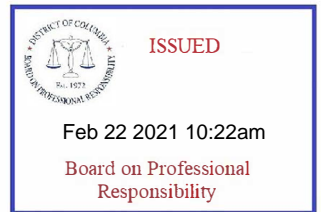


DISTRICT OF COLUMBIA COURT OF APPEALS  
BOARD ON PROFESSIONAL RESPONSIBILITY



In the Matter of: :  
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 JONATHAN C. DAILEY, : D.C. App. No. 18-BG-811  
 : Board Docket No. 16-BD-071  
 Respondent. : Bar Docket Nos. 2015-D104 &  
 : 2015-D246  
 :  
 A Disbarred Member of the Bar of the :  
 District of Columbia Court of Appeals :  
 (Bar Registration No. 448141) :

ORDER OF THE BOARD ON PROFESSIONAL RESPONSIBILITY

The Court of Appeals previously remanded this matter to the Board “for consideration of a sanction appropriately tailored to [R]espondent’s violations of Rules 1.15(a), (c), and (d) and Rule 1.7(b)(4).” *In re Dailey*, 230 A.3d 902, 915 (D.C. 2020) (per curiam) (disagreeing with the Board’s recommendation that Respondent engaged in reckless misappropriation, and holding that his misappropriation was negligent). In a separate proceeding, on December 23, 2020, the D.C. Court of Appeals disbarred Respondent as reciprocal discipline following his Maryland disbarment for misconduct unrelated to the above-captioned matter. Order, *In re Dailey*, D.C. App. No. 20-BG-439; see *Att’y Grievance Comm’n of Md. v. Dailey*, 225 A.3d 1032 (Md. 2020).

In light of the reciprocal discipline, Disciplinary Counsel has filed a motion to dismiss this matter without prejudice. Disciplinary Counsel explains that the Court does not impose consecutive disbarments and it “would conserve the resources of the Board and the Court” not to further litigate the question of sanction in this

matter. Mot. at 4. Disciplinary Counsel argues that if Respondent seeks readmission to the D.C. Bar,

he should be required to address (1) the adjudicated violations of Rules 1.15(a), (c), and (d) and Rule 1.7(b)(4), which the Court has concluded he committed; (2) the facts underlying the additional Rule 1.15(a) violation of intentional misappropriation found by the Hearing Committee; as well as (3) the misconduct found by the Court of Appeals of Maryland that resulted in his reciprocal disbarment in the District of Columbia.

*Id.* at 1. Respondent has not filed any opposition to the motion to dismiss, the time for doing so having expired.

On November 3, 2016, Disciplinary Counsel had filed a four-count Specification of Charges, alleging that Respondent committed violations of District of Columbia Rule of Professional Conduct (“Rule”) 1.7(b)(4) in Count I; Rule 1.15(a) (intentional misappropriation), (c), and (d) in Count II; Rule 1.15(a) (reckless misappropriation), (c), and (d) in Count III; and Rule 1.15(a) (commingling and incomplete record-keeping) in Count IV. After a hearing on the merits and the issuance of the Ad Hoc Hearing Committee’s Report on January 29, 2018,<sup>1</sup> the Board issued its own report finding that Respondent had committed the charged Rule violations in Counts I, III and IV, but it declined to apply Rule 1.15 to the litigation funding arrangement at issue in Count II. *See In re Dailey*, Board Docket No. 16-BD-071, at 2, 19-25 (BPR July 30, 2018). In its decision, the Court noted that it was

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<sup>1</sup> The Hearing Committee found that Respondent had committed all the charged violations and recommended that he be disbarred based on the intentional misappropriation in Count II and the reckless misappropriation in Count III.

not disturbing the Board’s handling of the misappropriation charge arising out of the litigation funding arrangement, among other Rule 1.15 charges, in Count II:

The Board declined to find a violation of Rule 1.15 as it related to respondent’s conduct in his use of alternative litigation funding because the substantive law relating to alternative litigation financing was undeveloped and the application of ethical rules to those circumstances raises “weighty policy questions.” Because neither Bar Counsel nor respondent takes exception to that finding, we do not address or disturb it.

*Dailey*, 230 A.3d at 906 n.1 (citing *In re Delaney*, 697 A.2d 1212, 1214 (D.C. 1997)).<sup>2</sup> As such, the charged Rule 1.15 violations in Count II have not been fully adjudicated, unlike the Rule violations found in Counts I, III and IV, which have been adjudicated, with only the sanction to be determined.

In the event that Respondent seeks reinstatement to the D.C. Bar, he will be required to present evidence regarding “the nature and circumstances of the misconduct for which [he] was disciplined,” along with evidence bearing on other reinstatement factors. *In re Cleaver-Bascombe*, 220 A.3d 266, 267 (D.C. 2019) (per curiam) (reinstatement following an original proceeding); *In re Mba-Jonas*, 118 A.3d 785, 786 (D.C. 2015) (per curiam) (reinstatement following reciprocal suspension). Due to the unique procedural posture of this case, where Respondent has been disbarred as reciprocal discipline, Respondent will not have received any discipline for the adjudicated misconduct in Counts I, III and IV if the motion to

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<sup>2</sup> In addition to the Rule 1.15(a) intentional misappropriation, Respondent had been charged in Count II with violating Rule 1.15(c) (failing to promptly notify a third-party of the receipt of entrusted funds), Rule 1.15(c) (failing to promptly render a full accounting), and Rule 1.15(d) (failing to keep disputed funds in an escrow account). Specification, ¶ 14.

dismiss is granted. However, this procedural anomaly will not relieve him of the obligation to address the adjudicated misconduct in Counts I, III and IV in the event that he seeks reinstatement. *See In re Mandel*, 745 A.2d 333 (D.C. 2000) (per curiam) (where the respondent was already disbarred in this jurisdiction, the pending reciprocal proceeding was dismissed without prejudice “to future consideration of the facts to which respondent stipulated in the Maryland proceeding in the event respondent petitions this court for reinstatement”).

The Count II conduct presents a somewhat different issue because it has not been fully adjudicated by the Court. However, Board Rule 9.8 allows a Hearing Committee in a reinstatement matter to consider “[e]vidence of unadjudicated acts of misconduct occurring prior to the Court’s order of disbarment,” provided certain conditions are met, including notice that Disciplinary Counsel intends to raise the unadjudicated misconduct in a future reinstatement proceeding. Disciplinary Counsel’s motion provides such notice of its intent to present evidence regarding “the facts underlying the intentional misappropriation” found by the Hearing Committee in Count II.

Upon consideration of the foregoing, and it appearing that dismissal of the above-captioned matter, without prejudice, is in the interest of justice and promotes judicial economy; it is hereby

ORDERED that Disciplinary Counsel's motion to dismiss without prejudice is granted.

BOARD ON PROFESSIONAL RESPONSIBILITY

By:

A handwritten signature in blue ink, appearing to read 'M. Kaiser', with a long horizontal flourish extending to the right.

Matthew G. Kaiser, Chair

All members of the Board concur in this Order.