THIS REPORT IS NOT A FINAL ORDER OF DISCIPLINE*

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

In the Matter of:	:	
	:	
ROBERT B. FITZPATRICK	:	
	:	
Respondent.	:	Board Docket No. 23-BD-035
	:	Disciplinary Docket No. 2019-D201
A Member of the Bar of the	:	
District of Columbia Court of Appeals	:	
(Bar Registration No. 40410)	:	

REPORT AND RECOMMENDATION OF THE AD HOC HEARING COMMITTEE

Respondent, Robert Fitzpatrick, is charged with violating Rules 1.15(a) (commingling and recordkeeping), 1.15(c) (failing to promptly return unearned fees), 1.16(d) (failing to refund unearned advanced fees following termination of representation), and 8.4(d) (serious inference with the administration of justice) of the District of Columbia Rules of Professional Conduct (the "Rules"), arising from allegations of an overdraft from Respondent's trust account and Disciplinary Counsel's subsequent investigation. Disciplinary Counsel contends that Respondent committed all of the charged violations and should be suspended for sixty days, with fitness, as a sanction for his misconduct. Respondent concedes that he delayed refunding entrusted funds to his clients (in violation of Rules 1.15(c) and 1.16(d)) and argues for at most a thirty-day suspension, with no fitness requirement.

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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.

As set forth below, the Hearing Committee finds that Disciplinary Counsel has proven all of the charged Rule violations by clear and convincing evidence and recommends that Respondent should receive a sixty-day suspension, with fitness.

I. PROCEDURAL HISTORY

Disciplinary Counsel served Respondent with a Specification of Charges ("Specification") on September 8, 2023.[1] Respondent then filed a motion seeking to extend time to file his Answer, withdraw the Specification, and direct Disciplinary Counsel to propose a resolution of this matter by way of a conciliation process involving the two parties. *See* Respondent's Motion (filed Sept. 27, 2023); *see also* HC Order (filed Oct. 6, 2023). Following Disciplinary Counsel's opposition in part, and Respondent's reply, the Hearing Committee granted Respondent's Motion insofar as extending time to file his Answer but otherwise denied the motion. HC Order (filed Oct. 6, 2023). Respondent filed his Answer on October 23, 2023, and filed a motion to dismiss on December 13, 2023.[2]

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[1] As a result of the Board's Protective Order (filed December 28, 2023) granting Respondent's request that the names of his clients (none of whom were complainants) not be disclosed, Disciplinary Counsel filed an Amended Specification of Charges the next day which replaced the client names with their initials to protect their identities. Pursuant to the Board's modified Protective Order (dated December 30, 2025), all client names have been redacted from the Committee's Report to protect their identities.

[2] We include a recommended disposition of Respondent's motion below, *see infra* pp. 31-32.

With the hearing scheduled to be conducted via Zoom, Disciplinary Counsel became aware that Respondent intended to participate using only his phone and filed an emergency motion for a pre-hearing conference to discuss the potential limitations of this arrangement. After Respondent's reply, a pre-hearing took place on December 8, 2023, where all agreed to conduct the hearing in person.

An in-person hearing took place on January 3-5, and 17, 2024, before this Ad Hoc Hearing Committee. Disciplinary Counsel was represented by Assistant Disciplinary Counsel Ebtehaj Kalantar, Esquire. Respondent represented himself. Prior to the start of the hearing, the Board granted Respondent's request for a protective order to prevent the disclosure of client confidences or secrets.[3] During the hearing, Disciplinary Counsel submitted exhibits DCX[4] 1 through 110, which were all admitted into evidence without objection (except DCX 109 which, as noted

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[3] Based on the Board's December 2023 Protective Order, the Committee instructed the parties to try and anticipate when shifting to a private session would be necessary, and for the shift(s) to be as nondisruptive as possible. Tr. 14-15; *see also* Tr. 92. But that proved to be challenging, and so the hearing shifted to a private session to promote an efficient, well-developed record. Tr. 115, 134-35 ("[T]here is . . . a presumption in favor of openness . . . but given where I think you're going with your examination and the need to actually get through this in the time we've allotted, I am inclined to say that we should go into a sealed proceeding, given the concerns [Respondent] has raised. This is what I wanted to avoid, is the stopping and the starting. And I want [Respondent] to be able to present [his] case as [he] see[s] fit.").

[4] "DCX" refers to Disciplinary Counsel's exhibits. "Tr." refers to the transcript of the hearing held on January 3-5, and 17, 2024.

below, was admitted over Respondent's objection).[5] Tr. 619, 821. Disciplinary Counsel called three witnesses: Respondent, Azadeh Matinpour, Esquire (an investigator for Disciplinary Counsel), and rebuttal witness Arydh "Motti" Bendet (Respondent's former bookkeeper).

Respondent did not submit any exhibits. But he sought to call three members from the Office of Disciplinary Counsel as witnesses, which Disciplinary Counsel opposed: Becky Neal, Esquire (Senior Assistant Disciplinary Counsel), Hamilton P. Fox, III, Esquire (Disciplinary Counsel), and Mr. Kalantar. Tr. 441-45; *see also* Respondent's First Witness List (filed Dec. 13, 2023); Disciplinary Counsel's Opposition to Respondent's First Witness List (filed Dec. 20, 2023). The Chair sustained Disciplinary Counsel's objection but allowed Respondent to make a proffer as to Ms. Neal's purported testimony. Tr. 447-48. Respondent did so later in the hearing. Tr. 736-744.

Upon conclusion of the hearing, the Hearing Committee made a preliminary non-binding determination that Disciplinary Counsel had proven at least one of the Rule violations charged in the Specification. Tr. 817; *see* Board Rule 11.11. In the sanctions phase of the hearing, Disciplinary Counsel submitted DCX 109—an

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[5] The Board, in two separate orders, directed that the following exhibits should be sealed because of the volume of pages containing confidences or secrets: DCX 8, 10, 13, 15, 22-24, 51, 69, 72, 82, 93, 105, and 107-108. *See* Board Order (filed Mar. 13, 2024); Board Order (filed Nov. 7, 2024). The Board, however, rejected Respondent's request to seal the names of his former tax preparer and other former colleagues. *See* Board Order (filed Feb. 16, 2024).

Informal Admonition Respondent received in 1992—which was admitted over Respondent's objection. Tr. 818-821.

On February 12, 2024, Respondent submitted a "Resignation from the D.C. Bar," seeking Disciplinary Counsel's approval and a Zoom call to discuss. After Disciplinary Counsel's response, the Committee denied Respondent's request for a call because his intention to resign is extraneous to this matter.

Disciplinary Counsel submitted its Proposed Findings of Fact, Conclusions of Law, and Recommendation as to Sanction ("ODC Br.") on February 16, 2024, and Respondent filed his Proposed Findings of Fact, Conclusions of Law, and Recommendation as to Sanction ("R. Br.") on March 11, 2024. Disciplinary Counsel filed its Reply ("ODC Reply") on March 20, 2024.

Believing that portions of the sealed transcript should be unsealed, the Chair on September 13, 2024, ordered the parties to meet, confer, and recommend which parts should be protected from the public. Both parties responded and seemingly could not come to an agreement. *See* Disciplinary Counsel's Statement (filed Sept. 26, 2024) (asserting it believes no part of the transcript should be sealed and cataloguing its emails with Respondent); Respondent's Statement (filed Sept. 26, 2024) (asserting that the parties did not meet and confer and describing his exchanges with Disciplinary Counsel). In light of the lack of agreement between the parties, on September 24, 2025, we ordered that the portions of the hearing transcript that were sealed during the hearing (beginning at Tr. 140) would remain under seal. *See* HC Order (filed Sept. 24, 2025).

On November 7, 2025, we issued an additional order anticipating that the Chair would file a motion with the Board Chair to modify or clarify the December 28, 2023 Protective Order and directing the parties to state whether they objected to the Committee citing sealed exhibits and sealed portions of the hearing and releasing information potentially related to client confidences (including quotes from currently-sealed portions of the record and sealed exhibits) in our upcoming Report and Recommendation, provided the Report did not disclose client names or other identifying information. On November 12, Disciplinary Counsel filed a Statement of No Objection, while Respondent filed a Statement containing nine objections; Respondent also filed a separate Reply to Disciplinary Counsel's Statement on November 14 reiterating many of the same points. In relevant part, Respondent argued that he did not know what confidences or secrets would be disclosed, and that the clients may not consent to the disclosures. The Chair filed a Request for Clarification on November 26, 2025 with the Board, attaching the submissions of Disciplinary Counsel and Respondent. Respondent subsequently filed another Response on December 1, in part repeating the same arguments he had made before the Committee and asking the Board to deny the Committee's Request.

On December 30, the Board issued an order directing that the Report "may comply with the Protective Orders by redacting client names and other identifying information from its publicly-available report" (without needing to redact potential client confidences or secrets), "so long as there is no reasonable likelihood that a reader of the report would be able to ascertain the identity of the client or the

situation involved from the information disclosed." *See* Board Order (filed Dec. 30, 2025). The order also directed that the "publicly-available report may include unredacted citations, and other references to sealed exhibits and transcript pages," but shall not "reproduce or otherwise disclose the contents of any portion of a sealed exhibit. Nor should such references permit a reader of the report to ascertain the identity of a client or the situation involved." In compliance with the Board's Order, all client names and identifying information have been redacted.

II. FINDINGS OF FACT

The following findings of fact are based on the testimony and documentary evidence admitted at the hearing, and these findings of facts are established by clear and convincing evidence. *See* Board Rule 11.6; *In re Cater*, 887 A.2d 1, 24 (D.C. 2005) ("clear and convincing evidence" is more than a preponderance of the evidence, it is "evidence that will produce in the mind of the trier of fact a firm belief or conviction as to the fact sought to be established" (quoting *In re Dortch*, 860 A.2d 346, 358 (D.C. 2004)).

A. Background

1. Respondent is a member of the Bar of the District of Columbia Court of Appeals, having been admitted by examination on January 5, 1968, and assigned Bar number 40410. DCX 4.

2. Since 2010, Respondent has been the sole signatory on a PNC Bank IOLTA account, number ending 2782. *See* DCX 3 at 5, ¶ 2 (admitting to Specification ¶ 2); DCX 6; DCX 107 at 3; Tr. 69, 732 (Respondent).

3. Respondent was the sole member of Robert B. Fitzpatrick, PLLC. Tr. 66-67 (Respondent); *see, e.g.*, DCX 69 (letterhead). Respondent at times had associates and staff who performed work for his clients. *See* Tr. 68, 170, 196, 309-310 (Respondent); DCX 69. *See generally* DCX 22-DCX 24 (invoices).

4. From 2008 to August 2020, Respondent employed Law Firm Bookkeeping Solutions, Inc. ("LBSI") to conduct his bookkeeping. Tr. 747-48, 755 (Bendet); Tr. 689, 726 (Respondent). LBSI was operated by Arydh "Motti" Bendet. Tr. 747 (Bendet). LBSI gave Respondent at least weekly reports of the general and client balances in his trust account. Tr. 748, 752-54 (Bendet). Respondent also recorded his time, DCX 22-DCX 24, issued or dictated invoices to the clients, Tr. 751 (Bendet), deposited funds into his trust and operating accounts, and wrote all checks on the trust accounts. Tr. 752 (Bendet); Tr. 733 (Respondent). At all times, Respondent, not LBSI, maintained complete control over and access to his bank account and financial records.[6]

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[6] In his brief, Respondent characterized the allegation that he had "complete" control as "probably an overstatement" because he was not the only one who personally made deposits and engaged in other activities to manage the account. R. Br. at 26-27; *see* Tr. 171 ("I believe the roles that [the people who worked for him or his bookkeeper] played has a bearing on . . . mitigation, exculpatory."), 347, 668, 684-86, 692-93 (Respondent). But he did not dispute that these activities were done at his direction, and that the account was ultimately his responsibility. *See* Tr. 48, 170, 684, 719 (Respondent); *see also* R. Br. at 45, 48.

B. Respondent's Failure to Return Unearned Client Money

5. The record before us indicates that Respondent failed to timely refund unearned fees for eleven clients after the matters in which he was representing them ended.[7] In some of these cases, Respondent has asserted that he did so at the request or with the permission of the client to use in case of a future matter. *See* DCX 22 at 21; DCX 104 at 2; Tr. 59 (Respondent); *see also* R. Br. at 29 ("There was a time years ago when [redacted] said keep the monies in trust in the event I need your services in the future."). However, Respondent did not have a system in place to track the funds, and he held some of these clients' fees for more than a decade without repaying the clients. DCX 5; DCX 104 at 1; Tr. 59-60, 685-86 (Respondent). The total fees that Respondent failed to return between 2012 through when these proceedings began in 2023 are approximately $4,986.15. DCX 5; Tr. 422-23 (Matinpour); Tr. 285-290 (Respondent, testifying about DCX 1 at ¶ 16 (Specification) and DCX 110). While Respondent has equivocated on various details, he does not dispute that he failed to timely refund client fees. R. Br. at 30-31. We set forth pertinent facts with respect to each of these clients below:

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[7] Respondent asserts that he has refunded five clients—[redacted], [redacted], [redacted], [redacted], and [redacted]—years after the relevant representations ended and after this disciplinary proceeding began. *See* R. Br. at 16-18, 21-22, 28-30; Tr. 676-77 (Respondent testifying in mitigation that he had sent [redacted] a check "recently"); DCX 110. He also admits that he has not yet refunded the unearned fees belonging to the other six clients. *See, e.g.*, R. Br. at 12-22, 28-30. No client testified, and though the record contains "Customer Copy" checks addressed to those five clients ([redacted], [redacted], [redacted], [redacted], and [redacted]), *see* DCX 110, there is no evidence of any client receiving their refund. Without this evidence, we decline to consider Respondent's assertions here in mitigation.

6. Client [redacted]: Around March 2014, Respondent was retained by [redacted], who paid him advance fees of $2,000. DCX 23 at 40-43. According to his ledgers and an invoice, the matter concluded within a month with Respondent having earned about half of the funds [redacted] had advanced. DCX 23 at 40-43; Tr. 83 (Respondent testifying that there was "further work that we were going to do," but "we never billed the client for it"). [redacted] was thus entitled to a refund of the unearned balance of $940.81, which Respondent concedes. DCX 23 at 40-43; DCX 5; Tr. 83, 802 (Respondent). Respondent failed to timely refund the unearned balance to [redacted] before the disciplinary proceedings. DCX 5; *see, e.g.*, DCX 107 (bank records through October 2023). Respondent offered no explanation for the nine years he withheld a refund of [redacted]'s funds. Tr. 676-77 (Respondent: "It just sat there, okay.").

7. Client [redacted]: In January 2019, [redacted] retained Respondent and paid him advance fees totaling $2,000. DCX 13 at 5, 7; DCX 95 at 1; DCX 82 at 31-34; DCX 23 at 35. According to Respondent's records, the matter ended a month later, but Respondent had not earned $1,000 of [redacted]'s advance fee. DCX 5; DCX 23 at 35-36; Tr. 808 (Respondent). As with client [redacted], Respondent has admitted, he did not refund the $1,000 to which [redacted] was entitled prior to this disciplinary proceeding. DCX 95 (Respondent admitting it was "inexplicably" not refunded); Tr. 808, 816 (Respondent). Respondent again offered no explanation for the four years he withheld the refunds. *See* Tr. 816 (Respondent); DCX 95 at 1, ¶¶ 8-9.

8. Client [redacted]: In September 2013, Client [redacted] retained Respondent and paid an advance fee of $500. DCX 23 at 50; DCX 104 at 2. According to

Respondent's records, the matter ended around September 2013 and Respondent issued an invoice for $483.34. DCX 23 at 51-52; DCX 104 at 2. [redacted] was therefore entitled to a refund of $16.66. DCX 23 at 50; DCX 104 at 2. Rather than return the unearned money, Respondent offered to hold it in his trust account. DCX 104 at 2. [redacted] agreed that Respondent could retain the money, but only for another week to ensure nothing else came up. DCX 104 at 2; DCX 22 at 21. Respondent did not refund the money a week later or otherwise contact [redacted] until ten years later, after he was under Disciplinary Counsel's investigation. *See* DCX 104. In his post-hearing brief, Respondent declined to provide any other details regarding his contacts with Client [redacted] on the grounds that he would be revealing an attorney/client confidence based on his interactions with Disciplinary Counsel. *See* R. Br. at 30 (explaining that because any discussion with Dan Mills, Esquire, an advisor with the D.C. Bar Practice Management Advisory Service ("PMAS"), would waive confidentiality, "Respondent can say no more regarding Mr. Mills' role in this matter").

9. Clients [redacted] and [redacted]: Respondent accepted $1,000 from client [redacted] in 2013, DCX 23 at 37, and $3,000 from client [redacted] in 2015. DCX 24 at 90. Once again, he did not fully earn the amounts each client paid. *See* DCX 5; DCX 22 at 5; DCX 23 at 37-39 ([redacted] advanced $1,000 but last invoice totaled $957.51); Tr. 435-38. And once again, Respondent failed to refund the unearned fees before the disciplinary proceedings. *See, e.g.*, DCX 5; DCX 22 at 5; DCX 107 (bank records); DCX 110 at 1-2; Tr. 288 (Respondent asserting he paid [redacted] and [redacted] on December 11, 2023).

10. Client [redacted]: In February 2012, client [redacted] retained Respondent and paid him an advance fee of $5,000. DCX 24 at 52-54; Tr. 487-491 (Matinpour). Respondent generated an invoice for the work he performed in the amount of $4,462.55. DCX 24 at 60. He generated a "draft" invoice in which he recorded an additional $70 of work between April and June 2012, but according to the invoice, he never billed the client for the time. DCX 24 at 61; Tr. 487-491 (Matinpour).[8] Beyond this, Respondent generated no other invoices or demonstrable work, and the matter ended around June 2012. *See* DCX 24 at 52-61; Tr. 490 (Matinpour); Tr. 82 (Respondent). [redacted] was thus entitled at a minimum to a refund of the unearned balance of $537.45. DCX 24 at 52; Tr. 490 (Matinpour). However, Respondent never refunded that amount or any amount to [redacted]. DCX 22 at 5; DCX 5 ([redacted] referred to as [redacted]); Tr. 490-91, 571 (Matinpour); *see, e.g.*, DCX 107; DCX 110; DCX 15 at 5 (standard retainer agreement with refund provision); Tr. 296-97 (Respondent). Respondent offered no explanation for the eleven years he has not refunded [redacted] their money.

11. Client [redacted]: In August 2012, client [redacted] retained Respondent and paid him an advance fee of $1,000. DCX 23 at 53; DCX 82 at 38; Tr. 299 (Respondent); Tr.

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[8] As discussed below, there is some uncertainty about whether fees reflected in invoices labeled "draft" were in fact earned. *See infra* note 9; *see also* R. Br. at 28 (suggesting inconsistency in Disciplinary Counsel's position as to whether the $70 recorded in a "draft" invoice belonged to Respondent or the client). We note that any inconsistency about the $70 is immaterial to our analysis—in short, Disciplinary Counsel proved that Respondent failed to refund at least $537.45 to [redacted] for eleven years.

433 (Matinpour). Around September 2012, Respondent completed the representation and issued an invoice for work totaling $850.01. DCX 23 at 57; *see* Tr. 299 (Respondent); Tr. 433 (Matinpour). The client was therefore entitled to a refund of $149.99. DCX 23 at 53. Respondent generated no other invoices or demonstrable work. *See* DCX 23 at 53-57; Tr. 300-01 (Respondent). Although Respondent testified that his firm had offered to hold the client's unearned money in the trust account, he offered no proof that [redacted] ever agreed to this arrangement. DCX 101 at 2; Tr. 309-314, 710 (Respondent). Respondent never refunded [redacted] the money the client was owed. *See* R. Br. at 18, 29.

12. Client [redacted]: In 2016, Respondent was retained by [redacted] and paid an advance fee of $5,000. DCX 23 at 59-63. The records show the matter ended around October 2016, and Respondent issued an invoice for $4,638.75. DCX 23 at 63. Emails produced by Respondent confirm that [redacted] was entitled to a $361.25 refund. DCX 53 at 1; *see* DCX 55; DCX 23 at 59-63. In December 2016, [redacted] requested a refund, but Respondent did not refund [redacted]'s money. DCX 53 at 1; *see, e.g.*, DCX 55; DCX 5; DCX 107; DCX 110; Tr. 159 (Respondent). Respondent wrote to [redacted] again in 2022, confirming that they did not remember receiving a refund. DCX 55. Despite this, Respondent still did not deliver a refund and has not provided any justification for this failure. *See* DCX 5; DCX 107; R. Br. at 19, 30.

13. Clients [redacted], [redacted] and [redacted]: For these three other clients, Respondent again accepted advance fees for a representation. DCX 5; DCX 23 at 64 ($2,000 from [redacted] in 2014); DCX 24 at 50 ($1,200 from [redacted] in 2017); DCX 23 at 45 ($1,200 from [redacted]

in 2019). In each case, Respondent earned less than the advance fees based on invoices in his records. *See* DCX 23 at 64 (ledger showing a balance of $302.08 owed to [redacted]); DCX 24 at 50 (ledger showing a balance of $1,200 owed to [redacted]); DCX 23 at 45 (ledger showing a balance of $270 owed to [redacted]). For each of these clients, Respondent offered various representations and promises but no actual records or other evidence to prove that he returned unearned fees to [redacted], [redacted], and [redacted]. *See* DCX 1-DCX 110; R. Br. at 17, 19-21.

C. Respondent's Failure to Remove Earned Funds from his Trust Account

14. During the same period that Respondent held client funds in his trust account—starting in June 2012, when he deposited client fees from client [redacted], until October 2023—Respondent handled at least four client matters in which he earned all the fees advanced by the client but nevertheless kept part of the money he earned in his trust account long after the matter ended. DCX 5; *see also* DCX 26 (Respondent's draft email to clients for whom he could not locate signed retainer agreements, which stated "We fully realize that our representation ended long ago"); Tr. 391 (Respondent testifying that he has two current clients, but neither is a part of the twenty-two clients at issue in this matter). Respondent did not remove these earned fees until after Disciplinary Counsel filed charges against him in September 2023.[9] DCX 5. Specifically:

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[9] As explained below, Respondent argues that he did not earn these fees (and thus did not transfer these funds to his operating account) because he did not invoice his clients for work he performed on their cases, but we do not accept this argument. FF 41; *see infra* pp. 38-41; *see also, e.g.*, R. Br. at 7, 13-14. Respondent's

15. Client [redacted]: In 2010, client [redacted] retained Respondent and paid him $25,000 in total. DCX 22 at 25-34. By April 2012, Respondent's invoices show that he had performed more than $25,000 of legal services. DCX 22 at 25-53; Tr. 425-26 (Matinpour). However, Respondent's records show that he did not withdraw all the money he had earned; he left $2,514.02 in his trust account. DCX 5; DCX 22 at 5, 25; *see* DCX 22 at 54;[10] Tr. 429, 545 (Matinpour). The earned fees remained in the

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engagement agreements that are available in the record do not specify that earned fees may only be transferred after sending an invoice. Respondent also acknowledged during Disciplinary Counsel's investigation that that his "billing records on the iolta accounts . . . appear to reflect in some instances recorded billable time but inexplicably no transfer from iolta to operating." DCX 21 at 1; *see, e.g.*, DCX 15 at 5 and DCX 69 ([redacted] and [redacted]'s respective engagement agreements permitting Respondent to "periodically withdraw funds from the IOLTA trust account in an amount equal to Client's outstanding legal fees owed to Firm as of the date of said withdrawal" without any requirement that Respondent first mail an invoice). We do not credit Respondent's subsequent attempts to disavow this statement. *See* Tr. 176-77, 190-91; R. Br. at 38-39. It is true that some of the pages of Respondent's invoices are labeled "DRAFT," *see, e.g.*, DCX 22 at 23 (draft invoice for client [redacted]); DCX 23 at 49 (draft invoice for client [redacted]), but as explained below, this is not sufficient to persuade us that the fees in question were not earned did not need to be transferred out of Respondent's trust account. *See infra* pp. 38-41.

[10] This page in Respondent's invoice for [redacted] is labeled "DRAFT," and is for "UNBILLED EXPENSES." DCX 22 at 54. The page before is labeled "D151809," where "D" could also signal a "draft" page. *Id.* at 53. As explained in our previous footnote and elsewhere, Respondent argues that because his invoices were drafts never sent to his clients, he had not "earned" these fees and thus could not transfer them out of his trust account despite performing the corresponding legal services. We again do not credit Respondent that he had this arrangement in place with his clients. But the designations for these two pages ("Draft" or "D") are immaterial here, because Disciplinary Counsel has proven Respondent earned at least $25,000 of [redacted]'s fees from the other pages of Respondent's invoices. *See* DCX 22 at 25-52.

trust account for more than a decade, until October 2023, when Respondent finally moved them to a new account. DCX 5; DCX 22 at 5; DCX 107 at 307; DCX 108 at 10; Tr. 426 (Matinpour).

16. Client [redacted]: In May 2015, client [redacted] hired Respondent and paid $25,000 in total. DCX 24 at 63-66; *see* DCX 69 at 3 (fee agreement confirming that retainer payment was $25,000). According to his records, Respondent earned all that amount by February 2016, performing $25,580.33 in legal services. DCX 24 at 88; *see* Tr. 547 (Matinpour). His records state he was "paid in full" in October 2016. DCX 24 at 88. Again, Respondent did not remove the entire amount he had earned. DCX 5. Instead, he left $580.33 of his own money in the trust account for more than seven years. DCX 5; DCX 24 at 63. Again, he did not remove the money until October 2023, when he transferred it to the new account. DCX 5; DCX 22 at 5; DCX 107 at 306; DCX 108 at 9.[11]

17. Clients [redacted], [redacted], and [redacted]: Respondent's representation of three other clients followed the same pattern. *See* DCX 5; DCX 22 at 5; DCX 27 at 3-5, ¶¶ 4, 12, 18; DCX 32 at 1, ¶ 2. His ledger and invoices show that in the [redacted] matter, Respondent earned $600 by May 2018 but did not remove it until October 2023. *See*

[11] Though two pages of an invoice for [redacted] are similarly marked "D151820" (DCX 24 at 86-87), we again find Disciplinary Counsel proved Respondent performed the corresponding legal services, earned those fees, and needed to transfer them out of his trust account within a reasonable amount of time, which Disciplinary Counsel proved he did not do.

DCX 22 at 22-23;[12] DCX 107 at 308; DCX 108 at 7; DCX 5. In the [redacted] matter, he earned $110 by March 2018 but again left the funds in his trust account until October 2023. *See* DCX 24 at 47-48; DCX 107 at 305; DCX 108 at 8; DCX 5. And in the [redacted] matter, Respondent earned $375 by May 2017 and kept that money in his trust account for more than six years, withdrawing it just before the other earned amounts in September 2023. *See* DCX 23 at 47, 49;[13] DCX 107 at 298, 304; DCX 108 at 4-5; DCX 5; Tr. 430 (Matinpour). All the withdrawals did not come until after charges were filed in September 2023. DCX 5; DCX 108 at 4-8; Tr. 430-31 (Matinpour). Up to then, the total balance of earned fees in Respondent's trust account had grown to $4,179.35. DCX 5; *see* DCX 22 at 5.

18. On September 19, 2023, Respondent finally began to make disbursements from his trust account relating to the clients whose funds were at issue. DCX 5; DCX 107 at 298-308; DCX 108. That day, he opened a separate PNC bank account (ending 9758), and from September to October 2023, he deposited the money he had earned in the [redacted], [redacted], [redacted], [redacted], and [redacted] matters. DCX 5; DCX 108.

D. Unidentifiable Funds in Respondent's Trust Account

19. Clients [redacted], [redacted], [redacted], [redacted], [redacted], and [redacted]: In addition to the client funds he did not return and the earned fees he did not withdraw, Respondent accumulated

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[12] Similarly, we find Respondent earned the fees for representing [redacted], despite Respondent labeling [redacted]'s invoice as "DRAFT." DCX 22 at 23.

[13] As with Respondent's invoice for [redacted], the invoice for [redacted] is labeled "DRAFT." DCX 23 at 49. For the reasons stated previously, we again find Disciplinary Counsel proved Respondent earned these fees.

$2,546.46 in his trust account from six clients for whom Respondent's records are insufficient to show whether the money belonged to Respondent or to the client. DCX 22 at 5; DCX 5; *see, e.g.*, Tr. 493-500, 506, 508-510, 515-16, 558-59 (Matinpour); DCX 22 at 6, 16; DCX 23 at 17, 25 ([redacted] and [redacted] client ledgers contradicted the invoices). For many matters, Respondent did not produce a retainer agreement or communications reflecting the terms of the relationship. Tr. 416, 494, 497-98, 500 (Matinpour); *see also* DCX 62; DCX 82; *see* FF 31 (missing retainers). By 2018, the total balance of these undetermined funds in the trust account had grown to $2,546.46. DCX 22 at 5; DCX 5. Respondent claims he issued a check to one client ([redacted]) three weeks before the hearing, but the record does not show whether the client received the refund. DCX 110 at 3. By the hearing, Respondent had not withdrawn money in any of the other five client matters from his trust account. *See* DCX 5; DCX 107.

E. Respondent's Handling of Issues with His Trust Account

20. While Respondent was accumulating earned fees and unearned client funds in his trust account, his bookkeeper, Mr. Bendet, made various unsuccessful efforts to bring Respondent's management of his trust account into compliance. In 2014, Mr. Bendet began to meet with Respondent and warn him about old balances in his trust account. *See* Tr. 754, 761-62 (Bendet testifying that the "overall conversation [was] how in the world are we ever going to get Bob to become a normal law firm"), 768-69. Mr. Bendet testified that Respondent did not heed his warnings and so he was unable to help Respondent determine what disbursements

he could make from the trust account and that Respondent repeatedly put off addressing these issues. Tr. 754, 760-62, 768-69, 772 (Bendet). Respondent disputed much of Mr. Bendet's account at the hearing and in his post-hearing brief. *See* R. Br. at 7, 33-34; Tr. 348, 684-87, 700 (Respondent); Tr. 767-770 (Respondent questioning Mr. Bendet). In light of Mr. Bendet's demeanor at the hearing and the consistency of his testimony with other evidence in the record, we credit his testimony and do not credit Respondent's denials. *See* FF 39, 41.

21. By the summer of 2019, the balance of earned and unearned fees, along with the undetermined funds, commingled in Respondent's trust account totaled $11,711.96. *See* DCX 5; DCX 22 at 5; *see also* DCX 27 at 2. The balance had grown continuously. *See* DCX 5; *see also* DCX 27 at 2.

22. On June 5, 2019, Respondent attempted to write a check from his trust account while simultaneously depositing funds in the account to cover the check. DCX 6; DCX 8 at 2. However, the funds he deposited did not immediately clear, leaving insufficient funds in the account to pay the check and resulting in an overdraft. DCX 6. His bank alerted Disciplinary Counsel, which began an investigation. DCX 7-DCX 10. Throughout the investigation, Respondent continued to take on client matters and deposit and withdraw money from the trust account. Tr. 502-03 (Matinpour); *see, e.g.*, DCX 107 at 121-159, 175, 190-223, 236-271, 283-323. By September 2023, when Respondent began to remove his earned money from the trust account, the overall trust account balance had reached approximately $73,000. DCX 107 at 298; *see* FF 17-18.

F. Disciplinary Counsel's Investigation

23. Disciplinary Counsel opened its investigation into Respondent's handling of entrusted funds due to the overdraft notice in June 2019. DCX 7. In November 2019, Disciplinary Counsel subpoenaed financial and accounting records that would provide a complete understanding of the financial transactions in the trust account, including fee agreements, invoices, and timesheets. DCX 11 at 5.

24. Over the next three years, Respondent made several incomplete responses to the subpoena, and at times failed to respond altogether. He repeatedly delayed compliance with Disciplinary Counsel's reasonable requests, often breaking promises that he himself had made to produce information. He also made repeated representations to Disciplinary Counsel that subsequently proved to be untrue.

25. For example, in May 2020, Respondent claimed that some funds in his trust account were earned but had "inexplicably" not been withdrawn. DCX 21. A month later, Respondent stated that even though he believed he earned the money, he would make refunds to the clients, and he forwarded his instructions to his bookkeeper to do so. DCX 25. However, Respondent failed to pay refunds to any clients. *See* DCX 5; DCX 107.

26. Disciplinary Counsel later wrote to Respondent and explained that, based on his financial records, there appeared to be earned as well as unearned funds in his trust account. *See* DCX 27 at 2-6. Disciplinary Counsel asked Respondent to confirm its analysis and provide all supporting financial records. *Id.* In response, Respondent suggested, but did not confirm, that the funds in his trust account were

all earned, but he failed to provide additional financial records to support his suggestion. *See* DCX 31; DCX 32.[14]

27. During this time, Respondent produced scattered client records, but nothing like a full documentary record for each of the relevant client accounts. *See, e.g.*, DCX 22-DCX 24; Tr. 410-11 (Matinpour); *see* FF 19, 24.

28. After years of going back and forth, on April 15, 2022, Respondent presented Disciplinary Counsel with a "plan of action," promising to: (1) do a "deep dig" into his digital records; (2) identify and consult with Disciplinary Counsel regarding any clients he could not locate, (3) consult with each client to confirm the fees were earned and share the communications with Disciplinary Counsel; and (4) transfer earned fees to his own account or refund any money determined to be unearned. DCX 32. Separately, Respondent also repeatedly assured Disciplinary Counsel that he would search for client files in offsite storage units. DCX 30 at 2-3; *see* DCX 31 at 1; DCX 38 at 2, ¶ 1; DCX 62 at 1; DCX 63 at 1-2. Despite Respondent's prior failures to comply with its requests, Disciplinary Counsel agreed to Respondent's "plan of action" and provided him three months, until July 27, 2022, to complete the plan and to provide all financial records, including retainer

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[14] In his post-hearing brief Respondent denied making this representation, but his denial is not consistent with documentary evidence in the record. *See* R. Br. at 39-40; DCX 32 at 1 ("I would propose to transfer those [earned] funds to my operating account."); *id.* ("Confer by phone with each client to confirm that the . . . firm earned the iolta funds, and that the firm is authorized to transfer same to its operating account.").

agreements, and to obtain missing records from storage and elsewhere. DCX 38; *see also* DCX 35 at ¶ 1.

29. Correspondence between Disciplinary Counsel and Respondent reflects their agreement that the "deep dig" component of the plan of action would include a search of his laptop, DCX 38 at 2; DCX 39 at 1; DCX 31-32; DCX 62 at 1; old laptops and other media used by his former staff, DCX 29 at 2; DCX 67; and the boxes in his offsite storage units which contained client files and other relevant records, DCX 29; DCX 31 at 1; *see* DCX 63 at 1-2. Respondent repeatedly assured Disciplinary Counsel (even as the July 27, 2022 deadline passed) that he would search both the laptops and offsite storage sites for records, including for what Respondent claimed would be "proof that the IOLTA monies were earned, at least more so than the record demonstrates." DCX 63 at ¶ C; *see* DCX 31-DCX 33; DCX 62; DCX 63 at ¶¶ F-H; DCX 68 at 2; DCX 73.

30. Ultimately, Respondent did not follow through with his plan of action or his promises to Disciplinary Counsel. He never conducted the "deep dig" of his digital files as he promised, nor did he perform a genuine search for documents from his offsite storage. Tr. 420 (Matinpour); *see* DCX 80; DCX 83; *see also generally* DCX 59-DCX 82. At the hearing, Respondent claimed that he visited offsite storage but admitted that he stopped searching after a day because it would have taken too long to do a complete search. Tr. 50, 361-62 (Respondent). He also admitted that he never accessed the laptops. Tr. 46-47, 362 (Respondent). In his view, searching for the records was not worth the time and expense. Tr. 46-47, 50, 362-63 (Respondent).

Respondent never advised Disciplinary Counsel that he had not completed his search of the offsite facility or his decision to abandon any effort to access the laptops. *See* Tr. 420 (Matinpour). *See generally* DCX 59-DCX 83.

31. In the end, Respondent's "deep dig" resulted in producing only six complete retainer agreements for the twenty-two client matters at issue ([redacted], [redacted], [redacted], [redacted], [redacted], and [redacted]), plus some reconciliation reports provided by Mr. Bendet. DCX 15 at 4-7 ([redacted]); DCX 69 ([redacted]); DCX 82 at 27-44 ([redacted], [redacted], [redacted], [redacted]); DCX 63 at 2; DCX 72 at 1, 5-9 (reconciliation reports); *see* Tr. 414-17 (Matinpour). Those records were insufficient to identify all the funds in the trust account and show whether they were unearned or, as Respondent claimed to both Disciplinary Counsel and some clients, earned. Tr. 415-16, 418 (Matinpour); *see, e.g.*, DCX 21; DCX 32; DCX 63 at ¶ C; DCX 76 (Respondent emailing [redacted] about work "never invoiced"). *See generally* DCX 59-DCX 82.

32. Respondent also failed to follow through on the other components of the plan to which he and Disciplinary Counsel agreed. There is no evidence in the record (apart from Respondent's own self-serving representations, which we do not credit, *see* FF 41, that he made any effort until shortly before the hearing to identify which clients he could not locate and inform Disciplinary Counsel. *See, e.g.*, DCX 32; DCX 38 at 3, ¶ 5. *See generally* DCX 33; Tr. 148 (Respondent). Similarly, with the exception of clients [redacted], [redacted], and [redacted], there is no evidence of him consulting with the clients he could locate about their balances and sharing that information with Disciplinary Counsel until after charges were filed, despite repeated requests. *See,*

e.g., DCX 40; DCX 45; DCX 47; DCX 51; DCX 53; DCX 55 ([redacted]); DCX 75 ([redacted]); DCX 76; DCX 80; DCX 106 ([redacted]); *see also* DCX 66; DCX 91; Tr. 147-48 (Respondent admitting he did not contact clients to prove funds were earned). Ultimately, Respondent provided communications for fewer than half of the twenty-two clients at issue. *See* DCX 86; DCX 99 ([redacted]); DCX 93-DCX 95; DCX 102 ([redacted]); DCX 103 ([redacted]); DCX 104 ([redacted]); DCX 105 ([redacted]); *see also* DCX 50; DCX 57 at 11-12; DCX 96; DCX 100.

33. Finally, Respondent did not uphold the fourth part of his "plan of action": his promise to transfer earned fees out of his trust account and refund unearned fees. DCX 31; DCX 32. Respondent's deadline to do so was July 27, 2022. DCX 38 at 3, ¶¶ 4-5). By then Respondent had only "commenced" to disburse the funds—or so he claimed. DCX 64. Ten months later, Respondent's bank records showed that he had not withdrawn any of the earned fees from the trust account or refunded any unearned fees to his clients, despite repeated reminders. *See* DCX 107 at 225-287; DCX 5; DCX 64; DCX 33; DCX 44 at 1-2; DCX 50; DCX 56; DCX 83 at 1.

34. Beyond his failure to honor commitments to Disciplinary Counsel, Respondent also repeatedly delayed the investigation, often citing personal commitments. After receiving Disciplinary Counsel's subpoena in December 2019, for instance, he asked for an extension, stating that he was still gathering more retainer agreements that he would forward later. DCX 12; DCX 14 at 2; DCX 15. In January and February of 2020, Respondent again requested more time due to client

matters and overseas and domestic travel, which Disciplinary Counsel granted. DCX 12; DCX 14; DCX 16. By May 2020, Respondent had still failed to respond completely and missed two more deadlines. DCX 19. Disciplinary Counsel had written to Respondent reiterating its request in April 2020 and provided him another month to respond. *Id.* Respondent eventually responded that the matter "fell off [his] radar screen." *Id.* Later in the investigation, Respondent asked for more time again because of speaking engagements, articles, a book he needed to complete, and client and family obligations. DCX 28. Disciplinary Counsel again granted Respondent more time. *Id.* Respondent later stated that he would search offsite storage, but he delayed that as well citing upcoming employment law presentations. DCX 29; DCX 30 at 2-3.

35. Respondent's pattern of responding to Disciplinary Counsel only on his own terms continued after he failed to fulfill his "plan of action" on July 27, 2022. On July 28, 2022, for example, Respondent wrote in response to a query from Disciplinary Counsel about whether he had earned certain client fees that he was engaged in other matters but would respond as soon as his schedule permitted. DCX 81. Respondent, who had no client matters at the time, DCX 63 at 2, never answered Disciplinary Counsel's question. Tr. 439 (Matinpour); Tr. 179 (Respondent).

36. Finally in September 2022, Respondent wrote to Disciplinary Counsel and proposed a new plan to "resolve the matter," which included actions he already failed to take as part of his first plan, such as refunding his clients and searching his

offsite storage. DCX 83 at 3-5. Disciplinary Counsel reminded Respondent of his prior broken commitments and requested his immediate response to its outstanding requests. DCX 83 at 1; *see* Tr. 180-82 (Respondent). Respondent again failed to respond. Tr. 419-420 (Matinpour).

37. Respondent's pattern of evasion and noncompliance continued even after Disciplinary Counsel filed charges and served them on Respondent on September 8, 2023. DCX 1; DCX 2. For instance, in October and November 2023, Disciplinary Counsel wrote to Respondent and renewed its request for trust account records, including all client communications. *See* DCX 88; DCX 91; DCX 94; DCX 96; DCX 100. Between November and December 2023, Respondent provided Disciplinary Counsel with bank records relating to the earned fees he had transferred out of his trust account, but no other financial records. DCX 92. He provided more client communications, but for only seven clients, whom he had only recently contacted. *See* DCX 86; DCX 99 ([redacted]); DCX 93; DCX 95; DCX 102 ([redacted]); DCX 101 ([redacted]); DCX 103 ([redacted]); DCX 104 ([redacted]); DCX 105 ([redacted]); DCX 106 ([redacted]). Respondent refused to turn over communications with the remaining clients. *See* Tr. 418, 502 (Matinpour); Tr. 54-56, 83, 309-314 (Respondent testifying that he did not provide communications with [redacted] because "[i]t's very personal" and referencing other communications not provided). Respondent testified that he did not forward communications with client [redacted], but it was not a failure to cooperate because he believed Disciplinary Counsel's requests were "overreaching." Tr. 262-65 (Respondent); *see also* R. Br. at 43.

G. Acceptance of Responsibility

38. Respondent has acknowledged that he committed some of the charged rule violations and that the "buck stops" with him. Tr. 170, 684 (Respondent); *see, e.g.*, Tr. 83 (Respondent). Yet, he also repeatedly disputed the fairness of Disciplinary Counsel's decision to initiate this proceeding and also blamed his former associates, former bookkeepers, and family for many of the recordkeeping and other failures discussed above. *See, e.g.*, Tr. 677-685 (Respondent).

H. Credibility Determinations

39. Arydh "Motti" Bendet testified credibly. He operates Law Firm Bookkeeping Solutions, Inc., which provided bookkeeping services to Respondent from 2008 through August 2020. Tr. 747-48, 755 (Bendet). His testimony was clear and consistent, even when posed the same questions repeatedly under cross examination. *See, e.g.*, Tr. 768 (Chair). Mr. Bendet was forthcoming and his testimony was corroborated by the contemporaneous documentary evidence. *See, e.g.*, Tr. 771-72, 758-59 (Bendet); DCX 85.[15]

40. Azadeh Matinpour was a credible witness. Ms. Matinpour is an investigative attorney at the Office of Disciplinary Counsel, who took part in Respondent's investigation and reviewed his financial and bank records. Tr. 400-05 (Matinpour). Her testimony about the investigation and the findings of her review of

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[15] Respondent vigorously disputes the accuracy of Mr. Bendet's testimony but does not offer any actual examples of inconsistency or other basis for us to question his credibility. *See* R. Br. at 7, 33-34, 43, 45, 46-47.

the records was clear, consistent, detailed, and corroborated by the documentary evidence. *See, e.g.*, Tr. 414, 421 (Matinpour); DCX 5; DCX 22-DCX 24; DCX 107; DCX 108. She was forthcoming and willing to concede facts, including under cross examination. *See* Tr. 414-15, 588, 600 (Matinpour).

41. Respondent's testimony was not credible in most respects. This determination is based on the following factors:

- Respondent's testimony was evasive and rambling. He had to be repeatedly reminded to answer Disciplinary Counsel's questions. *See, e.g.*, Tr. 108, 111, 256-59, 307-08, 312 (Chair). He also rephrased questions he did not like and delayed and quibbled over definitions. Tr. 71-72, 89-91, 159-163, 177-78, 280, 305-08, 724-730 (Respondent). And he consistently attempted to focus on irrelevant arguments about the propriety of Disciplinary Counsel's investigation, despite repeated instructions from the Chair.[16]

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[16] *See, e.g.*, Tr. 17, 51-54, 57 ("There's no complaint, but the investigation is . . . arbitrary and capricious. You know, just an arbitrary decision. Well, we've got an overdraft, let's just go after this guy, see what's what."), 363-64 ("I just think it's fundamentally unfair. . . . that, you know, somehow the overdraft led them to this . . . ."), 367 ("I fully explained it to [Ms. Neal], and then . . . next thing happens is the ODC lawyers have been let loose on . . . . the issues I got."), 441-42 ("I want to explore on cross . . . the earlier part of [Ms. Matinpour's testimony] seemed to try to come up with a rationale for what I've called the transformation of an overdraft into this."), 443 (expecting Ms. Neal to testify about the "reasonable relationship between an automatic complaint by the bank about the overdraft to docketing"), 446 ("I'd be interested in what happens in other overdraft cases, what the heck was wrong with my explanation, why did that go away, and it became this monster that you've had.") (ODC "or EEOC or any government agency can[not] take an A and just say . . . you didn't do anything wrong, but let's go chase after these other issues that bear in

- Respondent repeatedly changed his story with respect to certain clients. Tr. 101-03, 177, 191, 207, 269 (Respondent); *see also* DCX 21 at 1 (email to Disciplinary Counsel noting billing records "appear to reflect in some instances recorded billable time but inexplicably no transfer from iolta to operating"); DCX 25; DCX 32; DCX 63 at ¶ C; DCX 105; Tr. 206-07 (Respondent disavowing statements to client [redacted]); Tr. 154-58 (Respondent testifying about client [redacted] at DCX 40 and DCX 53). At one point, he even stated that had he known he would be accused of commingling, he would not have admitted he earned any of the relevant clients' funds and suggested that those statements had been elicited to "trap" him. *See* Tr. 176-77 (Respondent); *see also* Tr. 101-03, 206-07, 269 (Respondent).
- Finally, Respondent made statements that cannot be squared with the record before the Committee. For instance, he refused to concede that several client

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relationship to A. I think under any notion of due process, of arbitrary and capricious, of abuse of power . . . ."), 563-64 ("I have taken the position that I talked about at some length yesterday . . . . I don't think A leads to B, C, or D. . . . I'm trying to get to the bottom of who made that judgment and how they made that judgment."), 682 ("This could've been resolved years ago."), 695 ("[N]o one ever said this has written all over it a diversion agreement, let's get you with Mills or PMAS and resolve this."), 708 (characterizing the commingling and serious interference charges as "denigrat[ing] to silliness"), 802 ("[B]ecause if there had been nonescalation and an effort to resolve this early on, it would have required an ear at the ODC end of this that was willing to listen to some granular details about some of these matters."), 814 ("I think this matter should be dismissed, because I don't think there was the predicate to move from the overdraft matter to the others."); *see also* R. Br. at 35-36, 45-47.

matters had ended despite invoices in the record showing that he had performed no work on them for years. *E.g.*, Tr. 265-69 (Respondent not conceding [redacted] matter ended after last invoice entry in 2013, referring to DCX 22 at 21); *see also* Tr. 58, 75-81 (Respondent claiming not to know which client matters had terminated, including for a client with whom he admitted he lost contact). He also repeatedly claimed that nobody had warned him about the condition of his trust account prior to charges being filed. *See, e.g.*, Tr. 678-79, 681-82, 684-85 (Respondent). But the record shows evidence of Disciplinary Counsel raising concerns since 2020, while giving Respondent multiple opportunities to take corrective steps. *See, e.g.*, DCX 17; DCX 27; DCX 33 at 1; DCX 38 at 2-3; DCX 50 at 1-2; DCX 83 at 1. Going back further, Respondent's former bookkeeper, Mr. Bendet, testified credibly that in 2014, he had met with Respondent on several occasions and warned him about old balances in his trust account. *See* FF 20.

For all of these reasons, we did not find Respondent's testimony credible in most instances, except where otherwise noted in our factual findings and conclusions of law.

III. CONCLUSIONS OF LAW

Disciplinary Counsel bears the burden of showing that Respondent committed misconduct in violation of the charged rules by "clear and convincing evidence." *In re Mitchell*, 727 A.2d 308, 313 (D.C. 1999); Board Rule 11.6. Here, Disciplinary Counsel argues that it has proven all the charged rule violations and recommends a

sixty-day suspension with fitness as a condition for reinstatement. ODC Br. at 2. Respondent concedes that he "unduly delay[ed] in refunding unbilled/unearned money entrusted to him" and should face some sort of sanction. R. Br. at 6 ("Should [Respondent] be sanctioned for [the delay in returning unearned fees]? Yes—unquestionably."). However, Respondent also renews his motion to dismiss and his evidentiary objections from the hearing. *Id.* at 45-47; *see supra* p. 2 and note 16. To the extent he receives any sanction, Respondent argues that it should be no more than a thirty-day suspension, and with no fitness requirement. R. Br. at 6. In its Reply, Disciplinary Counsel largely reiterates the previous arguments made in its opening brief and at the hearing. *See* ODC Reply at 2-8, 10-15.

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

Whether to grant a motion to dismiss is a determination for the Board, not this Committee. *See* Board Rule 7.16(a); *In re Ontell*, 593 A.2d 1038, 1040 (D.C. 1991). But we recommend that Respondent's motion be denied. Respondent argues that this matter should be dismissed "because the conversion of this undocketed matter into a docketed matter was arbitrary and capricious." R. Br. at 45. In other words, Disciplinary Counsel's investigation should have been confined to the original overdraft in his IOLTA account. *See* FF 22-23. He also argues that this matter could have been resolved years ago "with a diversion agreement and a referral to Mr. Mills." R. Br. at 46; *see also* Respondent's Motion to Dismiss (filed Dec. 13, 2023). And he asserts various other procedural irregularities, including that he was entitled to a jury trial. *See* Motion to Dismiss at 3. Disciplinary Counsel opposes

Respondent's motion, noting that under Board Rule 2.1, it has broad investigatory authority any time it learns of a ground for discipline "from any source whatsoever" and that Respondent's other arguments lack merit. ODC Reply at 8, 10-11. We agree.

Disciplinary Counsel is correct that it has broad discretion to "investigate all matters involving alleged misconduct by an attorney . . . which may come to [its] attention"—including authority to open an investigation, with or without a client complaint, and to determine that investigation's scope. D.C. Bar R. XI, § 6(a)(2); *see, e.g.*, *In re Kennedy*, Board Docket No. 16-BD-042, at 53-55 (H.C. Rpt. July 31, 2019) (adjudicating misconduct unrelated to the original overdraft that caused Disciplinary Counsel to docket investigation). Respondent's belief that a diversion would have been more appropriate also is not grounds for dismissal; whether to offer diversion is committed to Disciplinary Counsel's sole discretion. D.C. Bar R. XI, § 8.1(c). Finally, Disciplinary Counsel is correct that there is no right to a jury trial in these proceedings. *See In re Clark*, 678 F. Supp. 3d 112, 124 (D.D.C. 2023) (citing *Ex parte Wall*, 107 U.S. 265, 288 (1883)). For all of these reasons, the motion to dismiss should be denied.

B. The Chair's Evidentiary Rulings Were Correct.

We also decline to revisit any of the Chair's evidentiary rulings. Respondent argues that the Chair committed the following evidentiary errors during the hearing: (1) Mr. Bendet, Respondent's accountant, should not have been permitted to testify because Respondent asserted the accountant-client privilege; (2) the testimony of Ms. Matinpour, Disciplinary Counsel's investigator, should have been excluded

because it was "riddled with opinion testimony, classic expert testimony" without Ms. Matinpour having been qualified as an expert; and (3) Respondent should have been allowed to call Ms. Neal, Senior Assistant Disciplinary Counsel, as a witness regarding Disciplinary Counsel's decision to expand its investigation beyond the original overdraft that gave rise to this matter. R. Br. at 46-47. Respondent provides no additional arguments to support any of these claims. Disciplinary Counsel disagrees and urges us to reaffirm the Chair's rulings, which we do.

Mr. Bendet: Respondent's argument that some unspecified portion of Mr. Bendet's testimony should have been excluded based on accountant-client privilege is meritless. *See* R Br. at 46-47. As Disciplinary Counsel notes, the District of Columbia does not recognize this privilege. ODC Br. at 11 (citing *Kuhn & Kogan, Chtd. v. Jeffrey C. Mensh & Assocs., Inc.*, 77 F. Supp. 2d 52, 54 (D.D.C. 1999)). And even if it did, Respondent put his accountant's performance at issue and thus waived any corresponding accountant privilege. *See Waters v. United States*, 302 A.3d 522, 534 (D.C. 2023) ("[A] litigant implicitly 'waives the attorney-client privilege by putting the lawyer's performance at issue during the course of litigation.'" (quoting *Bittaker v. Woodford*, 331 F.3d 715, 718-19 (9th Cir. 2003) (en banc))); Tr. 170-71 (Respondent asserting for mitigation purposes that although "the buck stops here," "the facts are the facts about what associates did or didn't do, what Motti [the accountant] or Miriam did or didn't do"); FF 38.

Ms. Matinpour: We similarly disagree with Respondent's request to exclude Ms. Matinpour's testimony. *See* R. Br. at 47. Whether to admit relevant testimony,

and the degree of weight to give it, is committed to the Committee's discretion. *See* Board Rule 11.3. We do not believe that Ms. Matinpour, an investigative attorney with the Office of Disciplinary Counsel, offered what amounted to expert opinion testimony. She testified about *facts* related to her investigation of Respondent's trust account and related transactions. She did not offer any expert opinions, and we did not rely on her testimony for anything other than establishing specific facts. *See, e.g.*, FF 40.

Ms. Neal: We also reject Respondent's contention that he should have been allowed to call Ms. Neal to discuss how Disciplinary Counsel's investigation "went from an undocketed . . . to a docketed matter." Tr. 442; *see* R. Br. at 47. As explained previously, such testimony would not have been relevant to any issue before the Committee given Disciplinary Counsel's broad investigatory authority. *See supra* pp. 31-32.

C. Disciplinary Counsel Proved that Respondent Violated Rules 1.15(c) & 1.16(d) by Failing to Promptly Return Unearned Fees and Failing to Timely Refund Unearned Advance Fees upon Termination of the Representation.

Rule 1.15(c) requires a lawyer to "promptly notify the client or third person" "[u]pon receiving funds . . . in which a client or third person has an interest" and to "*promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive*." (emphasis added). A lawyer violates Rule 1.15(c) if they fail promptly to deliver entrusted funds when the purpose for which the funds are held has been rendered moot. *See In re Edwards*, 990 A.2d 501, 520-21 (D.C. 2010) (appended Board Report). This is a case-specific inquiry; there

is no bright-line test for what constitutes "prompt" payment, but lengthy delays are generally not acceptable. *See, e.g., In re Ross*, 658 A.2d 209, 211-12 (D.C. 1995) (eleven-month delay was not prompt); *In re Moore*, 704 A.2d 1187, 1189-1192 (D.C. 1997) (per curiam) (appended Board Report) ("no doubt" that six-month delay in paying medical providers is not "prompt").

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).

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 of Rule 1.16(d) 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 Attorney-Client Arbitration Board 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).

Importantly for present purposes, attorneys generally are not permitted to hold unearned fees indefinitely in anticipation of a future representation, even if a client consents to them doing so. *See* Rule 1.15, cmt. [9].

Disciplinary Counsel argues that in "eleven client matters, [Respondent] accepted an advance payment of fees, performed work that totaled less than the advance payment, and failed to return the difference" in violation of Rules 1.15(c) and 1.16(d). ODC Br. at 27.[17] Respondent concedes that "there has been an unacceptable delay in refunding monies entrusted by the clients at issue." R. Br. at 2; *see also id.* at 4 ("From start to finish, Respondent accepted full responsibility for the prolonged failure to refund to certain clients."); *id.* at 2-3 (characterizing the "central question was why did he take so long to refund").

We agree that Respondent violated Rules 1.15(c) and 1.16(d) for these clients based on Respondent's admission, and our Findings of Fact that he did not earn all of the advance fees and did not timely refund his unearned portions. *See* FF 6-13; *Edwards*, 990 A.2d at 520-22 (finding a violation of both Rule 1.16(d) and 1.15(c) where the respondent failed to return entrusted funds when the purpose for which they were given was rendered moot).

D. Disciplinary Counsel Proved that Respondent Violated Rule 1.15(a) by Commingling Earned Funds with Unearned Client Funds in his Trust Account.

Rule 1.15(a) provides, in pertinent part, that:

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[17] The eleven matters involve the following clients: [redacted], [redacted], [redacted], [redacted], [redacted], [redacted], [redacted], [redacted], [redacted], [redacted], and [redacted]. ODC Br. at 26-28; FF 6-13.

> A lawyer shall hold property of clients or third persons that is in the lawyer's possession in connection with a representation separate from the lawyer's own property. Funds of clients or third persons that are in the lawyer's possession (trust funds) shall be kept in one or more trust accounts . . . .

Violation of this rule constitutes commingling. *Moore*, 704 A.2d at 1192. "[C]ommingling is established 'when a client's money is intermingled with that of his attorney and its separate identity is lost so that it may be used for the attorney's personal expenses or subjected to the claims of its creditors.'" *In re Malalah*, Board Docket No. 12-BD-038 (BPR Dec. 31, 2013), appended Hearing Committee Report at 9 (quoting *In re Hessler*, 549 A.2d 700, 707 (D.C. 1988)), *recommendation adopted where no exceptions filed*, 102 A.3d 293, 293 (D.C. 2014) (per curiam)); *see also Moore*, 704 A.2d at 1192 ("Commingling occurs when an attorney fails to hold entrusted funds in a special account, separate from his own funds.").

To prove commingling in a trust account, Disciplinary Counsel must show that the account contained "client funds and personal funds . . . at the same time." *In re Doman*, 314 A.3d 1219, 1230 (D.C. 2024) (per curiam). One way to make this showing is to demonstrate that the respondent failed to timely remove advanced fees after they were earned, and thus that the earned fees remained in the account with unearned client funds. *See, e.g.*, *In re Gray*, 224 A.3d 1222, 1229 (D.C. 2020) (per curiam).[18]

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[18] *See* Rule 1.15(e) ("Advances 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."); *In re Ekekwe-Kauffman*,

Disciplinary Counsel contends that Respondent violated the prohibition on commingling when he failed over a prolonged period to withdraw fees earned from clients [redacted], [redacted], [redacted], [redacted], and [redacted] from his trust account, thereby commingling those earned fees with entrusted funds belonging to a number of other clients. ODC Br. at 29-30; *see supra* note 9. During Disciplinary Counsel's investigation, Respondent appears to have agreed that his trust account contained earned funds that should have been withdrawn. *See, e.g.*, FF 41 (Respondent acknowledging that his "billing records on the iolta accounts . . . appear to reflect in some instances recorded billable time but inexplicably no transfer from iolta to operating"). Respondent now contends, however, that he "never billed" the clients in question and that invoices in his files were only "draft bills," thereby implying that the relevant funds were not in fact his and therefore could not have been commingled with unearned funds. R. Br. at 7, 31, 38-39. We disagree.

The record before us reflects that funds from clients [redacted], [redacted], [redacted], [redacted], and [redacted] remained in Respondent's trust account long after Respondent performed the work necessary to earn these funds. Specifically, invoices, ledgers and other documents in the record, whose accuracy Respondent has not disputed, show the following:

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210 A.3d 775, 793 (D.C. 2019) (per curiam) ("[A]n 'advance of unearned fees . . . must be held as client funds in a client's trust or escrow account until they are earned by the lawyer's performance of legal services.'" (quoting *In re Mance*, 980 A.2d 1196, 1203 (D.C. 2009))).

- For client [redacted], Respondent received $25,000 as an advance fee and earned at least that amount by April 2012. FF 15. But Respondent left $2,514.02 of his earned fees in his trust account until October 2023. FF 15.
- For client [redacted], Respondent received $25,000 as an advance fee and earned at least that amount by February 2016. FF 16. But Respondent left $580.33 of his earned fees in his account until October 2023. FF 16.
- For client [redacted], Respondent earned the entire $600 advance fee by May 2018 but left these funds in his trust account until October 2023. FF 17.
- For client [redacted], Respondent earned the $110 advance fee by March 2018 but left these funds in his trust account until October 2023. FF 17.
- For client [redacted], Respondent earned the entire $375 advance fee by May 2017 but kept that money in his trust account until September 2023. FF 17.

Throughout the period when earned funds from these five clients were left in the trust account, the account also contained unearned funds still belonging to at least eleven other clients, and likely more.[19] This meets the definition of commingling

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[19] The eleven clients whose funds were clearly unearned and should not have been commingled with earned funds belonging to Respondent were [redacted], [redacted], [redacted], [redacted], [redacted], [redacted], [redacted], [redacted], [redacted], [redacted], [redacted], and [redacted] (the clients discussed in Section III.C, *supra*). *See* FF 6-13. Disciplinary Counsel also points to several thousand dollars from six other clients, [redacted], [redacted], [redacted], [redacted], [redacted], and [redacted], which it cannot determine whether

under the Court of Appeals' precedents. *Doman*, 314 A.3d at 1230; *Gray*, 224 A.3d at 1229.

Respondent argues that he could not transfer out his earned fees until at least he sent his clients draft invoices for review, which he had not yet done. The record is inconclusive as to which invoices were sent to clients and which were not—for the most part, we have only Respondent's assertions on this point, which we have explained that we do not find credible. *See supra* notes 9-14; FF 41.[20]

In any event, whether Respondent sent invoices is not dispositive of the issue before the Hearing Committee: whether Respondent could—and, indeed, had an obligation to—remove earned advance fees from his trust account. As noted, Disciplinary Counsel has demonstrated that Respondent performed the work necessary to earn these fees. *See supra* notes 8-13 and pp. 38-39. There is no evidence apart from Respondent's own self-serving representations (contradicted by his own earlier statements during Disciplinary Counsel's investigation) that his

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Respondent earned. ODC Br. at 13-14, 29. If earned, these funds also should have been withdrawn from Respondent's trust account. If unearned, they should not have been commingled with earned fees. *See* FF 15-17. Similarly, Disciplinary Counsel notes that Respondent's trust account balance continued to grow during Disciplinary Counsel's four-year investigation from 2019-2023, presumably in connection to new client matters. ODC Br. at 15, 29-30. To the extent these new funds were earned, they should have been withdrawn and otherwise should not have been commingled with unearned funds. *See* FF 5.

[20] As discussed in our Factual Findings, the relevant invoices for [redacted], [redacted], and [redacted], also include pages marked "Draft," or "D," which could stand for "draft." *See supra* notes 11-13. In any event, the invoices—drafts or otherwise—help establish only that Respondent performed the work for each client, which neither party disputes.

arrangement with any of these clients nevertheless required him to leave their fees in his trust account until he sent an invoice for the client's review. *See supra* notes 9 and 14; FF 41. He offered no testimony from a client to corroborate this claim. Nor is there any evidence that such an arrangement was required by any of the engagement agreements Respondent used for these clients. The only one of these clients for whom Respondent even produced an agreement was [redacted]. The [redacted] agreement makes no mention of this arrangement; to the contrary, it permits Respondent to "periodically withdraw funds from the IOLTA trust account in an amount equal to Client's outstanding legal fees owed to Firm as of the date of said withdrawal" without any requirement that Respondent first mail an invoice. *See supra* notes 9 (quoting DCX 69) and 11. Similar language can be found in other engagement agreements Respondent produced, like that for client [redacted]. *See supra* note 9. No agreement Respondent has produced requires him to mail an invoice before withdrawing earned fees.

In sum, Respondent earned fees from five clients—[redacted], [redacted], [redacted], [redacted], and [redacted]—that he left sitting in his trust account for years, thereby mixing those funds with entrusted funds belonging to multiple other clients also in the account. Disciplinary Counsel has thus proven commingling in violation of Rule 1.15(a).[21]

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[21] We acknowledge that Respondent, to the extent he failed to withdraw earned fees that were not properly invoiced, may have been trying to avoid any appearance of misappropriating client money—one of the main risks the prohibition on commingling is intended to prevent. *See In re Rivlin*, 856 A.2d 1086, 1095 (D.C. 2004) (per curiam) (appended Board Report). But preventing outright misappropriation of client funds is not the only reason commingling is prohibited.

E. Disciplinary Counsel Proved that Respondent Violated Rule 1.15(a) by Failing to Maintain Adequate Records of the Funds in his Trust Account.

Rule 1.15(a) also requires lawyers to keep "[c]omplete records of . . . account funds and other property" and preserve them "for a period of five years after termination of the representation." *See Edwards*, 990 A.2d at 522 ("Financial records are complete only when an attorney's documents are 'sufficient to demonstrate the attorney's compliance with his ethical duties.'" (quoting *In re Clower*, 831 A.2d 1030, 1034 (D.C. 2003) (per curiam))). The purpose of the requirement of "complete records is so that 'the documentary record itself tells the full story of how the attorney handled client or third-party funds' and whether, for example, the attorney misappropriated or commingled a client's funds." *Edwards*, 990 A.2d at 522 (quoting *Clower*, 831 A.2d at 1034); *see also In re Pels*, 653 A.2d 388, 396 (D.C. 1995) (finding a Rule 1.15(a) violation when attorney showed a "pervasive failure" to maintain contemporaneous records accounting for the flow of client funds within

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There is also a risk that commingled client funds will simply lose their separate identity from an attorney's funds or even be vulnerable to an attorney's creditors. *Id.*; *see Hessler*, 549 A.2d at 707 (quoting *Black v. State Bar*, 368 P.2d 118, 122 (Cal. 1962) (en banc)).

To be sure, while neither the Board nor the Court of Appeals appear to have spoken to this issue, it is implausible that Rule 1.15(a) would penalize an attorney for waiting a reasonable amount of time between earning fees and withdrawing them from a trust account—for example, if the attorney had sent an invoice and was anticipating their client might have questions. But in this case, where Respondent waited years to withdraw earned fees (and then did so only in the face of Disciplinary Counsel's investigation), there can be no argument that the delay was reasonable.

various bank accounts). Thus, "[t]he records themselves should allow for a complete audit even if the attorney or client is not available." *Edwards*, 990 A.2d at 522.

Disciplinary Counsel asserts that Respondent manifestly failed to keep adequate records. The very fact that, during Disciplinary Counsel's investigation, Respondent had to promise to do a "deep dig" to obtain the information Disciplinary Counsel required "by itself suggests his records were inadequate." ODC Br. at 30-31. Disciplinary Counsel also points to the fact that Respondent's records for numerous clients were "inaccurate or insufficient to make any clear determin[ation] about the ownership of the funds in his trust account." *Id.* at 31. Respondent does not directly respond to Disciplinary Counsel's assertions, although he does claim that his "bank records were fully available, records from his bookkeeper were made available" and that Disciplinary Counsel retained "whatever it did from that firm." R. Br. at 37.

It is clear to us that Respondent violated Rule 1.15(a)'s recordkeeping requirements. His records contained numerous gaps, resulting in it being impossible to determine the ownership for thousands of dollars in his trust account. *See* FF 19, 31, 37; *see supra* note 19. Far from allowing for a "complete audit" in Respondent's absence, his records did not even allow Disciplinary Counsel to piece together relevant information after years of painstaking work. Accordingly, Disciplinary Counsel has proven a violation of Rule 1.15(a)'s recordkeeping provision.

F. Disciplinary Counsel Proved that Respondent Violated Rule 8.4(d) by Failing to Respond to Disciplinary Counsel's Inquiries and Subpoenas.

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." Failure to respond to Disciplinary Counsel's inquiries constitutes a violation of Rule 8.4(d). Rule 8.4, cmt. [2]; *see In re Bailey*, 283 A.3d 1199, 1209 (D.C. 2022); *see also, e.g.*, *Carter*, 11 A.3d at 1223 (failure to respond to notices of an investigation from Disciplinary Counsel forming part of the basis for Rule 8.4(d) violation); *Edwards*, 990 A.2d at 524-25 (same).

The main evidence to which Disciplinary Counsel points in support of this charged violation is Respondent's evident failure to follow through with the "plan of action" he promised to Disciplinary Counsel in 2022, despite being given months to fulfill his commitments (followed by repeated extensions). ODC Br. at 32; FF 28-33. Respondent did not do the "deep dig" of his records he promised, did not "identify and consult with Disciplinary Counsel regarding any missing clients," did not apparently consult with his clients—or at least provide those communications to Disciplinary Counsel—and finally did not "remediate his trust account . . . and . . . repay his clients," at least until Disciplinary Counsel filed charges against him. ODC Br. at 32-33. Overall, Disciplinary Counsel observes that Respondent's noncompliance led to a "prolonged" investigation, which required Disciplinary Counsel to spend "substantial time and resources to have [Respondent] comply with his own promises and proposed plan of action, produce the records he promised, remediate his trust account, and repay his former clients." *Id.* at 34. Respondent thus

violated Rule 8.4(d), it argues, even though Respondent did not oppose any of the subpoenas of his bank records. *Id.*

Respondent counters that he provided "all records that allow [Disciplinary Counsel] to establish that the delay in timely refunding monies was a violation of proper practice." R. Br. at 8. If Disciplinary Counsel was "hamstrung" by any of Respondent's failures, he notes, it never sought an order from the Hearing Committee to compel production of additional records. *Id.* Respondent further explains that he "concluded on a cost/benefit basis that it made no sense to spend days digging" through file boxes and searching on old laptops to find evidence of additional unbilled work. R. Br. at 40.

We have no hesitation in agreeing with Disciplinary Counsel that Respondent seriously interfered with the administration of justice. Throughout the investigation, Respondent demonstrated a pattern of partial compliance or non-compliance. He repeatedly failed to respond to inquiries, *see* FF 35-37; requested extensions (sometimes on the basis of speaking engagements and other personal commitments) and then blew past the extended deadlines he had been granted, FF 34; and, most troubling of all, ultimately did not take the steps to which he himself had committed to try and obtain the information Disciplinary Counsel requested, FF 25, 28-33. Overall, the record shows a troubling lack of respect for the disciplinary process on Respondent's part, one that forced Disciplinary Counsel to expend significantly more resources than would have otherwise been required for this matter.

Respondent's failures to reasonably respond to Disciplinary Counsel's investigation violated Rule 8.4(d).

IV. RECOMMENDED SANCTION

In this case, Disciplinary Counsel has asked the Committee to recommend a sixty-day suspension, plus fitness. ODC Br. at 34. Respondent has requested that we recommend a thirty-day suspension at most (with the requirement that, prior to his suspension, he "shall attend courses on ethics . . . and financial management . . . that are deemed appropriate"), and no fitness. R. Br. at 4-5, 46. For the reasons described below, we agree with Disciplinary Counsel and recommend that Respondent be suspended for sixty days, with fitness.

A. Standard of Review

The sanction imposed in an attorney disciplinary matter is one that is necessary to protect the public and the courts, maintain the integrity of the legal profession, and deter the respondent and other attorneys from engaging in similar misconduct. *See, e.g.*, *In re Hutchinson*, 534 A.2d 919, 924 (D.C. 1987) (en banc); *In re Martin*, 67 A.3d 1032, 1053 (D.C. 2013); *Cater*, 887 A.2d at 17. "In all cases, [the] purpose in imposing discipline is to serve the public and professional interests . . . rather than to visit punishment upon an attorney." *In re Reback*, 513 A.2d 226, 231 (D.C. 1986) (en banc) (citations omitted); *see also In re Goffe*, 641 A.2d 458, 464 (D.C. 1994) (per curiam).

The sanction also must not "foster a tendency toward inconsistent dispositions for comparable conduct or . . . otherwise be unwarranted." D.C. Bar R. XI, § 9(h)(1);

see, e.g., *Hutchinson*, 534 A.2d at 923-24; *In re Berryman*, 764 A.2d 760, 766 (D.C. 2000). In determining the appropriate sanction, the Court of Appeals considers a number of factors, including: (1) the seriousness of the conduct at issue; (2) the prejudice, if any, to the client which resulted from the conduct; (3) whether the conduct involved dishonesty; (4) the presence or absence of violations of other provisions of the disciplinary rules; (5) whether the attorney has a previous disciplinary history; (6) whether the attorney has acknowledged his wrongful conduct; and (7) circumstances in mitigation or aggravation. *See, e.g.*, *Martin*, 67 A.3d at 1053 (citing *In re Elgin*, 918 A.2d 362, 376 (D.C. 2007)). The Court also considers "'the moral fitness of the attorney' and 'the need to protect the public, the courts, and the legal profession.'" *In re Rodriguez-Quesada*, 122 A.3d 913, 921 (D.C. 2015) (per curiam) (quoting *In re Howes*, 52 A.3d 1, 15 (D.C. 2012)).

B. Application of the Sanction Factors

1. The Seriousness of the Misconduct

Respondent's misconduct was serious. Respondent failed to timely return unearned fees to eleven clients—delaying payment for eleven years in one instance. FF 5-13. And Respondent did so despite his accountant, Mr. Bendet, having warned him about old balances in his trust account in 2014. FF 20. Respondent moreover failed to maintain adequate records and did not reasonably respond to Disciplinary Counsel during its investigation, resulting in Disciplinary Counsel expending significantly more resources on this matter than otherwise would have been required.

2. Prejudice to the Client

As noted, Respondent delayed in refunding funds that belong to his clients, in at least one case for more than a decade. This constitutes significant prejudice to Respondent's clients.

3. Dishonesty

There is no allegation of dishonesty in this matter.

4. Violations of Other Disciplinary Rules[22]

We have found that Respondent violated Rules 1.15(c) and 1.16(d) by failing to timely refund unearned money to clients, even after the representation was over, Rule 1.15(a) by commingling and failing to maintain adequate records, and Rule 8.4(d) by seriously interfering with the administration of justice during Disciplinary Counsel's investigation.

5. Previous Disciplinary History

Respondent received an informal admonition on December 18, 1992, for failing to refund his unearned fee in violation of Rule 1.16(d). DCX 109. Though this reflects the same misconduct Respondent committed here, this was issued to Respondent over thirty years ago and is the only instance of prior discipline. We thus give this informal admonition little weight.

6. Acknowledgement of Wrongful Conduct

Respondent asserts that he accepts "full responsibility for his untimely refunds." R. Br. at 45; *see, e.g.*, Tr. 170 ("[T]he buck stops here."), 677-78. However,

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[22] "The 'violation of other disciplinary rules' prong of the analysis considers how many rules were violated." *In re Dobbie*, 305 A.3d 780, 812 (D.C. 2023).

Respondent has failed to acknowledge any of the other violations in this case. And he has at times suggested that his recordkeeping failures were at least partly the responsibility of others, including his accountant and other attorneys at his firm. *See* FF 38. Therefore, we do not conclude that he has fully accepted responsibility for his behavior.

7. Need to Protect the Public, the Courts, and the Legal Profession

Respondent's conduct during Disciplinary Counsel's investigation and before us at the hearing demonstrated serious disrespect for the disciplinary process. As noted, throughout Disciplinary Counsel's investigation he repeatedly delayed and obfuscated, failing to fulfill commitments he himself had made. *See supra* Section III.F. *See generally* FF 25-37. His behavior before this Committee was equally concerning. His testimony under oath was evasive and rambling, and he repeatedly made statements that contradicted his own prior representations and facts in the record. FF 41. This conduct does not conform to the standards necessary to protect members of the public and the legal system.

8. Other Circumstances in Aggravation and Mitigation

In mitigation, Respondent argues that he did not misappropriate any client funds, all of which remained in his trust account. R. Br. at 22. He also points to *pro bono* work that he has done, engagement with the Bar, and various life circumstances. *Id.* at 22-23. We take his pro bono efforts and bar activities into consideration. *See In re Washington*, 489 A.2d 452, 461 (D.C. 1985) (appended Board Report) ("There are mitigating factors—Respondent's *pro bono* work and Bar

activities."); *see also In re Hager*, 812 A.2d 904, 921-22 (D.C. 2002) (citing as a mitigating factor respondent's "extensive record of *pro bono* service").

In aggravation, Disciplinary Counsel points to Respondent's previous informal admonition in 1992 and argues that Respondent has "failed to learn from the experience or conform his conduct." ODC Br. at 36-37. As we have previously noted, we assign little value to this singular admonition given the length of time that has elapsed.

C. Sanctions Imposed for Comparable Misconduct

The Court has imposed sanctions ranging from a public censure to a ninety-day suspension for misconduct comparable to here:

- *In re Toppelberg*, 906 A.2d 881, 881-82 (D.C. 2006) (per curiam) (sixty-day suspension with thirty days stayed and probation for "failing to keep appropriate trust account records, failing to notify and promptly pay third parties, failing to supervise employees, failing to cooperate with a disciplinary authority, interfering with the administration of justice and failing to comply with a court order," in violation of Rules 1.15(a), 1.15(b), 5.3, 8.1(b), and 8.4(d));
- *In re Hallmark*, 831 A.2d 366, 368 (D.C. 2003) (ninety-day suspension, with fitness, for failing to keep clients reasonably informed, failing to promptly refund unearned fees, failing to protect a client's interest in connect with termination of the representation, and failing to respond to Disciplinary Counsel and the Board's requests for information, in

violation of Rules 1.4(a), 1.15(d), 1.16(d), 8.4(d), and D.C. Bar Rule XI § 2(b)(3) and (4));

- *In re Clower*, 831 A.2d 1030, 1031-32, 1035 (D.C. 2003) (per curiam) (public censure for failing to maintain complete records and failing to promptly notify and pay a third party, in violation of Rules 1.15(a), 1.15(b), and D.C. Bar Rule XI § 19(f));
- *In re Millstein*, 855 A.2d 1137, 1137-38 (D.C. 2004) (per curiam) (public censure with conditions for same violations as in *Clower*); and
- *In re Mance*, 980 A.2d 1196, 1208-09 (D.C. 2009) (public censure for commingling and failing to promptly return fees, in violation of Rules 1.15(a) and 1.16(d)).

There are also many cases in which the Court has imposed sanctions for failing to respond to Disciplinary Counsel, which typically result "in brief suspensions," sometimes with fitness. *Doman*, 314 A.3d at 1234 (referring to Board Report) (citing, *e.g.*, *In re Pullings*, 724 A.2d 600, 600-02 (D.C. 1999) (per curiam) (appended Board Report) (sixty-day suspension stayed with one year of probation with conditions for failing to respond to Disciplinary Counsel's inquiries and Board orders, as well as other misconduct)); *see also In re Cooper*, 936 A.2d 832, 833-35 (D.C. 2007) (per curiam) (thirty-day suspension with fitness requirement and proof of compliance with Disciplinary Counsel's subpoena for failing to respond to inquiries and subpoena regarding discrepancies in his client trust account); *In re Naegele*, 225 A.3d 984, 995 (D.C. 2020) (per curiam) ("Typically, the sanction for

such misconduct is a 30-day suspension, with a fitness requirement for reinstatement.").

This matter is most analogous to *In re Toppelberg*, where the respondent's violations included failing to keep adequate records, failing to promptly pay third parties,[23] and failing to cooperate with a disciplinary authority. 906 A.2d at 881. The respondent in that case also demonstrated similar mitigating and aggravating circumstances, including the lack of any motive for personal gain set against a manifest failure to respond to Disciplinary Counsel's inquiries with reasonable care. *In re Toppelberg*, Bar Docket No. 191-02, at 58-59 (BPR July 21, 2006), *recommendation adopted*, 906 A.2d 881.

The sanction in *Toppelberg* was a sixty-day suspension, with thirty days stayed in favor of one year of supervised probation with a requirement to consult with PMAS. 906 A.2d at 882. But unlike *Toppelberg*, Respondent's delay in refunding client money spanned *eleven* clients (and *eleven* years), instead of two entities. *Cf. Toppelberg*, Bar Docket No. 191-02, at 28-29. And unlike *Toppelberg*, Respondent's continued failure to respond adequately to Disciplinary Counsel spanned three years, not nine months. *Id.* at 53; *cf. In re Mance*, 869 A.2d 339, 342-43 (D.C. 2005) (per curiam) (staying a thirty-day suspension in favor of one

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[23] Respondent's misconduct involves a failure to timely refund unearned fees to his clients. But both this misconduct and a failure to promptly pay third parties reflects the same error—a timely failure to provide funds to the rightful owner. In any event, we have found that Respondent violated Rule 1.15(c) and Rule 1.16(d). *See Edwards*, 990 A.2d at 520-21.

year of unsupervised probation with conditions where "the events at issue were, by all accounts, an aberration." (quoting Board Report)). Respondent's more serious, protracted, misconduct warrants a full sixty-day suspension.

D. Fitness

The purpose of conditioning reinstatement on proof of fitness is "conceptually different" from the basis for imposing a suspension. *Cater*, 887 A.2d at 22. The Court has observed that while a suspension represents "a 'commensurate response to the attorney's past ethical misconduct,' the fitness requirement addresses the concern 'that the attorney's resumption of the practice of law will not be detrimental to the integrity and standing of the Bar, or to the administration of justice, or subversive to the public interest.'" *In re Brown*, 310 A.3d 1036, 1050 (D.C. 2024) (quoting *In re Lattimer*, 223 A.3d 437, 452-53 (D.C. 2020) (per curiam)).

Thus, in *Cater*, the Court held that "to justify requiring a suspended attorney to prove fitness as a condition of reinstatement, the record in the disciplinary proceeding must contain clear and convincing evidence that casts a serious doubt upon the attorney's continuing fitness to practice law." 887 A.2d at 6. Proof of a "serious doubt" involves "more than 'no confidence that a [r]espondent will not engage in similar conduct in the future.'" *In re Guberman*, 978 A.2d 200, 213 (D.C. 2009). It connotes "real skepticism, not just a lack of certainty." *Id.* (quoting *Cater*, 887 A.2d at 24).

As the Court explained:

> The fixed period of suspension is intended to serve as the commensurate response to the attorney's past ethical misconduct. In

> contrast, the open-ended fitness requirement is intended to be an appropriate response to serious concerns about whether the attorney will act ethically and competently in the future, after the period of suspension has run. . . . [P]roof of a violation of the Rules that merits even a substantial period of suspension is not necessarily sufficient to justify a fitness requirement . . . .

Cater, 887 A.2d at 22.

In addition, the Court found that the five factors for reinstatement set forth in *In re Roundtree*, 503 A.2d 1215, 1217 (D.C. 1985), should be used in applying the *Cater* fitness standard. They include:

> (a) the nature and circumstances of the misconduct for which the attorney was disciplined;
>
> (b) whether the attorney recognizes the seriousness of the misconduct;
>
> (c) the attorney's conduct since discipline was imposed, including the steps taken to remedy past wrongs and prevent future ones;
>
> (d) the attorney's present character; and
>
> (e) the attorney's present qualifications and competence to practice law.

Cater, 887 A.2d at 21, 25.

To summarize, Disciplinary Counsel believes that Respondent's violation of Rule 8.4(d) alone justifies fitness. But it rests its argument on other grounds too. Drawing on the five *Roundtree* factors, it argues that:

- Respondent's mismanagement of his trust account was prolonged and extensive (and that his lack of cooperation with Disciplinary Counsel was serious and protracted);

- Respondent's lack of recognition of the seriousness of his misconduct was evidenced throughout the hearing;

- Respondent's uncooperativeness regarding his trust account has lasted to date;

- Respondent's present qualifications and competence are in serious question given his conduct during these proceedings (including that he "relies exclusively on his mobile phone"); and

- Respondent's willingness to engage in revisionist history (allegedly walking back on his prior admissions in an attempt to avoid findings of commingling) calls into question his present character.

ODC Br. at 39-44.

Respondent contends that, should the Committee recommend a suspension, he should not be required to subsequently establish his fitness, mostly relying on his credentials, including serving on committees addressing technology issues in employment cases, and speaking engagements about employment law that exemplify his expertise. R. Br. at 23-25. He also notes that he has no present intention to retire or resign from the D.C. Bar. *Id.* at 25.[24]

Imposing fitness "is appropriate" where a respondent demonstrates "persistent disregard for the disciplinary process and continued refusal to cooperate with [Disciplinary] Counsel and the Board." *Hallmark*, 831 A.2d at 377 (quoting *In re Smith*, 649 A.2d 299, 300 (D.C. 1994) (per curiam)); *see also In re Siegel*, 635 A.2d 345, 346 (D.C. 1993) (per curiam) ("In circumstances where the respondent has repeatedly evinced indifference (or worse) toward the disciplinary procedures by

[24] But as we noted previously, Respondent filed a "Resignation From D.C. Bar" on February 12, 2024.

which the Bar regulates itself, a requirement that the attorney prove fitness to resume practice is entirely reasonable."). We believe that Respondent should receive fitness.

As noted, Respondent repeatedly demonstrated a lack of respect for the disciplinary process during Disciplinary Counsel's three-year investigation. *See supra* Section III.F. Before this Committee, he repeatedly minimized the seriousness of his misconduct and even tried to blame Disciplinary Counsel for his own failures to uphold commitments he had made to them.[25] The delays and obfuscations that characterized his responses to Disciplinary Counsel also continued during the hearing (and thereafter), during which Respondent repeatedly gave rambling, evasive testimony, raised meritless issues not germane to the charges before us, and contradicted his own prior representations and evidence in the record. *See supra* note 16 (describing, repeatedly, that this matter could have been resolved years ago with a diversion agreement); *see also In re Lea*, 969 A.2d 881, 890 (D.C. 2009) ("[A]n attorney's disregard for the disciplinary process may be so repeated, deliberate, and prolonged that a requirement to prove fitness is entirely justified." (citation omitted)); *In re Yelverton*, 105 A.3d 413, 430 (D.C. 2014) ("We recognize that an attorney has a right to defend himself and we expect that most lawyers will do so

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[25] For instance, Respondent characterized the commingling and serious interference charges as "denigrat[ing] to silliness." *See supra* note 16. And despite his conduct during the investigation, he accuses Disciplinary Counsel of committing "many . . . acts that lacked common courtesy," and that "if there was any conduct that adversely affected the administration of justice, it was," among other things, Disciplinary Counsel's "refusal to engage in meaningful dialogue to resolve this matter" and "its refusal to discuss some of the complicated issues that arose." R. Br. at 8.

vigorously, to protect their reputation and license to practice law. But even a claim of innocence does not relieve an attorney from recognizing the seriousness of the misconduct that led to disciplinary proceedings."); *In re Gonzalez*, Board Docket No. 17-BD-071 (BPR Oct. 24, 2018), appended Hearing Committee Report at 90 (relying on the respondent's "dismissive attitude during the hearing" in finding fitness), *recommendation adopted where no exceptions filed*, 207 A.3d 170, 171-72 (D.C. 2019) (per curiam).

In sum, having thoroughly examined the record and observed Respondent over multiple days of an in-person hearing, we are left with serious doubts that he would conform to the Rules in the future. We acknowledge Respondent's past professional accolades and service to the Bar, but these cannot outweigh his behavior during these proceedings, including behavior that the Committee witnessed first-hand. Imposition of fitness is warranted.

V. CONCLUSION

For the foregoing reasons, the Committee finds that Respondent violated Rules 1.15(a) (commingling and recordkeeping), 1.15(c) (failing to promptly return unearned fees), 1.16(d) (failing to refund unearned advanced fees following termination of representation), and 8.4(d) (serious inference with the administration of justice) and should receive the sanction of a sixty-day suspension, with fitness. We further recommend that Respondent's attention be directed to the requirements

of D.C. Bar Rule XI, § 14, and their effect on eligibility for reinstatement. *See* D.C. Bar R. XI, § 16(c).

AD HOC HEARING COMMITTEE

Daniel I. Weiner, Chair

Cameron Walker-Miller, Public Member

Brian Baker, Attorney Member