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:	:	
	:	
THOMAS H. QUEEN,	:	
	:	
Respondent.	:	Board Docket No. 25-BD-036
	:	Disc. Docket No. 2023-D158
A Member of the Bar of the	:	
District of Columbia Court of Appeals	:	
(Bar Registration No. 146340)	:	

REPORT AND RECOMMENDATION OF AD HOC HEARING COMMITTEE

Respondent, Thomas H. Queen, is charged with violating Rules 1.15(a) (commingling, record-keeping), 8.1(b) (knowingly failing to respond to Disciplinary Counsel's lawful demands for information), and 8.4(d) (serious interference with the administration of justice) of the District of Columbia Rules of Professional Conduct (the "Rules"), as well as D.C. Bar Rule XI, § 2(b)(3) (failing to comply with orders of the Court and Board). These charges stem from his representation in three client matters and from Disciplinary Counsel's investigation. Disciplinary Counsel contends that Respondent committed all of the charged violations and should receive a sixty-day suspension with a fitness requirement upon any application for reinstatement as a sanction for his misconduct.

As set forth below, the Ad Hoc Hearing Committee ("Hearing Committee") finds that Disciplinary Counsel has proven violations of Rules 1.15(a), 8.1(b), 8.4(d)

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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.

and D.C. Bar Rule XI, § 2(b)(3) and recommends that Respondent receive a sixty-day suspension, fully stayed in favor of a one-year probation, with conditions, to be supervised by the Practice Management Advisory Services of the District of Columbia Bar ("PMAS"). If Respondent fails to comply with the conditions of probation, resulting in a revocation of probation, we recommend that the previously stayed suspension be imposed with a fitness requirement for reinstatement.

I. PROCEDURAL HISTORY

On June 12, 2025, Disciplinary Counsel served Respondent with a Specification of Charges ("Specification"). The Specification alleges that Respondent, in connection with his use of his brother's IOLTA account in three client matters, violated the following rules:

- Rule 1.15(a) (commingling), by failing to keep entrusted funds separate from his own funds;
- Rule 1.15(a) (record-keeping), by failing to keep complete records of entrusted funds;
- Rule 8.1(b), by knowingly failing to respond to Disciplinary Counsel's lawful demands for information;
- Rule 8.4(d), by seriously interfering with the administration of justice; and
- D.C. Bar Rule XI, § 2(b)(3), by failing to comply with orders of the Court and the Board.

Specification ¶ 28.

Respondent filed an answer on July 23, 2025. *See* Response of Respondent to Draft Specification of Charges ("Answer"). In response to the charge of commingling, Respondent denied "*intentional* commingling of funds" in several paragraphs, *id.* ¶¶ 9, 12 (emphasis added), and elsewhere denied "commingling," *id.* ¶ 19. Respondent also denied the charges of failure to cooperate with Disciplinary Counsel, stating with respect to documents, that he had produced all the requested documents that he could locate. *Id.* ¶¶ 22, 23, 25. Finally, Respondent denied having committed any violations of the Rules of Professional Conduct or D.C. Bar Rule XI, § 2(b)(3). *Id.* at 6.

A pre-hearing conference was held on September 16, 2025. A hearing was held on December 2 and 4, 2025, before this Hearing Committee. Disciplinary Counsel was represented at the hearing by Assistant Disciplinary Counsel Jerri U. Dunston, Esquire. Respondent was present throughout the hearing and was represented by Johnny Howard, Esquire.

During the hearing, Disciplinary Counsel submitted DCX[1] 1-67, 70, and 72. All of those exhibits were admitted into evidence. Tr. 210-13, 403; *see also* Tr. 112:3-10.[2] As a preliminary matter during the hearing, the Committee orally granted

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[1] "DCX" refers to Disciplinary Counsel's exhibits. "RX" refers to Respondent's exhibits. "Tr." refers to the transcript of the hearing held on December 2 and 4, 2025.

[2] DCX 8-14, 24, 52, 65, and 70 were admitted over objection. *See* Disciplinary Counsel's Amended List of Exhibits Form (Dec. 5, 2025).

Disciplinary Counsel's Contested Motion to Amend Exhibit List, which was filed before the hearing on December 1, 2025. Tr. 14:1-15:10. Disciplinary Counsel called as its witnesses Charles Queen, Evelyn Crawford Queen, and the Office of Disciplinary Counsel's forensic accountant, Charles Anderson. Respondent testified on his own behalf and recalled Mr. Anderson as a witness.

Upon conclusion of the liability phase of the hearing, the Hearing Committee made a preliminary, non-binding determination that Disciplinary Counsel had proven at least one of the violations set forth in the Specification of Charges. Tr. 398:19-399:3; *see* Board Rule 11.11. In the sanctions phase of the hearing, Disciplinary Counsel submitted DCX 72, and Respondent submitted RX 1. Neither party presented testimonial evidence in that portion of the hearing.

On December 4, 2025, Respondent filed a Motion to Dismiss, arguing that the instant matter is barred on the grounds of improper splitting of charges, abuse of process, res judicata, and collateral estoppel, and Disciplinary Counsel filed its Opposition to the Motion to Dismiss ("ODC's Opposition to Respondent's Motion to Dismiss"). Both pleadings had been previously filed with the Board on Professional Responsibility ("Board"), but Respondent elected to refile his motion with the Hearing Committee, and Disciplinary Counsel similarly refiled its prior opposition. The Hearing Committee permitted the parties to file supplemental pleadings related to Respondent's Motion to Dismiss, in light of the more fully developed factual record from the hearing. *See* Tr. 394:18-396:22.

On December 15, 2025, Disciplinary Counsel filed a Supplemental Filing, addressing issues related to Respondent's renewed Motion to Dismiss ("ODC's Supplemental Filing").[3] On December 22, 2025, Respondent filed a Response to Supplemental Filing in Support of the Requested Recommendation of Dismissal of the Specification of Charges ("Respondent's Response").

At the close of the hearing, the parties agreed to a schedule for the filing of post-hearing briefs. That schedule was memorialized in a scheduling order issued December 5, 2025 ("December 5 Order"). The December 5 Order directed that Disciplinary Counsel's opening brief "contain proposed findings of fact that shall consist of numbered paragraphs, including within each paragraph specific references to the parts of the record that support the facts set forth in that paragraph." December 5 Order at 2 (emphasis in original). The December 5 Order further directed that Respondent's brief "contain a response to each numbered paragraph in Disciplinary Counsel's proposed findings of fact, including, in the case of any disagreement, specific references to the parts of the record relied upon," adding that it "may also include additional proposed findings of fact that shall consist of numbered

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[3] In its supplemental filing regarding Respondent's Motion to Dismiss, Disciplinary Counsel moved for the admission of three additional exhibits. *See* ODC Supplemental Filing, at 2 n.1 (Exh. 73), 8 n.5 (Exh. 71), 14 n.10 (Exh. 74). The Committee declines to include the proposed attachments as admitted exhibits, but notes that the filed pleadings and attachments are part of the record in this case, as are the attachments to Respondent's Motion to Dismiss.

paragraphs, including within each paragraph specific references to the parts of the record relied upon." *Id.* (emphasis in original).

Disciplinary Counsel submitted its Proposed Findings of Fact, Conclusions of Law, and Recommendation as to Sanction on January 9, 2026. Disciplinary Counsel's submission complied with the requirements of the December 5 Order.

Respondent's post-hearing brief was due January 20, 2026. Respondent did not file a post-hearing brief by that date. On January 27, 2026, a week after the filing date had passed, Respondent filed a Motion to Enlarge the Time to File. Disciplinary Counsel filed a response to the motion, arguing that Respondent had not demonstrated good cause that would justify an extension. Because Respondent's Motion to Enlarge Time did not attach the brief, as required by Board Rule 12.1(a),[4] the motion was denied. *See* Hearing Committee Order (Jan. 30, 2026) (directing Respondent's attention to the requirements of Board Rule 12.1(a)).

On April 27, 2026, nearly five months after the hearing and three months after Respondent's Motion to Enlarge the Time to File was denied, Respondent filed a Motion for Leave to File Respondent's Post Hearing Brief Out-of-Time. That motion was unsupported by good cause and attached a brief that did not comply with the December 5 Order and relied substantially on evidence outside the record. *See*

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[4] Board Rule 12.1(a) provides that "[m]otions for leave to file a brief after time has expired will only be considered if accompanied by the proffered brief."

Disciplinary Counsel's Opposition to Respondent's Motion for Leave to File Post-Hearing Brief Out of Time (Apr. 20, 2026). On May 5, 2026, Respondent filed Respondent's Reply to Disciplinary Counsel's Opposition to Motion for Leave to File Post-Hearing Brief Out of Time and Supplemented Post[-]Hearing Brief.

On May 20, 2026, the same day of the issuance of this Report and Recommendation, the Hearing Committee issued an Order denying Respondent's Motion for Leave to File Respondent's Post Hearing Brief Out-of-Time.[5]

II. MOTION TO DISMISS

The Hearing Committee does not rule on a respondent's motion to dismiss but submits its written recommendation on the motion to the Board as part of its Report and Recommendation. *See* Board Rule 7.16; *In re Ontell*, 593 A.2d 1038, 1040 (D.C. 1991).

Respondent's Motion to Dismiss is based upon the claimed identity between a charge of noncooperation with Disciplinary Counsel made in another disciplinary case in which he is the respondent (Disc. Docket No. 2020-D223 ("*Queen I*")) and the charge of noncooperation (the violations of Rule 8.1(b), Rule 8.4(d), and D.C. Bar Rule XI, § 2(b)(3)) made in the instant case (Disc. Docket No. 2023-D158

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[5] Respondent's primary argument justifying the filing of the post-hearing brief now rests on the interim issuance of a Report and Recommendation by Hearing Committee Eight in another disciplinary case in which he is the respondent (Disc. Docket No. 2020-D223). *See infra* Part II. The findings and determinations in the separate matter are not in the record or properly before this Committee. *See infra* note 8; *see also* Order (May X, 2026).

("*Queen II*")). "The core issue," according to Respondent, "is whether Disciplinary Counsel improperly split related claims arising from the same IOLTA account into two separate proceedings, *Queen I* and *Queen II*, thereby violating principles of claim preclusion, procedural fairness, and judicial economy." Respondent's Response at 1. For the reasons stated below, we recommend that the motion be denied.

We recognize that Respondent's assertions in his motion regarding res judicata and collateral estoppel appear to seek dismissal of the instant case (*Queen II*) in its entirety; however, that challenge is only to the noncooperation charges. At best, then, a finding of res judicata or collateral estoppel would mean that Respondent is facing only a single charge of noncooperation—that lodged in *Queen I*— rather than two. Respondent's contentions of improper splitting of claims and due process/abuse of process challenge the propriety of the commingling or record-keeping charges in this case.

A. <u>Res Judicata</u>

The doctrine of res judicata applies in lawyer discipline proceedings. *In re Stanton*, 589 A.2d 425, 426 (D.C. 1991) (per curiam). Whether res judicata applies to a given matter turns upon three criteria:

> (1) whether the claim was adjudicated finally in the first action; (2) whether the present claim is the same as the claim which was raised or might have been raised in the prior proceeding; and (3) whether the

> party against whom the plea is asserted was a party or in privity with a party in the prior case.

Calomiris v. Calomiris, 3 A.3d 1186, 1190 (D.C. 2010). All three criteria must be satisfied for res judicata to attach. *See Patton v. Klein*, 746 A.2d 866, 870 (D.C. 1999) (per curiam).

The requisites of res judicata have not been satisfied in this case. Looking at the second *Calomiris* criterion, the alleged instances of Respondent's noncooperation in *Queen I* occurred at different times, and involved requests for different documents and information, than the noncooperation alleged in *Queen II*. It is true that the same IOLTA account is involved in both cases, and that there is some overlap in the documents and information that were *requested* by Disciplinary Counsel.[6] But the alleged facts underlying the *charges* of noncooperation in the two cases are different and do not overlap.

Queen I's noncooperation charge arises principally from Respondent's alleged failure to respond fully—despite repeated requests and a Board order—to requests transmitted to Respondent's counsel on May 8, 2023. *Queen I*, Specification of Charges, ¶¶ 56-65 (attachment to Respondent's Motion to Dismiss); *Queen I*, July 16, 2024, Transcript 589:13-19.[7] The May 8, 2023, request focused

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[6] For example, in the documents requested, *compare* DCX 53 at 9 (requesting IOLTA records for September 1, 2018, through May 30, 2023), *with* DCX 56 at 6 (requesting IOLTA records for January 1, 2016, through November 7, 2023).

[7] The May 8, 2023, request was admitted in *Queen II* as DCX 53.

entirely on Respondent's handling of a single client's matter—the T.B. matter discussed *infra*. DCX 53.

By contrast, the noncooperation charge in *Queen II* arises principally from Respondent's alleged failure to respond fully—despite repeated requests and an order of the District of Columbia Court of Appeals ("Court" or "Court of Appeals")—to requests made by Disciplinary Counsel on November 8, 2023, DCX 56, and April 9, 2024, DCX 66. DCX 1 at 7-9 (*Queen II*, Specification of Charges, ¶¶ 20-27). Thus, the two claims of noncooperation arise from different sets of facts. They are not the same, and the second *Calomiris* criterion accordingly is not satisfied.

Further, there is no final judgment from the Court of Appeals in *Queen I*, so the first *Calomiris* criterion also has not been satisfied.[8]

Thus, res judicata is not a basis for dismissing any portion of *Queen II*.

B. <u>Collateral Estoppel</u>

The motion also contends that *Queen II* is barred by the doctrine of collateral estoppel. Respondent's Motion to Dismiss at 7-8. "Collateral estoppel or issue preclusion renders conclusive in the same or a subsequent action an issue of fact or law previously determined by a court of competent jurisdiction." *Patton*, 746 A.2d at 870 (internal quotations omitted). Similar to res judicata, collateral estoppel

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[8] Hearing Committee Number Eight issued a Report and Recommendation in *Queen I* on April 9, 2026. No member of this Hearing Committee has reviewed the *Queen I* Report and Recommendation.

applies only when four criteria are satisfied: "(1) the issue [must be] actually litigated and (2) determined by a valid, final judgment on the merits; (3) after a full and fair opportunity for litigation by the parties or their privies; (4) under circumstances where the determination was essential to the judgment, and not merely dictum." *Id.* at 871.

Here too, the criteria have not been met. There is no final judgment in *Queen I* and the alleged facts being litigated in *Queen II* differ from those that are alleged in *Queen I*. It is true, as Respondent contends, that the Specifications in both matters allege failure to respond to lawful demands for information, but the failure alleged in *Queen I* is not the same as the one alleged in *Queen II*. Collateral estoppel accordingly does not provide a basis for dismissing any part of *Queen II*. [9]

C. <u>Due Process/Abuse of Process</u>

"Because disciplinary proceedings are 'quasi-criminal,' attorneys subject to discipline are entitled to due process of law." *In re Fay*, 111 A.3d 1025, 1031 (D.C. 2015) (per curiam) (citing *In re Williams*, 464 A.2d 115, 118-19) (D.C. 1983) (per

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[9] Disciplinary Counsel contends that Respondent waived his res judicata affirmative defense by failing to assert it in his Answer and causing delay before raising the issue. *See* ODC's Opposition to Respondent's Motion to Dismiss at 4-5 (citing *Mitchell v. Gales*, 61 A.3d 678, 687 (D.C. 2013) and *Osei-Kuffner v. Argana*, 618 A.2d 712, 714-15 (D.C. 1993)). It appears that Respondent did delay in raising the issue, but because Disciplinary Counsel's other arguments are dispositive and because of the unusual posture of Respondent's motion having been presented initially to the Board, *see* Respondent's Motion to Dismiss at 1; Tr. 7:18-9:12, we decline to address the waiver issue.

curiam)). Although the due process protections afforded to attorneys are less extensive than those provided to criminal defendants, attorneys subject to discipline are entitled, at a minimum, to "adequate notice of the charges and a meaningful opportunity to be heard." *Id.* Respondent unquestionably has been afforded both of these requisites.

Moreover, there has been no abuse of process. Respondent's unsupported allegation that Disciplinary Counsel has engaged in prosecutorial overreach, *see* Respondent's Motion to Dismiss at 6-7, lacks merit. The "key element in an abuse of process claim is whether [a] process was used to achieve 'an end unintended by law, . . . not regularly or legally obtainable.'" *Epps v. Vogel*, 454 A.2d 320, 324 (D.C. 1982) (quoting *Morowitz v. Marvel*, 423 A.2d 196, 198 (D.C. 1980)). Disciplinary Counsel has a continuous obligation to "investigate all matters involving alleged misconduct . . . which may come to the attention of Disciplinary Counsel . . . from any source whatsoever, where the apparent facts, if true, may warrant discipline." D.C Bar R. XI, § 6(a)(2).

D. <u>Splitting of Claims</u>

Respondent's argument that Disciplinary Counsel improperly split its charges also fails. *See* Respondent's Motion to Dismiss at 5-6.[10] Disciplinary Counsel

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[10] We are not aware of any reported discipline case where a respondent filed a motion to dismiss alleging an improper splitting of claims. Typically, an improper splitting of claims is raised where a plaintiff improperly files two cases involving the same cause of action and same conduct in order to maintain jurisdiction by a court that has

responds that no improper splitting of charges occurred because the claims involved in *Queen I* and *Queen II* are not based on the same facts or transactions and involve separate ethical failures. Neither commingling nor failure to keep records is charged in *Queen I*. As for the noncooperation charges, the failures to cooperate that are the basis of the charge in *Queen I* are different from the failures to cooperate that are charged here.

E. Timing of Cases

Finally, Respondent contends that Disciplinary Counsel had sufficient information in hand at the time *Queen I* was filed to include the charges from *Queen II* in the same petition. *See* Respondent's Response at 4-6.[11] It is unclear whether this in fact is the case, particularly given that in both matters, Respondent's allegedly repeated failures to respond in a complete and timely manner to Disciplinary Counsel's inquiries and subpoenas caused lengthy delays in Disciplinary Counsel's development of the cases. *See, e.g.*, ODC's Opposition to Respondent's Motion to Dismiss at 8-11. More importantly, the petitions in *Queen I*

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a jurisdictional limit for civil actions. *See, e.g.*, *Le John Mfg. Co. v. Webb*, 91 A.2d 332, 334 (D.C. 1952).

[11] Respondent contends that "Disciplinary Counsel's failure to consolidate these related charges has resulted in duplicative pleadings, imposing undue burden and prejudice on Respondent." Respondent's Response at 6. Although Respondent could have filed a motion to consolidate following service of the *Queen II* Specification of Charges on June 12, 2025, he did not do so.

and *Queen II* are based upon different facts that occurred at different times. *See* ODC's Supplemental Filing at 15.

For the foregoing reasons, we recommend that Respondent's Motion to Dismiss be denied.

III. FINDINGS OF FACT

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

1. Respondent is a member of the Bar of the District of Columbia Court of Appeals, having been admitted to the bar of the United States District Court for the District of Columbia on January 28, 1968, and later having been assigned Bar Number 146340 by the District of Columbia Court of Appeals. DCX 2 at ¶ 1, DCX 3; Tr. 306:1-4 (Respondent).

2. Respondent maintained office space for his law firm, Thomas H. Queen & Associates. Tr. 31:13-15 (C. Queen); Tr. 339:6-17 (Respondent).

3. Respondent's brother, Charles Queen, was a member of the District of Columbia Bar from 1989 until August 14, 2024. Tr. 27: 4-5, 15-17; Tr. 29:14-30:12; Tr. 31:6-7; Tr. 42:5-43:11 (C. Queen); DCX 23 at 1; DCX 24. Charles Queen practiced probate and personal injury law from his own law firm, Charles A. Queen

& Associates, using Respondent's office space. Tr. 31:4-12; Tr. 32:20-33:1; Tr. 40:2-9; Tr. 42:5-43:11 (C. Queen); DCX 23 at 1.

4. Charles Queen maintained a trust account in the name of his firm at Riggs Bank, which later became PNC Bank. The Charles Queen & Associates trust account was PNC IOLTA Account Number XXX8453. Tr. 33:2-6; Tr. 34:2-7; Tr. 42:5-43:11 (C. Queen); DCX 23 at 1; DCX 25.

5. Respondent was never a signatory on his brother's trust account; his brother was the primary signatory and ultimately the only signatory on the account. Tr. 33:4-17; Tr. 38:4-7; Tr. 42:5-43:11 (C. Queen); DCX 23 at 1; DCX 25.

6. Respondent did not maintain his own trust account. Instead, he used his brother's account for his law practice, including for the deposit of entrusted client funds. Tr: 340:3-8 (Respondent); Tr. 42:5-43:11 (C. Queen); DCX 23 at 1.

7. In the mid-to-late 2010s, Charles Queen suffered several strokes and stopped going into the office regularly. Tr. 27:20-28:3; Tr. 40:15-16; Tr. 42:5-43:11 (C. Queen); DCX 23 at 1-2.

8. By 2016, Respondent was the only attorney using Charles Queen's trust account, and the account contained only funds that Respondent had deposited in connection with his practice. Tr. 35:5-11; Tr. 39:3-8; Tr. 41:6-17; Tr. 42:5-43:11; Tr. 43:12-18 (C. Queen); DCX 23 at 1-2.

9. Respondent controlled the flow of money into and out of the trust account. Tr. 340:3-8 (Respondent); Tr. 42:5-43:11; Tr. 43:15-18 (C. Queen); DCX 23 at 2.

10. Respondent deposited (or caused to be deposited) funds generated from his practice into the trust account. Tr. 340:3-5 (Respondent); Tr. 39:3-8; Tr. 42:5-43:11 (C. Queen); DCX 23 at 1-2.

11. The monthly statements for the trust account were mailed to Respondent's law office, which he shared with his brother Charles Queen. Tr. 34:22-36:6; Tr. 40:10-14; Tr. 42:5-43:11 (C. Queen); DCX 23 at 1.

12. The checkbook and the deposit slip book for the trust account were kept in the law office. Respondent had access to the trust account checkbook, deposit slip book, and bank statements. Tr. 40:17-41:5; Tr. 42:5-43:11 (C. Queen); DCX 23 at 1-2.

13. When Respondent wanted to withdraw money from the trust account, he would have Charles Queen sign a check that often did not include the payee or amount. Sometimes Respondent would have Charles Queen sign several blank checks at a time. On some occasions, Charles Queen's wife, Evelyn Crawford Queen, would bring him to the office to sign blank checks. On others, Respondent would bring them to Charles Queen to sign. Tr. 37:15-38:20; Tr. 39:13-40:1; Tr. 41:18-42:1; Tr. 42:5-43:11 (C. Queen); Tr. 51:1-8; Tr. 54:2-16; Tr. 55:17-57:6; Tr. 59:19-60:11 (E. Queen); DCX 23 at 1.

14. For checks signed by Charles Queen in blank, Respondent would fill out the payee and amount later. Tr. 39:18-40:1; Tr. 42:5-43:11 (C. Queen); DCX 23 at 1.

15. Because all the money in the trust account from 2016 on was generated from Respondent's practice and because Charles Queen was ill and did not go into the office regularly, Charles Queen trusted Respondent to maintain the trust account and ensure that the account was not overdrawn. Tr. 40:15-21; Tr. 42:5-43:11 (C. Queen); Tr. 60:22-61:14 (E. Queen); DCX 23 at 1-2.

16. Respondent did not maintain client ledgers to track the money deposited into and withdrawn from the trust account for each client matter. Except as noted in Finding 18, Respondent also did not keep any other records of the purpose for each client-related deposit into and withdrawal from the trust account. Tr. 67:1-6; Tr. 69:4-13 (Anderson); Tr. 372:11-15 (Respondent); *see* Tr. 347:10-19; Tr. 348:14-18; Tr. 383:15-384:19 (Respondent).

17. Moreover, Respondent did not maintain a general ledger to track the transactions in the trust account and to show the running balance. *See* Tr. 67:7-68:5; Tr. 69:14-70:1 (Anderson).

18. Respondent contended that checkbook stubs for the IOLTA account, the memo lines of checks written on that account, and the deposit slips for the account constituted the "complete records" required by Rule 1.15(a). *See* Tr. 340:17-342:12 (Respondent). Respondent admitted that his financial records were limited to the bank statements and check stubs in the trust account checkbook. Tr. 340:17-22. Respondent contended that the necessary financial records could be acquired from other sources (e.g., the bank where the IOLTA account was maintained). *See* Tr. 360:12-21 (Respondent). Even had the records received from

the bank been sufficient to explain how his handling of entrusted funds—which Disciplinary Counsel's investigator credibly testified they were not, Tr. 268:21-270:1 (Anderson)—they were not maintained *by Respondent*, as required by Rule 1.15(a).

19. Because of Respondent's incomplete record-keeping, Disciplinary Counsel could not determine the source of funds withdrawn from the trust account, the purpose of all the payments, and whether each payment was consistent with Respondent's ethical obligations. Tr. 71:4-12 (Anderson). Disciplinary Counsel was unable to determine whether Respondent had misappropriated any client funds. Tr. 71:13-16 (Anderson).

20. Respondent, who has been a licensed attorney since 1968, FF 1, in private law practice since 1975, Tr. 308:5-9, and a solo practitioner since 1977, Tr. 308:15-19, testified that during the period in question, he "did not understand commingling" and "did not understand that [the deposits in question] constitute a commingling." Tr. 353:10-12; *see* Tr. 353:6-354:1 (Respondent). He testified to an erroneous belief that "commingling" is limited to depositing client funds into the lawyer's operating account. Tr. 353:12-20 (Respondent).

21. Respondent's records show that from September 2018 to October 2023, he commingled in the trust account entrusted funds belonging to his client T.B. and tens of thousands of dollars of his own earned fees from three separate client matters. Tr. 137:22-138:8; Tr. 139:2-11 (Anderson). As described in detail below, Respondent kept entrusted funds belonging to T.B. in the account from

September 2018 until October 2023. *See* FF 26-28. During that same period, Respondent kept earned fees in the account from three separate client matters: from January 2017 to September 2020, the account held fees from Respondent's representation of C.H. (*see* FF 22-26); from November 2018 until after October 2023, the account held earned fees from the S.J.P. matter (*see* FF 30-34); and from July 2019 to July 2021, the account held earned fees from the O.G. matter (*see* FF 35-36).

A. <u>Fees from the C.H. Matter: January 2017 to September 2020</u>

22. On January 11, 2017, Respondent caused a check for $85,000 to be deposited in the trust account. DCX 28 at 2, 4-5. The funds resulted from a partial settlement of a probate matter Respondent handled for C.H. The $85,000 included funds due to C.H., Respondent's earned fees, and funds to reimburse Respondent for already paid costs. Tr. 91:3-92:12 (Anderson); DCX 6 at 2.

23. The next day, Respondent caused check no. 1691 for $64,565.55 to be issued to his client C.H. as the client's share of the partial settlement. DCX 28 at 3.[12] That left $20,434.45 in the trust account from the C.H. representation—$19,180 in Respondent's earned fees and $1,254.45 to reimburse Respondent for costs. *See* Tr. 172:5-16 (Anderson); DCX 6 at 2 (calculating Respondent's total owed fees and costs as $20,434.55, which appears to be a minor typographical error).

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[12] The client's full inheritance, minus the portion earned by Respondent, was $99,565.55, but the other heirs were required to pay the remaining $35,000 to Respondent's client within a year. DCX 6 at 2.

24. Respondent caused a check for $5,000 to be issued to his brother Charles Queen as attorney's fees in the C.H. matter on January 19, 2017, which left $14,180 in earned fees from the C.H. matter in the trust account. DCX 29 at 3; Tr. 346:13-20 (Respondent).

25. Respondent did not begin to withdraw the remaining earned fees until May 2020. Accordingly, they remained in the trust account and later were commingled with entrusted funds belonging to his client T.B. Tr. 149:16-153:2 (Anderson).

26. Respondent withdrew the remaining fees through three checks issued to himself from May to September 2020. *See* DCX 35 at 3 ($6,000, May 7, 2020); DCX 37 at 4 ($6,500, Aug. 13, 2020); DCX 38 at 4 ($7,000, Sept. 7, 2020); *see also* DCX 52 at 10 (response to Question 10); Tr. 153:10-21; Tr. 156:7-157:10 (Anderson) (explaining that an additional $6,500 check was written on Aug. 10, 2020, DCX 37 at 3, but not paid out). Respondent withdrew a total of $24,500 for the C.H. representation, paid to himself and his brother Charles Queen, though only $20,434.45 from the C.H. matter remained in the trust account to cover these fees and costs. *See* FF 23-24; DCX 6 at 2; DCX 35 at 3; DCX 37 at 4; DCX 38 at 4; Tr. 151:8-157:15 (Anderson).

B. <u>T.B. funds: September 2018 to October 2023</u>

27. On September 24, 2018, Respondent received into the trust account $128,665.84 belonging to his client T.B. Tr. 122:11-129:16 (Anderson); DCX 10 at 3, 6; DCX 11; *see* DCX 8; DCX 9 at 2.

28. At the time, the account still contained more than $14,000 of Respondent's earned fees from the C.H. matter. FF 24-25. Respondent did not distribute any funds to T.B. for nearly two years. FF 29. Before he did so, Respondent deposited additional earned fees into the account. In November 2018, Respondent deposited nearly $35,000 from the S.J.P. matter, FF 33, and in July 2019 he deposited more than $24,000 from the O.G. matter, FF 35.

29. Respondent distributed T.B.'s funds through a series of checks issued from August 2020 to October 2023:

a. check no. 1802 dated August 14, 2020, payable to T.B. for $103,000 (DCX 12 at 2);

b. check no. 1852 dated September 4, 2020, payable to T.B. for $5,000 (DCX 13);

c. check no. 1804 dated October 19, 2023, payable to himself for $12,000 (DCX 45 at 3); and

d. check no. 1805 dated October 20, 2023, payable to T.B. for $8,665.84 (DCX 14).

C. <u>Fees from the S.J.P. Matter: November 2018 to October 2023</u>

30. In or around 2016 through 2018, Respondent represented S.J.P. in a probate matter. DCX 15; DCX 16.

31. In September 2018, Respondent caused three checks totaling $2,130 to be drawn on the account to pay expenses in the S.J.P. matter, though no funds had been deposited into the account to cover those expenses. *See* DCX 31 at 3 (check

no. 1696 for $1,350); DCX 31 at 5 (check no. 1697 for $150); DCX 31 at 4 (check no. 1698 for $630); Tr. 72:17-22; Tr. 73:20-74:14; Tr. 75:5-77:4 (Anderson).

32. When Disciplinary Counsel asked Respondent to identify the source of funds to pay the three checks, he stated: "Although I am not certain, I believe that the . . . three payments were made from fees of other clients that were on deposit in the IOLTA Account." DCX 52 at 12 (response to Question 15(b)). Respondent did not identify, however, the specific source of the funds that he withdrew from the trust account. Tr. 72:17-73:13 (Anderson).

33. On November 27, 2018, while T.B.'s funds were still in the account, *see* FF 29, Respondent deposited into the trust account $34,933.35 in court-approved, earned fees from the S.J.P. matter. Tr. 147:14-149:3; Tr. 172:17-173:1 (Anderson); Tr. 352:7-16 (Respondent); DCX 17 at 1; DCX 18.

34. From then until T.B.'s funds were fully withdrawn (in October 2023), FF 29, Respondent withdrew only $8,000 of his earned fees from the S.J.P. matter: $6,000 in November 2018 and another $2,000 in July 2020.[13] Tr. 143:16-145:5

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[13] Respondent attributed both checks to earned fees from the S.J.P. representation even though he did not reflect the client's name on the face of the checks and admitted that he was not sure they could properly be attributed to fees earned in the S.J.P. matter. DCX 52 at 12 (response to Question 14); *see* DCX 33 at 3; DCX 36 at 3. The check stub for the $6,000 check (check no. 1699) does not identify a client or case name for the withdrawal. DCX 67 at 37. And the check stub for the $2,000 check (check no. 1701) appears to identify C.H. as the client for whom the fee was withdrawn. *Id.*

(Anderson); Tr. 351:20-352:16 (Respondent); DCX 33 at 3; DCX 36 at 3. Thus, nearly $27,000 in earned fees remained in the account with T.B.'s funds.

D. Fees from the O.G. Matter: July 2019 to July 2021

35. On July 18, 2019, Respondent deposited into the trust account $24,005.52 in court-approved, earned fees in the O.G. matter. Tr. 102:11-108:19 (Anderson); DCX 20 at 9; DCX 21 at 1; DCX 22 at 1; DCX 34 at 2-3.

36. Respondent did not begin withdrawing those funds until more than a year later. From October 2020 to July 2021, he wrote himself seven checks totaling $26,500 as earned fees for the O.G. matter, even though he had only earned $24,005.52. Tr. 102:11-115:18 (Anderson); DCX 22 at 1; *see* DCX 39 at 4 (check no. 1854 for $3,000); DCX 40 at 4 (check no. 1856 for $5,000); DCX41 at 3 (check no. 1857 for $3,000); DCX 70 at 3 (check no. 1859 for $5,000); DCX 42 at 3 (check no. 1860 for $3,500); DCX 43 at 3 (check no. 1863 for $2,000); DCX 43 at 4 (check no. 1864 for $5,000); *see also* DCX 52 at 10 (response to Question 10).

E. Entrusted Funds from the A.X.J. Matter: 2014 to April 2023

37. On April 24, 2023, Respondent wrote a trust account check for $76,192.14 to the Personal Representative of the Estate of A.X.J. DCX 44 at 3 (check no. 1865). Respondent testified that these entrusted funds came from the settlement of a wrongful death case that occurred before 2014. All of the decedent's heirs received their portion of the settlement except A.X.J. Respondent held the funds in the trust account but A.X.J. died without Respondent having distributed his portion of the settlement. Tr. 382:17-384:2; Tr. 385:15-386:16; Tr. 387:6-12

(Respondent). Accordingly, those entrusted funds were commingled in the trust account with Respondent's fee for the C.H. matter from January 2017 to September 2020, FF 22-26, with Respondent's fee for the S.J.P. matter from November 2018 to April 2023, FF 30-34, and with Respondent's fee for the O.G. matter from July 2019 to July 2021, FF 35-36.

F. Respondent's Failures to Respond to Disciplinary Counsel's Inquiries

38. During Disciplinary Counsel's investigation, Respondent failed to comply with a Board order compelling his response to the letter of inquiry Disciplinary Counsel sent him asking about his handling of funds in the trust account. *See* FF 44-46. Respondent also failed to fully comply with a Court order enforcing a subpoena directing him to provide records for the trust account. *See* FF 44, 47. He then ignored an additional written inquiry from Disciplinary Counsel and another subpoena. FF 48-49.

39. Respondent claimed that he had provided all the requested documents he could locate. Tr. 343:1-12; Tr. 358:14-21; Tr. 359:16-360:1 (Respondent); *see also* Tr. 387:13-16 (Respondent). That claim was called into question, however, by the fact that on at least one occasion, he provided documents that had been requested—and not furnished—previously. *Compare* DCX 56 at 6 (November 8, 2023, subpoena requesting documents related to IOLTA account from Jan. 1, 2016, through Nov. 7, 2023), *with* DCX 59 (producing bank statements in response to Disciplinary Counsel's Motion to Compel before the Board that were among

documents requested in DCX 56). Respondent provided no explanation as to why those documents had not been provided initially. *See* DCX 59.

40. In fact, Respondent did not dispute his failure to respond in a timely fashion to at least some of Disciplinary Counsel's requests for narrative explanations. *E.g.*, Tr. 363:9-368:14 (Respondent).

41. On November 8, 2023, Disciplinary Counsel sent Respondent a letter of inquiry relating to the trust account and a subpoena for his financial records. DCX 56.

42. The written inquiry asked for a description of the roles of Respondent and his brother Charles Queen in managing the account. Disciplinary Counsel also asked Respondent to confirm the statements made by his brother in a letter to Disciplinary Counsel, namely that Respondent controlled the trust account even though it was in Charles Queen's name, that Charles Queen signed blank checks Respondent that would present to him so that Respondent could withdraw money from the trust account, and that Respondent's practice generated the funds in the trust account. DCX 56 at 2; DCX 23. The accompanying subpoena sought financial records relating to the trust account since January 1, 2016. DCX 56 at 6 (Question 1). Respondent acknowledged that he received the November 2023 request and subpoena, Tr. 363:9-365:13 (Respondent).

43. Despite being given additional time, Respondent had not complied fully with the subpoena or responded in writing to Disciplinary Counsel's written inquiry

in the granted time. Tr. 161:7-163:2; Tr. 178:4-180:3 (Anderson); DCX 57 at 6-7 (¶¶ 7-8); DCX 58 at 4-5 (¶¶ 7-8).

44. On February 13, 2024, Disciplinary Counsel filed a motion with the Court of Appeals to enforce its November 8, 2023, subpoena and a motion with the Board to compel Respondent's written response to its November 8, 2023, requests for information. DCX 58; DCX 57. Respondent was aware that both motions had been filed. Tr. 378:1-379:5 (Respondent). Respondent did not oppose either motion but provided a few of the subpoenaed records in response to the Motion to Compel pending before the Board before the Court ruled on the Motion to Enforce. Tr. 181:1-182:9 (Anderson); DCX 59; DCX 60; FF 18 note 12.

45. On March 11, 2024, the Board ordered Respondent to make a "complete response" to Disciplinary Counsel's written questions. DCX 61. Respondent was aware that the Board had ordered his response and aware that, upon further motion, the Board granted him additional time to do so. Tr. 379:6-20 (Respondent); DCX 62; DCX 63. Even after being granted this additional time to comply, Respondent failed to respond to Disciplinary Counsel's inquiries, thus knowingly violating the Board's order. Tr. 165:18-167:17 (Anderson); DCX 62; DCX 63; DCX 65 at 2.

46. Respondent claimed that he thought he had prepared a response to the letter from Charles Queen to Disciplinary Counsel (DCX 23). Tr. 364:2-367:21 (Respondent). At the request of Disciplinary Counsel, the Chair ordered Respondent to produce that response. Tr. 367:22-368:5 (Dunston-Chair colloquy). To date,

Respondent has not done so. The Hearing Committee accordingly concludes that Respondent did *not*, in fact, prepare such a response, but finds that Disciplinary Counsel has not proven by clear and convincing evidence that Respondent's somewhat confused testimony to the contrary was deliberately and knowingly false.

47. On March 29, 2024, the Court of Appeals ordered Respondent to comply with Disciplinary Counsel's November 8, 2023, subpoena. DCX 64. Respondent was aware of the order. Tr. 379:21-380:8 (Respondent). Respondent provided additional records, but not all of the records subpoenaed. Tr. 183:3-8; Tr. 195:7-18 (Anderson); DCX 59; *see* DCX 67. Some of the documents provided by Respondent in March 2024 (DCX 59) had been requested back in November 2023, which makes it difficult for the Hearing Committee to credit his testimony that he had produced all the documents he could locate when presented with the subpoena. It is conceivable that he could not locate them in November but was able to do so in March. Neither party presented evidence on this question, however.

48. On April 9, 2024, the Office of Disciplinary Counsel asked Respondent to explain the circumstances under which trust account check no. 1865 dated April 24, 2023, for $76,192.14 was written to the Personal Representative of the Estate of A.X.J. DCX 66 at 7-8.[14] Disciplinary Counsel served Respondent with an

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[14] Disciplinary Counsel also asked Respondent to explain the source of funds for $118,274.50 in the trust account as of January 1, 2024, and subpoenaed any records explaining the origin of the funds. DCX 66 at 2; *see* DCX 66 at 7. Respondent did not respond to the written inquiry or subpoena request. Tr. 185:8-187:1 (Anderson).

additional subpoena for his records relating to this payment. *Id.* Respondent did not respond to the April 9, 2024, letter or subpoena. Tr. 185:8-187:1 (Anderson).[15] It was not until the hearing that Respondent first provided some information about the source of the funds for the check. Tr. 385:15-387:20 (Respondent).[16]

49. Respondent contended at the hearing that the face of the check itself answers all of Disciplinary Counsel's questions. Tr. 383:10-384:19 (Respondent). The face of the check does not explain, though, how much money Respondent received from the wrongful death settlement and deposited into the trust account, when the funds were deposited, whether any funds were withdrawn or misappropriated prior to the negotiation of checks by the decedent's heirs, to whom the entrusted funds should have been disbursed, or the amount to which each recipient was entitled. *See* DCX 49.

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[15] Respondent produced no *records* that support or explain the source of funds for the check. Tr. 382:17-384:2 (Respondent). Indeed, Respondent failed to provide Disciplinary Counsel with information about the source of funds for the $76,192.14 check or the appropriateness of the payment despite being asked about it repeatedly. Tr. 184:1-187:1 (Anderson); DCX 56 at 6 (Question 1); DCX 66 at 8; *see* DCX 53 at 9 (Question 15); DCX 54.

[16] Respondent testified that he failed to promptly deliver the proceeds of a wrongful death settlement to A.X.J., who was incarcerated at the time, because his client requested that he not do so. Tr. 386:9-15 (Respondent). Apparently, A.X.J. passed away at some undisclosed time in the intervening years without Respondent having delivered the inheritance to him. Tr. 386:15-21 (Respondent). This conduct, if true, raises further questions about Respondent's compliance with Rule 1.15, including the requirement to promptly notify and pay third parties funds in which they have an interest.

50. Respondent's failure to respond to Disciplinary Counsel's requests and subpoenas and to comply fully with Court and Board orders caused extra work for Disciplinary Counsel, additional delays in the investigation, and needless burden for the Court and the Board. Tr. 187:2-188:10 (Anderson). It also prevented Disciplinary Counsel from obtaining a full and clear picture of Respondent's handling of funds in the trust account. *See, e.g.*, Tr. 277:22-278:6 (Anderson).

IV. CONCLUSIONS OF LAW

A. Disciplinary Counsel Proved that Respondent Violated Rule 1.15(a) (Commingling) by Failing to Keep Entrusted Funds Separate from His Own Funds.

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

> 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.

Commingling occurs when an attorney fails to hold entrusted funds in an account separate from his own funds. *In re Moore*, 704 A.2d 1187, 1192 (D.C. 1997) (per curiam) (appended Board Report). Thus, commingling 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 Hessler*, 549 A.2d 700, 707 (D.C. 1988) (appended Board Report) (quoting *Black v. State Bar*, 368 P.2d 118, 122 (Cal. 1962) (en banc)

(per curiam)).[17] To establish commingling, the entrusted and non-entrusted funds must be in the same account at the same time. *See In re Doman*, 314 A.3d 1219, 1230 (D.C. 2024) (per curiam). "The rule against commingling has three principal objectives: to preserve the identity of client funds, to eliminate the risk that client funds might be taken by the attorney's creditors, and most importantly, to prevent lawyers from misusing/misappropriating client funds, whether intentionally or inadvertently." *In re Rivlin*, 856 A.2d 1086, 1095 (D.C. 2004) (per curiam) (appended Board Report).

Here, Disciplinary Counsel has proven by clear and convincing evidence that Respondent commingled client and personal funds. Funds belonging to his client in the T.B. matter were in the IOLTA account from September 2018 until October 2023. FF 27-29. Funds belonging to A.X.J. from the wrongful death matter were in the IOLTA account from 2014 until April 2023. FF 37. Respondent's earned fees from one or more of the C.H., S.J.P., and O.G. matters were in the IOLTA account from January 2017 until after October 2023. FF 22-26, 33-36. Thus, for nearly seven years there was uninterrupted commingling in the IOLTA account of client or third-party funds with Respondent's earned fees. This is a classic example of commingling. *See Hessler*, 549 A.2d at 707 (appended Board Report); *Moore* 704 A.2d at 1192 (appended Board Report); *Doman*, 314 A.3d at 1230.

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[17] Respondent's professed belief that commingling occurs only when an attorney places client funds in the attorney's operating account, Tr. 353:5-354:1 (Respondent), is not an accurate statement of the law.

Finally, Respondent, who has been in solo private law practice for close to half a century, claimed to misunderstand what constitutes commingling. FF 20. We did not discredit Respondent's somewhat surprising testimony that he believed commingling was limited to placing client funds in an operating account (and did not encompass leaving earned fees in a trust account), but that is not a defense to the charge. *In re Smith*, 817 A.2d 196, 202 (D.C. 2003); *In re Ross*, 658 A.2d 209, 211 (D.C. 1995) ("[I]gnorance is not a defense to a commingling charge." (citing *In re Harrison*, 461 A.2d 1034, 1036 n.3 (D.C. 1983))).

> If a failure to understand the most central Rules of Professional Conduct could be an acceptable defense for a charged violation, even in cases of good faith mistake, the public's confidence in the bar and, more importantly, the public's protection against lawyer overreaching would diminish considerably. Respondent's mistake-of-law defense, therefore, does not negate to any extent his improper commingling.

Smith, 817 A.2d at 202.

B. Disciplinary Counsel Proved that Respondent Violated Rule 1.15(a) (Record-Keeping) by Failing to Keep Complete Records of Entrusted Funds.

Rule 1.15(a) also provides that "*complete records* of . . . account funds and other property shall be kept *by the lawyer* and shall be preserved for a period of five years after termination of the representation" (emphasis added). *See In re Edwards*, 990 A.2d 501, 522 (D.C. 2010) (per curiam) (appended Board Report) ("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))).[18] "The purpose of . . . requiring complete records is so that 'the documentary record itself tells the full story

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[18] Although the current D.C. Rules do not specify what constitutes "complete records," the Court of Appeals has indicated that lawyers "may wish to look for guidance on records from the 2010 ABA Model Rules For Client Trust Account Records." Rule 1.15, cmt. [2]. Rule 1 of the ABA Model Rules For Client Trust Account Records (Aug. 9, 2010) sets forth the following list of records that a lawyer should maintain:

> (a) receipt and disbursement journals containing a record of deposits to and withdrawals from client trust accounts, specifically identifying the date, source, and description of each item deposited, as well as the date, payee and purpose of each disbursement;
>
> (b) ledger records for all client trust accounts showing, for each separate trust client or beneficiary, the source of all funds deposited, the names of all persons for whom the funds are or were held, the amount of such funds, the descriptions and amounts of charges or withdrawals, and the names of all persons or entities to whom such funds were disbursed;
>
> (c) copies of retainer and compensation agreements with clients;
>
> (d) copies of accountings to clients or third persons showing the disbursement of funds to them or on their behalf;
>
> (e) copies of bills for legal fees and expenses rendered to clients;
>
> (f) copies of records showing disbursements on behalf of clients;
>
> (g) the physical or electronic equivalents of all checkbook registers, bank statements, records of deposit, pre-numbered canceled checks, and substitute checks provided by a financial institution;
>
> (h) records of all electronic transfers from client trust accounts including the name of the person authorizing transfer, the date of transfer, the name of the recipient and confirmation from the financial institution of the trust account number from which money was withdrawn and the date and the time the transfer was completed;

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 (appended Board Report) (quoting *Clower*, 831 A.2d at 1034); *see also In re Pels*, 653 A.2d 388, 396 (D.C. 1995) (finding Rule 1.15(a) violation when attorney showed a "pervasive failure" to maintain contemporaneous records accounting for the flow of client funds within various bank accounts). Thus, "[t]he records themselves should allow for a complete audit even if the attorney or client is not available" to explain them. *Edwards*, 990 A.2d at 522 (appended Board Report).

Here, Disciplinary Counsel has proven by clear and convincing evidence that Respondent failed to keep complete records of entrusted funds. Respondent maintained neither a separate ledger for each client's funds in the IOLTA account nor a general ledger tracking all funds going in and out of that account. FF 16-18. The lack of complete records fell short of what the Rules require—namely that complete records be maintained "*by the lawyer*," D.C. Rule 1.15(a) (emphasis added), and that those records allow "any audit of the attorney's handling of client

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> (i) copies of [monthly] trial balances and [quarterly] reconciliations of the client trust accounts maintained by the lawyer; and
>
> (j) copies of those portions of client files that are reasonably related to client trust account transactions.

(brackets in original); *see also* D.C. Bar Rules of Professional Conduct Review Committee, Final Report for Public Comment—Proposed Changes to D.C. Rule 1.15 Comments [1] and [2] (March 2026) (https://www.dcbar.org/getmedia/269a2494-9c9d-4f22-88ad-e82ff0176829/Final-Report-for-Comment-on-Rule-1-15-Comments-1-and-2-March-6-2026).

funds by [Disciplinary] Counsel [to] be completed even if the attorney or the client, or both, are not available," *Clower*, 831 A.2d at 1034.

Even had the bank been able to provide some of the necessary financial records, *see* FF 18, Respondent had an independent duty to maintain his own complete records regardless of their potential availability elsewhere. Rule 1.15(a) (requiring that complete records be kept "by the lawyer"); Rule 1.15, cmt. [2].

"Complete records" does not mean "some records." Respondent accordingly violated the record-keeping requirements of Rule 1.15(a).

C. Disciplinary Counsel Proved that Respondent Violated Rule 8.1(b) by Knowingly Failing to Respond to Disciplinary Counsel's Lawful Demands for Information.

Rule 8.1(b) provides that "a lawyer . . . in connection with a disciplinary matter, shall not . . . knowingly fail to respond reasonably to a lawful demand for information from . . . [a] disciplinary authority." Thus, a knowing failure to respond to a request from Disciplinary Counsel regarding a complaint violates Rule 8.1(b). *See, e.g.*, *In re Lea*, 969 A.2d 881, 888 (D.C. 2009). Note that "Rule 8.1(b) specifically addresses the requirement of responding to [Disciplinary] Counsel as opposed to the more general requirements of Rule 8.4(d)." *In re Rivlin*, Bar Docket Nos. 436-96 et al., at 40 n.20 (BPR Oct. 28, 2002), *recommendation adopted*, 856 A.2d 1086 (D.C. 2004).

Here, Disciplinary Counsel has proven by clear and convincing evidence that Respondent knowingly failed to provide documents in response to Disciplinary Counsel's subpoenas and subsequent orders of the Board and the Court of Appeals.

FF 43, 45, 47. Disciplinary Counsel also has proved by clear and convincing evidence that Respondent knowingly failed to respond to Disciplinary Counsel's requests for narrative information regarding the IOLTA account and Respondent's handling of funds coming into and leaving that account. *See* FF 40, 45. Respondent offered no excuse for his failure to provide the numerous narrative responses that Disciplinary Counsel had sought.

Among the documents subpoenaed by Disciplinary Counsel on November 8, 2023, were records pertaining to the IOLTA account. FF 41; DCX 56. Sixteen bank statements covered by that subpoena were not produced until the following March, FF 44; DCX 59, and then only after Disciplinary Counsel had asked the Court of Appeals to enforce the November subpoena, FF 44. Also, Respondent failed to respond to written questions propounded by Disciplinary Counsel on November 8, 2023, *see* FF 42; DCX 56, even after the Board ordered him to do so, FF 45. Respondent acknowledged that he received the November 8, 2023, request and subpoena, FF 42, so he knew about those documents. Despite his knowledge of the significance of the requests and subpoenas, Respondent claimed he did not know whether he had ever responded to Disciplinary Counsel but thought he had, *see* FF 46.

Disciplinary Counsel has proven by clear and convincing evidence that Respondent knowingly failed to respond reasonably to Disciplinary Counsel's lawful demand for information.

D. Disciplinary Counsel Proved that Respondent Violated Rule 8.4(d) by Seriously Interfering with the Administration of Justice.

Rule 8.4(d) provides that it is professional misconduct for a lawyer to "[e]ngage in conduct that seriously interferes with the administration of justice." Failure to respond to Disciplinary Counsel's inquiries and subpoenas, as well as failure to comply with orders of the Board and the Court, constitutes a violation of Rule 8.4(d) as well as a violation of Rule 8.1(b). Rule 8.4, cmt. [2]; *see, e.g.*, *Doman,* 314 A.3d at 1231; *In re Daniels*, 299 A.3d 541, 542 (D.C. 2023) (per curiam) (finding a violation of both Rule 8.4(d) and 8.1(b) for failure to comply with Board order compelling a response); *In re Thompson*, 195 A.3d 64 (D.C. 2018) (per curiam) (finding a violation of Rule 8.4(d) for failure to comply with Court order compelling a response). Failure to respond to Disciplinary Counsel's inquiries may violate Rule 8.4(d) even where Disciplinary Counsel does not first file a motion to compel compliance with its subpoenas. *See Doman*, 314 A.3d at 1231. The Rule covers both affirmative actions by attorneys and failure to correct wrongful actions by their agents. *See In re Bailey*, 283 A.3d 1199, 1210 (D.C. 2022) (finding a violation of Rule 8.4(d) where the respondent "was made aware of his failures to comply with the initial subpoena and took no meaningful steps to personally remediate that failure or to ensure that his attorney did so").

For the same reasons that Disciplinary Counsel has established that Respondent violated Rule 8.1(b), Disciplinary Counsel has established that Respondent seriously interfered with the administration of justice. In addition, Disciplinary Counsel has established that Respondent failed to respond to orders of

the Board and the Court of Appeals, FF 45; FF 47, which separately constitutes a violation of Rule 8.4(d). *See Daniels*, 299 A.3d at 542; *Thompson*, 195 A.3d at 64.

E. Disciplinary Counsel Proved that Respondent Violated D.C. Bar Rule XI, § 2(b)(3) by Failing to Comply with Orders of the Court and the Board.

D.C. Bar R. XI, § 2(b)(3) provides that "[f]ailure to comply with any order of the Court or the Board" shall be a ground for discipline. Here, for the reasons set forth in Parts IV.C. and D. above, Disciplinary Counsel has proven by clear and convincing evidence that Respondent failed to comply with orders of the Court and the Board.

V. RECOMMENDED SANCTION

In this case, Disciplinary Counsel has asked the Hearing Committee to recommend the sanction of a sixty-day suspension with a fitness requirement. For the reasons described below, we recommend the sanction of a sixty-day suspension, fully stayed on the condition that Respondent be placed on supervised probation for one year, with conditions, including monitoring by PMAS. If Respondent does not fully comply with the practice monitor's requirements for a period of twelve consecutive months or fails to comply with the other conditions of his supervised probation, we recommend that he be required to serve the previously stayed suspension and establish his fitness to practice law upon any application for reinstatement.

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. He engaged in commingling for a long period of time. Moreover, the commingling was not accidental but due at best, by his own admission, to a misunderstanding of what constitutes commingling. His failure to comply with requests for a response and with the subpoena required orders from both the Board and the Court of Appeals. Despite the orders, Respondent still has not fully complied.

2. Prejudice to Clients

Respondent engaged in prolonged commingling in multiple client matters. Respondent's keeping of his earned fees in the trust account meant that he failed to protect the identity of client funds, which put those entrusted client funds at risk for being misappropriated. *See Rivlin*, 856 A.2d at 1095 (misuse of trust account by keeping earned fees in the account put clients' funds at risk); *see also In re Edwards*, Board Docket No. 15-BD-030, at 16 (BPR July 25, 2019) ("While neither party argues that any client was prejudiced by Respondent's misconduct, the extensive commingling coupled with Respondent's lack of recordkeeping was so severe and pervasive that Disciplinary Counsel simply could not determine whether or not any misappropriation had occurred."), *recommendation adopted*, 278 A.3d 1171 (D.C. 2022) (per curiam).

3. Dishonesty

The Hearing Committee does not believe Disciplinary Counsel has established dishonesty during the disciplinary investigation or in his testimony before the Hearing Committee.[19]

4. Violations of Other Disciplinary Rules

Respondent violated four rules: Rule 1.15(a), Rule 8.1(b), Rule 8.4(d), and D.C. Bar Rule XI, § 2(b)(3). The Rule 1.15(a) violation involved two separate ethical failures (commingling and record-keeping). The remaining three rule violations involve the same type of misconduct over a prolonged period.

5. Previous Disciplinary History

Respondent has prior disciplinary history. In 2009, Respondent was reprimanded by the Maryland Court of Appeals (now known as the Maryland Supreme Court) for his negligent handling of a matter and failing to acknowledge Maryland Bar Counsel's requests for information for four months. *Attorney Grievance Comm'n v. Queen*, 967 A.2d 198 (Md. 2009) (DCX 72).

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[19] We believe Respondent's testimony was affected by his forgettery. Respondent avoided appearing to testify falsely by responding, in effect, that "If Disciplinary Counsel says something is so, then it's so." *See, e.g.*, Tr. 361:11-12; Tr. 363:13-14; Tr. 367:7-13; Tr. 368:14 (Respondent). Respondent came across as somewhat befuddled and forgetful, and the Committee does not believe that this is sufficient to show clear and convincing evidence of dishonesty while testifying.

6. Acknowledgement of Wrongful Conduct

Respondent acknowledged his wrongful conduct grudgingly, if at all. Indeed, he seemed to go to considerable lengths to avoid either acknowledging or denying his wrongful conduct. Overall, this factor is aggravating.

7. Other Circumstances in Aggravation and Mitigation

Disciplinary Counsel suggests that the additional work involved in attempting to have Respondent cooperate with the disciplinary investigation is an aggravating factor. We agree.

C. Sanctions Imposed for Comparable Misconduct

Commingling and record-keeping violations. Respondent failed to keep adequate records of entrusted funds. He also commingled, over a period of many years, personal and entrusted funds. The Court and Board generally have imposed sanctions ranging from a non-suspensory sanction (reprimand or censure) to a thirty-day suspension for record-keeping and commingling violations. *See, e.g.*, Order, *In re Klass*, Board Docket No. 13-BD-041 (BPR Dec. 22, 2014) (issuing Board reprimand where there were significant mitigating factors, including that no client was harmed, respondent expressed genuine remorse, and took immediate steps to correct problems in her account management); *In re Mott*, Bar Docket No. 246-01 (BPR July 28, 2005) (recommending public censure where misconduct was aggravated by duration of commingling over several months, but mitigated by no harm to client, previous unblemished history, and acknowledgement of the misconduct), *recommendation adopted where no exceptions filed*, 886 A.2d 535

(D.C. 2005) (per curiam); Order, *In re Canty*, Bar Docket No. 310-02 (BPR Dec. 31, 2003) (issuing Board reprimand where in aggravation, commingling occurred over a thirteen-month period, but in mitigation, no harm to any client, full cooperation with Disciplinary Counsel, and the respondent rarely practiced personal injury); *In re Salgado*, Board Docket No. 16-BD-041 (BPR Oct. 23, 2018) (recommending thirty-day suspension with fitness requirement where in aggravation, commingling was of lengthy duration and involved vulnerable immigration clients, and respondent had previous disciplinary history and failed to acknowledge wrongfulness of the misconduct), *recommendation adopted where no exceptions filed*, 207 A.3d 168 (D.C. 2019) (per curiam); *In re Iglehart*, 759 A.2d 203 (D.C. 2003) (per curiam) (imposing thirty-day suspension); *In re Ukwu*, 712 A.2d 502 (D.C. 1998) (per curiam) (imposing thirty-day suspension, fully stayed, in favor of probation with conditions).

Here, Respondent's commingling lasted for a significant length of time: at least seven years. Despite his many years of experience as a solo private law practitioner, he claimed to misunderstand what constituted commingling and expressed little, if any remorse about his misconduct and the risk he caused to his clients and others by failing to appropriately shield their funds.

Failure to cooperate with Disciplinary Counsel. Generally, the Court has imposed discipline ranging from a public censure to a brief suspension for violations of Rules 8.1(b), 8.4(d), and D.C. Bar R. XI, § 2(b)(3). *See In re Silverman*, Bar Docket No. 04-BG-73 (BPR Dec. 7, 2004) (recommending public censure where

respondent ultimately participated in the disciplinary process, acknowledged she received Disciplinary Counsel's requests for information and a Board order, and filed an answer as well as a written response to the underlying complaint), *recommendation adopted in consolidated matter*, *In re Greenspan*, 910 A.2d 324 (D.C. 2006); *In re Kaufman*, 878 A.2d 1187 (D.C. 2005) (per curiam) (issuing public censure where in mitigation, respondent participated in disciplinary process, filed an answer, conceded his violations of the Rules, and ultimately submitted written response to Disciplinary Counsel's inquiry letter); *Lea*, 969 A.2d at 894 (imposing thirty-day suspension with reinstatement conditioned on the filing of a response to underlying disciplinary complaint and a fitness requirement); *In re Godette*, 959 A.2d 61 (D.C. 2008) (imposing thirty-day suspension, with fitness requirement if respondent did not successfully complete six hours of CLE and respond to underlying disciplinary complaint within ninety days of Court order, where in aggravation, respondent evaded service of process, did not respond to complaint, and did not participate in disciplinary proceedings); *In re Solomon*, 945 A.2d 614 (D.C. 2008) (per curiam) (imposing 120-day suspension with reinstatement conditioned on full compliance with Disciplinary Counsel's requests for information and proof of fitness); *In re Scanlon*, 865 A.2d 534 (D.C. 2005) (per curiam) (imposing thirty-day suspension with reinstatement conditioned on filing response to disciplinary complaint and completion of six hours of CLE where in aggravation, respondent never responded to complaint, did not file an answer, and did not participate in disciplinary proceedings).

Here, Respondent did file an Answer and participated in the disciplinary proceedings. He did respond to Disciplinary Counsel's inquiry letter, but his response was delayed and incomplete. He also did provide some records requested by Disciplinary Counsel's subpoena but did so only after Disciplinary Counsel sought a Court order enforcing the subpoena.

Respondent's noncooperation in this case is compounded by the fact that he was disciplined for comparable conduct in 2009. DCX 72 (*Attorney Grievance Comm'n v. Queen*, 967 A.2d 198 (Md. 2009)).

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. A suspension represents "a 'commensurate response to the attorney's past ethical misconduct,' whereas 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 Respondent 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.

We believe this is a close case—one that warrants the use of supervised probation and Respondent's work with an assigned practice monitor, but not necessarily a fitness requirement. *See In re Edwards*, 870 A.2d 90, 97 (D.C. 2005) (noting that fitness requirement may have practical effect of considerably lengthening a respondent's period of suspension); *In re Fox*, 66 A.3d 548, 555 (D.C. 2013) (describing appointment of a practice monitor as a "thoughtful, targeted response" to respondent's poor record-keeping).

Based on Respondent's own testimony as well as other evidence in the record, we are concerned that Respondent remains unclear about the proper use of a trust account and the avoidance of commingling entrusted funds with his own fees. For that reason, we believe that to protect the public, oversight by PMAS during a one-year supervised probation is needed.

We, therefore, recommend the following conditions of the one-year supervised probation:

(1) Within thirty days of the Court's order imposing the probation, Respondent shall accept the terms of the probation by countersigning the Board order implementing the probation. *See* Board Rule 18.1(a).

(2) Within fourteen days of signing the Board order, Respondent shall meet with Dan Mills, Esquire, Manager of the Practice Management Advisory Services (PMAS) of the District of Columbia Bar (or his successor or designee). At that meeting, Respondent shall execute a waiver allowing PMAS to communicate directly with the Office of Disciplinary Counsel regarding his compliance. When

he meets with PMAS virtually or in person, he will make any and all records relating to his practice available for its review.

(3) Mr. Mills and/or the assigned practice monitor will conduct a full assessment of Respondent's practices, including but not limited to reviewing financial records, client files, and engagement letters. During his probation, Respondent shall consult regularly with Mr. Mills and/or the assigned practice monitor on the schedule PMAS establishes. Respondent must be in full compliance with Mr. Mills and/or the assigned practice monitor's recommendations for the entire period of probation. Mr. Mills and/or the assigned practice monitor will submit quarterly (every three months) written reports to the Board, with copies to Disciplinary Counsel and Respondent.

(4) Within fourteen days of signing the Board order, Respondent shall confer with the Office of Disciplinary Counsel to ensure his full compliance with all still-outstanding requests for information in this matter. Within sixty days of signing the Board order, Respondent shall provide Disciplinary Counsel with written confirmation of his compliance.

(5) Respondent will not be required to notify his existing clients of his probation.

(6) If Respondent is found to have violated the conditions of his probation by a preponderance of the evidence, *see* Board Rule 18.3(d), he may be required to immediately serve the previously stayed suspension with a fitness requirement consistent with the Court's order of probation, *see* Board Rule 18.3(h) and D.C. Bar

R. XI, § 3(a)(7). *See, e.g.*, *Fox*, 66 A.3d at 555-56 (imposing a requirement that the respondent serve the stayed portion of his suspension and demonstrate his fitness to practice law if he violated the terms of probation); *In re Bettis*, 855 A.2d 282, 290 (D.C. 2004) (imposing a requirement that respondent serve a period of suspension and demonstrate fitness to practice if he failed to timely pay restitution or agree to conditions of probation).

If Respondent does not accept the terms of probation within thirty days of the Court's order, the sixty-day suspension should be imposed with a fitness requirement for reinstatement. *See* D.C. Bar R. XI, § 16.

VI. CONCLUSION

For the foregoing reasons, the Committee finds that Respondent violated D.C. Rules 1.15(a), 8.1(b), and 8.4(d), plus D.C. Bar Rule XI, § 2(b)(3), and recommends that he should receive the sanction of a sixty-day suspension, fully stayed in favor of one year of probation to be supervised and monitored by PMAS, with conditions, as noted above. We further recommend that Respondent's attention be directed to the requirements of D.C. Bar R. XI, § 14, and their effect on eligibility for reinstatement. *See* D.C. Bar R. XI, § 16(c), in the event the sixty-day suspension is imposed.

AD HOC HEARING COMMITTEE

Eric L. Hirschhorn, Chair

Sally Winthrop, Public Member

Pamela Soncini, Attorney Member