sort" are not sufficient to rebut the presumptive sanction of disbarment, and "[o]nly the most stringent of extenuating circumstances would justify a lesser disciplinary sanction." *Id*. at 191, 193.

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*, 778 A.2d at 337-38 (citing *Addams*, 579 A.2d at 191, 196, 199).

C. **The Record Demonstrates Overwhelming Evidence of Respondent's Intentional Misappropriation and Other Grave Rule Violations Justifying Disbarment**

Respondent should be disbarred. He intentionally misappropriated the funds of five clients. This alone warrants his disbarment. *See Addams*, 579 A.2d at 191 (Court reaffirmed "that 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 extenuating or mitigating factors that would justify anything less than disbarment for Respondent's misappropriations. Indeed, Respondent's other misconduct and numerous aggravating factors reinforce the need for disbarment. *See Martin*, 67 A.3d at 1053 (listing factors to consider in determining sanction).

In addition to intentionally misappropriating funds from five clients, Respondent engaged in other serious and pervasive misconduct – he intentionally neglected, then abandoned his clients' matters; he failed to communicate with his clients despite their repeated efforts to reach him; he failed to provide one client a

written fee statement; he failed to refund unearned fees and return client files and documents; he lied to Disciplinary Counsel and then refused to cooperate; and he violated numerous Board and Court orders. Respondent's pattern of willful misappropriation, dishonesty, client neglect and failures to communicate, and repeated instances of client abandonment and failures to return client files, constitute a fraudulent enterprise whereby Respondent used his law license to defraud military veterans facing significant and often dire legal issues that Respondent falsely represented himself as being uniquely qualified to resolve.

Respondent's clients were prejudiced by his repeated patterns of misconduct. Six of the seven clients never received the agreed-upon legal services they paid for. Morton was apparently content with the petition Respondent prepared, but Respondent sent it to Morton years after taking all his money and only after Morton complained to Disciplinary Counsel. The other six clients received no benefit for the fees they paid Respondent and their matters languished for a year or more after Respondent had taken all their money. Given the passage of time and Respondent's false representations that he was pursuing Ray's matter, Ray may have lost any prospect of challenging his reduction in rank. The only relief that the clients have received has been from the Clients' Security Fund which has reimbursed some of the clients for the funds Respondent took without authority and without having done anything to earn them. Respondent, however, has vowed not to pay the Fund despite his obligation to do and claimed he will appeal the awards to his clients – notwithstanding his failure to participate in the Fund's process.

Respondent takes no meaningful responsibility for his misconduct. He has not admitted any wrongdoing in the client matters or acknowledged the harm he caused his clients. Respondent continues to flout Board and Court orders directing him to provide responses, client files, and financial records. He also refused to comply with the Court's order suspending him in July 2020. Respondent continued to hold himself as a lawyer to the public thereafter, and into 2021. Respondent has deceived and apparently cheated other clients. His continued violations of the Rules and his ongoing contempt of Board and Court orders while he has been under investigation demonstrate that he has no intention of complying with his ethical obligations.

The record here supports no mitigating factors, nor has Respondent pointed the Hearing Committee to any. At the hearing, Respondent testified about his supposed passion to help veterans with legal issues involving their service. Tr. 675, 678. But the record here demonstrates no such passion. Instead, the record evidences a pattern whereby Respondent used his District of Columbia law license to lure distressed veterans into paying him thousands of dollars in advance fees, and then immediately taking those fees while Respondent never intended to perform the services for which he was retained.

Respondent has not been the subject of prior public discipline, but he was an experienced lawyer when he engaged in the misconduct, and that is an aggravating factor. Respondent also aggravated his misconduct by failing to file an answer, participate in the pre-hearing proceedings, and by filing baseless and last-minute

motions to postpone the hearing and dismiss the charges, and testifying falsely at the hearing. Given the nature and extent of Respondent's misconduct, which continued at the hearing, disbarment is the only appropriate sanction. As a condition of reinstatement, Respondent should be required to pay restitution to the Fund and to his clients who have not yet received reimbursement, with interest at the legal rate.

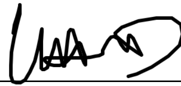
V. CONCLUSION

For the foregoing reasons, the Committee finds that Respondent violated Rules 1.15(a) and (e) (intentional misappropriation), Rules 1.3(a), (b), and (c) (neglect and intentional neglect), Rules 1.4(a) and (b) (failing to communicate), Rule 1.5(b) (failing to provide written fee agreement); Rule 1.16(d) (failing to return client files and refund unearned fees), Rule 8.1(a) (knowingly making false statements to Disciplinary Counsel), Rule 8.1(b) (knowingly failing to respond to Disciplinary Counsel's investigative inquiries), Rule 8.4(c) (engaging in conduct involving dishonesty, deceit, or misrepresentation), and Rule 8.4(d) (serious interference with the administration of justice), and D.C. Bar Rule XI, § 2(b)(3) (failing to respond to a disciplinary order), and recommends that Respondent be disbarred. We further recommend that as a condition of reinstatement, Respondent should be required to pay restitution to the Fund and to his clients who have not yet received reimbursement, with interest at the legal rate. Finally, we recommend that

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

HEARING COMMITTEE NUMBER EIGHT

Thomas E. Gilbertsen, Chair



William V. Hindle, Public Member

Jay A. Brozost, Attorney Member