DISTRICT OF COLUMBIA COURT OF APPEALS
BOARD ON PROFESSIONAL RESPONSIBILITY

In the Matter of:	:	
	:	
PETER N. NJANG,	:	
	:	Board Docket No. 15-BD-075
Respondent.	:	Bar Docket No. 2010-D123 and
	:	2011-D010
An Administratively Suspended Member of the	:	
Bar of the District of Columbia Court of Appeals	:	
(Bar Registration No. 456012)	:	

REPORT AND RECOMMENDATION OF THE
BOARD ON PROFESSIONAL RESPONSIBILITY

Disciplinary Counsel[1] charged Respondent, Peter N. Njang, with violations of District of Columbia Rules of Professional Conduct (the "Rules") 1.5(c); 1.15(a); and D.C. Bar Rule XI, § 19(f).[2] An Ad Hoc Hearing Committee, in a Report and Recommendation dated October 26, 2016, found that there was clear and convincing evidence that Respondent violated all charged Rules. Because the Hearing Committee concluded that Respondent engaged in intentional misappropriation, it recommended that Respondent be disbarred pursuant to *In re Addams*, 579 A.2d 190 (D.C. 1990) (en banc).

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[1] The Specification of Charges was filed by the Office of Bar Counsel. The District of Columbia Court of Appeals changed the title of Bar Counsel to Disciplinary Counsel, effective December 19, 2015. We use the current title herein.

[2] Effective March 1, 2016, Section 19(f) was deleted from D.C. Bar Rule XI, following the recommendation of the Board of Governors of the D.C. Bar that Section 19(f) was largely duplicative of Rule 1.15. *See* Order, No. M-251-15 (D.C. Feb. 4, 2016) (deleting Section 19(f)); Notice, No. M-251-15 (D.C. Oct. 27, 2015) (requesting comment on the proposal to delete Section 19(f)). We consider the charged violation of Section 19(f) because it was in effect at the time of the alleged misconduct.

Neither Respondent[3] nor Disciplinary Counsel took exception to the Report and Recommendation of the Hearing Committee, and thus the Board has decided the matter based on the record. Board Rule 13.5. The Board, having reviewed the record, concurs with the Hearing Committee's factual findings as supported by substantial evidence in the record, with its conclusions of law as supported by clear and convincing evidence, including the finding that Respondent's misappropriation was intentional, and with the recommended sanction of disbarment.

The Hearing Committee found ample evidence of intentional misappropriation in the case of Jean Marie Sigmou, who was involved in an automobile accident on or about September 8, 2009. Respondent received a total of $7,500 in insurance settlements in Mr. Sigmou's case. He paid $2,341 to medical providers, and gave Mr. Sigmou a check for $2,659, which left only $2,500 remaining from the insurance checks. However, before Mr. Sigmou cashed his check on March 9, 2010, Respondent withdrew $4,600 from his trust account ($800 on January 13; $2,900 on January 21; $300 on February 22; and, $600 on March 3). As a result, there were insufficient funds in the trust account when Mr. Sigmou cashed his check, resulting in an overdraft. Thus, Respondent misappropriated funds due to Mr. Sigmou. *See In re Edwards*, 990 A.2d 501, 518 (D.C. 2010) (appended Board Report) (misappropriation occurs where "the balance in the attorney's . . . account falls below the amount due to the client [or third party], regardless of whether the attorney acted with an improper intent").

[3] Respondent did not participate in proceedings before either the Hearing Committee or the Board.

In a letter to Disciplinary Counsel, Respondent admitted that this overdraft was a result of his "tampering" with the trust account and that he had no excuse for his conduct, and he sought mercy. While his letter does not explain precisely what Respondent means by tampering, read in the context of his failure to offer any justification for the overdraft, it is clear that Respondent was acknowledging that he intentionally took money out of the trust account, knowing that such a withdrawal was not permitted. Thus, Respondent's misappropriation was intentional.

For these and other reasons set forth in the Hearing Committee's Report and Recommendation, which is attached hereto and adopted and incorporated by reference, we recommend that Respondent be disbarred, the sanction mandated by *Addams*.

BOARD ON PROFESSIONAL RESPONSIBILITY

By: /DB/
David Bernstein

Dated: December 21, 2016

All members of the Board concur in this Report and Recommendation.

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

In the Matter of:	:	
	:	
PETER N. NJANG,	:	
	:	Board Docket No. 15-BD-075
Respondent.	:	Bar Docket No. 2010-D123 and
	:	2011-D010
A Member of the Bar of the District	:	
of Columbia Court of Appeals	:	
(Bar Registration No. 456012)	:	

REPORT AND RECOMMENDATION OF THE AD HOC HEARING COMMITTEE

Disciplinary Counsel[1] charges Respondent Peter N. Njang with serious violations of the District of Columbia Rules of Professional Conduct ("Rules") arising from his representation of clients. Specifically, Disciplinary Counsel charges that Respondent intentionally or recklessly misappropriated client funds, failed to maintain complete records of entrusted funds, and failed to inform a client in writing of how the client's settlement proceeds would be disbursed. Disciplinary Counsel alleges this conduct violated Rules 1.5(c); 1.15(a); and D.C. Bar Rule XI, § 19(f).[2] Disciplinary Counsel recommends that Respondent be disbarred for his misconduct. Respondent has not participated in these proceedings.

The matter is before an Ad Hoc Hearing Committee, consisting of Thomas S. DiLeonardo, Esquire, Chair; Sara K. Blumenthal, Public Member; and Arlus J. Stephens, Esquire, Attorney

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Member. As described below, the Hearing Committee finds by clear and convincing evidence that Respondent committed the violations alleged in the Specification of Charges. The Hearing Committee recommends that Respondent be disbarred.

I. Procedural History

On July 18, 2015, Disciplinary Counsel personally served Respondent with a Petition Instituting Formal Disciplinary Proceedings and the Specification of Charges ("Petition"). DX A.[3] Respondent did not answer the Specification within the time required by Board Rule 7.5. A pre-hearing conference was held on September 10, 2015. Disciplinary Counsel was represented by Assistant Disciplinary Counsel Traci M. Tait, Esquire. Notice of the pre-hearing conference was sent to Respondent at his address of record with the D.C. Bar, and the address where he was served with the Specification of Charges. The notice sent to his address of record was not returned. The notice sent to the address where Respondent was served was returned as undeliverable. Respondent did not appear at the pre-hearing conference, and no counsel appeared on his behalf. The Chair noted on the record that Respondent had the right to proceed *pro se* or to be represented by counsel, and that Board Rule 19.5 provides for the appointment of counsel if Respondent is indigent. The Chair also recited the consequences provided in the Board Rules for failing to answer the Specification of Charges.

The Hearing Committee Chair subsequently issued an order memorializing the pre-hearing conference and schedule entered there. On October 27, 2015, this order was mailed to Respondent at the address where Disciplinary Counsel served Respondent with the Petition, and at the address Respondent used on a letter he wrote to the Hearing Committee Chair dated September 30, 2015.

[3] "DX" refers to Disciplinary Counsel's exhibits. "Tr." refers to the transcript of the hearing. "FF" refers to the Hearing Committee's findings of facts in Section II, *supra*.

A copy of the transcript of the pre-hearing conference was mailed to Respondent at those addresses.

A hearing was held on October 15, 2015. Respondent did not appear, either in person or through counsel. Respondent's former client Jean Marie Sigmou testified at the hearing. Disciplinary Counsel offered DX A through C and 1 through 21, which were admitted. Tr. 132-33.

Respondent never filed an answer, did not appear at the pre-hearing conference or the hearing (either in person or through counsel), and submitted no exhibits. The Hearing Committee received a letter from Respondent dated September 30, 2015, in which he stated that he "admit[ted] to the allegations," claimed they were the result of "sloppiness," asked for lenity, and informed the Hearing Committee that he would not attend the hearing to defend against the charges or make a case for negligent misappropriation. Respondent's letter does not constitute an answer to the Specification of Charges. It was filed well out of time, Respondent's answer having been due on August 7, 2015 – a fact noted by the Hearing Committee Chair at the pre-hearing conference. *See* September 10, 2015 Prehearing Tr. 10-11; DX B at 1 (Respondent personally served with Specification of Charges on July 18, 2015); Board Rules 7.5 (Respondent's answer due within 20 days of service). Board Rule 7.7 provides that a Respondent who fails to answer may not present "non-testimonial evidence."

At the conclusion of the testimony, the Hearing Committee concluded that Respondent violated at least one Rule of the District of Columbia Rules of Professional Conduct. Tr. 147. Disciplinary Counsel did not present any additional evidence in aggravation of sanction. *Id.*

The Hearing Committee ordered post-hearing briefs. Disciplinary Counsel filed its brief on November 10, 2015. Respondent did not file a brief.

II. Findings of Fact

The Hearing Committee finds the facts below by clear and convincing evidence. *See* Board Rule 11.5.

1. Respondent was admitted to the Bar of the District of Columbia Court of Appeals on October 6, 1997, and was assigned Bar Number 456012. DX 1.

2. Jean Marie Sigmou was involved in an automobile accident on or about September 8, 2009. DX 5c at 48. Respondent represented Mr. Sigmou in the ensuing personal injury case, agreeing to "[i]nitiate the process of recovering damages from the other party at fault in the auto accident." DX 5c at 48-168; DX 5a at 10-11.

3. Respondent's retainer agreement with Mr. Sigmou provided for a one-third contingency fee as follows:

> **Fee**
>
> Client agrees that attorney will be entitled to thirty-three and a third (33 1/3%) percent of gross settlement, that is, before payment of medical and other bills. Gross settlement shall not include client's lost wages and property damage.
>
> Client acknowledges should it be necessary that the matter results to [sic] litigation, Attorney will be entitle[d] to forty percent (40%) percent of settlement or judgment. Client will also be responsible for any costs associated with filing the case such as Court fee[s], service of process, payment of witnesses, cost of deposition[s], etc. which Client must pay out of pocket in order for the case to be litigated.

DX 5a at 10.

4. Respondent ultimately received a total of $7,500 in entrusted funds in Mr. Sigmou's case: a $2,500 check, dated December 30, 2009, for Personal Injury Protection Coverage ("PIP") from Mr. Sigmou's own insurance company (Nationwide Insurance); and a $5,000 settlement check, dated January 14, 2010, from the alleged tortfeasor's insurance company (USAA). DX 5a at 78, 120; DX 5b at 12; DX 5c at 105.

A. March 8, 2010 Overdraft

5. On March 10, 2010, Disciplinary Counsel received an overdraft notice from M&T Bank that Respondent had overdrawn his Interest on Lawyers Trust Account ("IOLTA") numbered 9895 on March 8, 2010. DX 2. On that date, (a) Respondent's IOLTA contained $593.80 and (b) Respondent's client, Jean Marie Sigmou, cashed check number 1131 for $2,659.00, which later was dishonored for insufficient funds. *Id.*; *see* Tr. 137.

6. Disciplinary Counsel opened an informal inquiry and wrote to Respondent on March 18, 2010, enclosing the overdraft notice and a notice of support for practitioners offered by Regulation Counsel. DX 3.

7. On March 30, 2010, Disciplinary Counsel subpoenaed Respondent's client file in Mr. Sigmou's case, including all financial records related to settlement and disbursements in his matter. *Id.*

8. By letter dated March 23, 2010 (DX 4), Respondent wrote in full:

> I am responding to your letter of March 18, 2010 regarding my tempering [sic] into clients [sic] account. I have no excuse to give and if I gave one, it would be very flimsy. My only request is mercy and a promise that I will never do that again. It is the first and the last. That account has been there for almost ten years. This is the first time I did it. Again, I do not want to make an excuse though I may have one but it would be a flimsy excuse. I am deeply remorseful. Thanks for your understanding.

9. On or about April 29, 2010, Respondent produced his client file in Mr. Sigmou's case, as well as some related financial records. DX 5a, b, c. Respondent also submitted some financial records pertaining to the period prior to Mr. Sigmou's settlement. DX 5c at 14-44.

10. The records Respondent produced did not include a disbursement sheet for Mr. Sigmou, and there was no document reflecting payment to Mr. Sigmou's medical providers, costs, expenses, or Respondent's fee. Nor did the documents in Respondent's client file fully account

for how Respondent disbursed the $7,500 in entrusted funds in Mr. Sigmou's case. *See generally* DX 5a, b, c.

11. On March 27, 2016, Disciplinary Counsel subpoenaed M&T Bank to produce Respondent's IOLTA records for the period January 1, 2009 through January 31, 2011. DX 6 at 169-179. Respondent was the only signatory on the account. DX 6a at 177-78. The records produced by M&T Bank revealed the following:

12. On January 8, 2010, M&T Bank posted the deposit of Mr. Sigmou's $2,500 PIP check from Nationwide Insurance. DX 7 at 184, 188. The deposit raised Respondent's IOLTA balance from $126.80 to $2,626.80. DX 7 at 184.

13. In January 2010, Respondent wrote checks against the $2,626.80 balance in the IOLTA, as follows:

- On January 13, 2010, Respondent wrote check number 1127 payable to himself for $800 with no memorandum notation or other means that would enable him to document any entitlement to the money. DX 7a at 195. This check cleared the bank on the same date. *Id.*; DX 7 at 184.
- On January 13, 2010, Respondent wrote check number 1129 for $283 payable to "Emergency Medicine Associates," with no memorandum, but a handwritten notation of "Jean Marie Sigmou" and an account number. DX 7b at 196. This check cleared the bank on January 19, 2010. *Id.*; DX 7 at 184.
- On January 14, 2010, Respondent wrote check number 1130 for $92 payable to "Holy Cross Hospital," with a handwritten memorandum notation "Emergency Room Services" and a handwritten notation of "Virginia Chaziva" and an account number.

DX 7c at 197. This check, containing an apparent date drafting error ("1/14/09"), cleared the bank on January 19, 2010. *Id.*; DX 7 at 184.

- On January 13, 2010, Respondent wrote check number 1128 for $58 payable to "Imaging Associates of Washington" with a handwritten memorandum notation "med bill for Jean Marie Sigmou," as well as handwriting at the top of the check of "Jean Marie Sigmou" and an account number. DX 7d at 198. This check cleared the bank on January 20, 2010. *Id.*; DX 7 at 184.

14. On January 20, 2010, M&T Bank posted the $5,000 settlement check from the opposing insurance company in the Sigmou matter. On that date, Respondent's IOLTA balance rose to $6,393.80 (check number 1128 for $58 had already posted). DX 7 at 184.

15. On January 21, 2010, Respondent wrote check number 1132 payable to himself for $2,900, dated "1/21/10," and containing the handwritten memorandum notation "Jean Marie." DX 7e at 199. This check cleared the bank on January 22, 2010. *Id.*; DX 7 at 184.

16. On January 22, 2010, Respondent wrote check number 1131 payable to Mr. Sigmou for $2,659; however, Respondent did not provide the check to Mr. Sigmou until March 8, 2010, at or near the same date Mr. Sigmou cashed the check at M&T Bank. DX 9 at 204, 206; Tr. 137; *see also* FF 22, *infra*. Mr. Sigmou's attempt to deposit check number 1131 resulted in the overdraft that prompted Disciplinary Counsel to investigate Respondent's handling of funds. *See* FF 5, *supra*.

17. Respondent's ending IOLTA balance for January 2010 was $3,493.80. DX 7 at 184.

18. Respondent's IOLTA received no deposits (other than $0.55 and $0.87 in interest) between January 20 and March 8, 2010. DX 7 at 184; DX 8 at 200; DX 9 at 204.

19. In the meantime, however, Respondent wrote two checks from the IOLTA. On February 18, 2010, Respondent wrote check number 1133 payable to "Doctors Care Chiropractic Center, PC" for $2,000, with a handwritten memorandum notation "Jean Marie Sigmou." DX 8b at 203. This check cleared the bank on February 25, 2010, leaving a balance of $1,193.80. DX 8 at 200. On February 22, 2010, Respondent wrote check number 1134 payable to himself for $300, with no memorandum notation. DX 8a at 202. This check cleared the bank on February 23, 2010. DX 8 at 200.

20. On February 28, 2010 and March 1, 2010, Respondent's ending IOLTA balance was $1,193.80. DX 8 at 200; DX 9 at 204. As noted above, by this time, Respondent had already written Mr. Sigmou a check for $2,659, but he did not deliver it until March 8, 2010. *See* FF 16, *supra*. There was not enough money in the IOLTA to cover the $2,659 check.

21. On March 3, 2010, Respondent wrote another check to himself, check number 1135, for $600 with no memorandum notation or other means that would enable him to document any entitlement to the money. DX 9 at 204, 206. This check cleared the bank on March 4, 2010, leaving an IOLTA balance of $593.80, not enough to cover the $2,659 check. *Id.*

22. On March 8, 2010, Mr. Sigmou met Respondent at Respondent's office, and Respondent provided Mr. Sigmou with check number 1131 (dated "1/22/10") representing $2,659 in settlement proceeds. Tr. 137; DX 9 at 204, 206. On that same date, Mr. Sigmou went to Respondent's bank, cashed the check, and received the funds on the spot. Tr. 137; DX 9 at 204, 206.

23. Check number 1131 was posted by the bank on March 8, 2010, and left a negative IOLTA balance of $2,065.20. DX 9 at 204, 206.

24. On March 9, 2010, the bank reversed payment of Mr. Sigmou's check for insufficient funds. DX 9 at 204, 207-08. On March 19, 2010, Respondent transferred $2,900 into his IOLTA. DX 9 at 204, 210-11.

25. On March 22, 2010, check number 1131 for $2,659 cleared the bank. DX 9 at 204. In summary, Respondent received a total of $7,500 in entrusted funds in Mr. Sigmou's case. DX 7, DX 7a-e. He paid $2,341 to medical providers, and $2,659 to Mr. Sigmou, which left only $2,500 remaining from the insurance checks. However, he paid himself $4,600 ($800 on January 13, $2,900 on January 21, $300 on February 22, and $600 on March 3), from these funds before Mr. Sigmou deposited his check, resulting in the March 9 overdraft in his trust account.[4]

B. December 22, 2010 Overdraft

26. On or around January 6, 2011, Disciplinary Counsel received a second overdraft notice from M&T Bank, indicating that Respondent had overdrawn his IOLTA on December 22, 2010. DX 19 at 265-66. On that date, check number 1098 for $1,400 dated December 22, 2010 and payable to "LR Solutions," with a handwritten memorandum notation "Research services/JD Nursing," was presented to the bank for payment but dishonored for insufficient funds. DX 18 at 252-57. Respondent's IOLTA contained only $1,275.57 at the time check number 1098 was presented for payment. DX 18 at 252, 256; DX 19 at 266.

27. On January 6, 2011, Disciplinary Counsel sent Respondent a letter and subpoena *duces tecum* enclosing the overdraft notice and seeking an accounting of the funds in Respondent's IOLTA for the previous year (January 1, 2010 through the date of production), including supporting documents. DX 19 at 261-69.

[4] Assuming that the $126.80 in his trust account when he received the Sigmou payment reflected funds held in trust to pay the $92 bill, plus his own funds of $24.80, Respondent paid himself $4,575.20 from Mr. Sigmou's insurance checks.

28. On January 21, 2011, Respondent provided Disciplinary Counsel with his written response and enclosed some documents from the relevant period. DX 20.

29. In his response, Respondent explained that the overdraft resulted from his "miscalculations." Respondent stated that his client, JD Nursing & Management Services, Inc. ("JD Nursing"), had advanced him $3,000, from which he paid $2,900 to LR Solutions to conduct research and draft the Complaint, Arbitration Demand and a Memorandum of Law in connection with JD Nursing's case; a filing fee of $120; "mailing [of] about $40.92"; and "photocopying [of] about $20.00" for a "total of $3,080.92." DX 20 at 272. Respondent wrote that his "practice is not doing well" and "that is why [he] is not able to concentrate on many things." *Id.* Regarding this overdraft, Respondent also wrote that "I had taken some money out of the account which was mine though unfortunately, through carelessness, I withdrew more than I should have withdrawn." *Id.*

30. Enclosed with his January 21, 2011 letter to Disciplinary Counsel, Respondent produced some financial records; however, those records did not provide a clear accounting for the funds contained in his IOLTA from January 1, 2010 through January 21, 2011. DX 20. And, although Respondent sought additional time to gather and submit the documents requested through the Disciplinary Counsel's subpoena, Respondent did not provide any additional documents. DX 20 at 273.

31. Besides failing to produce an accounting of his IOLTA for 2010, Respondent failed to produce financial or other records sufficient for Disciplinary Counsel to prepare one. *See generally* DX 3; DX 4; DX 5a, b, c; DX 19; DX 20. For example, Respondent failed to produce client disbursement sheets, medical providers' bills, copies of settlement checks, releases, and retainer agreements – *i.e.*, the tools necessary to verify that incoming and outgoing IOLTA funds

were properly deposited and disbursed in 2010. DX 3; DX 4; DX 5a, b, c; DX 19; DX 20. Nor did Respondent produce a ledger or some other set of financial records explaining his IOLTA's activity for that year. *See generally* DX 3; DX 4; DX 5a, b, c; DX 19; DX 20.

32. Disciplinary Counsel asked Respondent to explain the IOLTA's purpose and the nature of the funds deposited therein. DX 19 at 262-263; DX 19 at 268-69. However, in Respondent's responsive letter, Respondent merely replied "IOLTA account," without elaboration. DX 20 at 273.

33. Disciplinary Counsel asked Respondent to explain in detail, for the relevant period, his usual and customary procedures, if any, for handling and processing entrusted funds, from receipt to complete disbursement. DX 19 at 263. Respondent answered:

> Usually, checks are sent me, I and the client go to the Bank and deposit the amounts in the case of personal injury cases; I disburse proceeds to medical providers, write a check to the client with detail [sic] explanation of how the money was distributed. I sometime [sic] do not take my one third in a block and sometimes take less than one third in order not to discourage clients and making them think that I am greedy. I put my relationship with them above the financial part.

DX 20 at 273.

34. Respondent acknowledged at least one instance of a $3,000 advance for fees paid by JD Nursing. DX 20 at 272. He deposited the check on September 29, 2010. DX 15 at 242, 244-45. Respondent produced no financial or other records to Disciplinary Counsel indicating that he earned any of the fees. *See generally* DX 20.

35. Respondent produced no records demonstrating whether he appropriately disbursed the funds from JD Nursing to himself and others, despite Disciplinary Counsel's document subpoena and request for accounting covering the JD Nursing deposits and withdrawals. *Compare* DX 15 at 242, 244, DX 16 at 248, 250, *and* DX 18 at 252, 254, 256, *with* DX 19 at 261-69.

C. Respondent's Records

36. The documents Respondent did produce were often illegible and/or lacking necessary detail; consequently, they were of imperfect use for accounting purposes. DX 20 at 286-322; *See generally* DX 5c at 21-44.

37. The nature of some deposits into Respondent's IOLTA was not apparent. For example, on March 19, 2010, Respondent made a $2,900 cash deposit that resulted in the bank's honoring Mr. Sigmou's check. DX 9 at 210-11; DX 21 at 2-3; *see* FF 24, *supra*. Neither Respondent's submissions nor the records produced by the bank show whether the cash was entrusted or his personal funds, at a time when the IOLTA still contained entrusted funds from Mr. Sigmou's checks. DX 7; DX 8; DX 9.

38. Respondent admitted that, on some occasions, he left his own funds in the IOLTA, but he did not provide financial records demonstrating that his were the only funds in the account. *See generally* DX 3; DX 4; DX 5a, b, c; DX 19; DX 20. Because Respondent maintained no records tracking the funds in and out of the account, he could not be sure that his funds were not mixed with those of clients and third parties whose funds he was holding in trust. DX 3; DX 4; DX 5a, b, c; DX 19; DX 20.

39. For the period covered by Disciplinary Counsel's subpoena records (2010), Respondent produced disbursement sheets (although almost no other financial records) for four clients: (a) Alice Nyabando (DX 20 at 274); (b) Michael Archibong (DX 20 at 275); (c) Rose Solomon (DX 20 at 276); and (d) Augustina N. Tabe (DX 20 at 277). However, Respondent failed to produce a disbursement sheet and complete financial records showing who was entitled to -- and received -- funds in Mr. Sigmou's case. *See generally* DX 3; DX 4; DX 5a, b, c; DX 19; DX 20.

40. Respondent failed to produce a disbursement sheet (or other financial records demonstrating proper distribution of entrusted funds) for at least two other clients whose entrusted funds he received -- Samuel Eyong and Virginia Chaziva -- during the period covered by Disciplinary Counsel's subpoena. *Compare* DX 11 at 215, *and* DX 7c at 197, *with* DX 20.

41. Because Respondent produced no ledger tracking the funds in and out of his IOLTA, it is impossible to determine from the records he provided whose funds Respondent was taking when he cashed the following checks to himself without referring to case or client, source, or entitlement to the funds:

- check number 1134 dated February 22, 2010, for $300 (DX 20 at 293);
- check number 1142 dated July 29, 2010, for $700 (DX 20 at 301);
- check number 1094 dated September 8, 2010, for $500 (DX 20 at 311);
- check number 1095 dated September 29, 2010, for $500 (DX 20 at 312); or
- check number 1126 dated January 7, 2010, for $450 (Respondent wrote "Yatumo" on the front of the check register, but not on the memo line of the check itself, and never indicated whether this payment related to a client matter). *Compare* DX 7 at 194, *with* DX 5 at 26.

42. The record evidence -- including Respondent's own memoranda on his checks -- reveals how he characterized some of the transactions in his IOLTA. For example, in his check register, Respondent identified:

- check number 1114 paying himself ("Peter N. Njang") $500 with the notation "personal use" on the memorandum line. DX 5c at 33.
- check number 1135 made out to himself ("Peter N. Njang") for an illegible amount with the notation "loan" on the memorandum line. DX 5c at 35; DX 20 at 294.

Although the amount reflected in the check register is illegible, bank records indicate Respondent paid himself $600 with check number 1135. DX 9 at 206.

- check number 1115 made out to someone other than himself (partially illegible then "Mba-Agobe") for $200 with the notation "loan from Auto Accident a/c" on the memorandum line. DX 5c at 34.
- check number 1065 made out to "John Komong" or "Komony" for $500 as "final payment reimbursement." DX 5c at 36.
- check number 1112 made out to an illegible payee (not Respondent) for $50 noting "advertisement" on the memorandum line and the additional notation "$50.00 from $500.00" below the routing and check numbers. DX 5c at 31.
- check number 1110 made out to "OSI" for $218.28 with the notation "office rent June & July 09" on the memorandum line. DX 5c at 29.
- check number 1108 made out to "Olubode Otubu" for $60 with the notation "website hosting 2nd installment" on the memorandum line. DX 5c at 27.
- check number 1127 made out to himself ("Peter N. Njang") for $800 with the notation "from Sigmou's account" on the memorandum line. DX 5c at 27.

43. In Rose Solomon's case, the insurance company agreed to settle the case for $5,686.36 and sent a check for that amount, which Respondent deposited in his IOLTA on May 12, 2010. DX 20 at 276; DX 11 at 213, 217. From those proceeds, it appears that Respondent would have been entitled to $1895.45 (one-third of the settlement amount). Nonetheless, on May 21, 2010, Respondent paid himself $2,100. DX 11 at 213, 220. Respondent provided no accounting or other records to account for his $2,100 fee. *See generally* DX 3; DX 4; DX 5a, b, c; DX 19; DX 20.

III. Conclusions of Law

A. Misappropriation

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. . . . Complete records of such 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." Misappropriation, in violation of Rule 1.15(a), is defined as "any unauthorized use of client's funds entrusted to [an attorney], including not only stealing but also unauthorized temporary use for the lawyer's own purpose, whether or not [the attorney] derives any personal gain or benefit therefrom." *In re Cloud*, 939 A.2d 653, 659 (D.C. 2007) (internal citation omitted). Misappropriation is essentially a *per se* offense and does not require proof of improper intent. *See In re Anderson*, 778 A.2d 330, 335 (D.C. 2001). It occurs where "the balance in the attorney's . . . account falls below the amount due to the client [or third party], regardless of whether the attorney acted with an improper intent." *In re Edwards*, 990 A.2d 501, 518 (D.C. 2010) (appended Board report).

To determine whether Respondent engaged in misappropriation, we must determine whether Disciplinary Counsel has proven by clear and convincing evidence that the balance in Respondent's trust account fell below the amount that he was required to hold for Mr. Sigmou. We conclude that Disciplinary Counsel has satisfied its burden. Respondent received $7,500 in insurance proceeds in Mr. Sigmou's case ($2,500 in PIP funds, and $5,000 in settlement of the claim against the tortfeasor). FF 25. He paid $2,341 in medical expenses, and wrote a check for $2,659 payable to Mr. Sigmou, leaving $2,500 remaining (presumably the amount Respondent claimed as his fee). *Id.* Disciplinary Counsel argues that Respondent was not entitled to keep one-

third of the PIP funds as part of his contingent fee, citing D.C. Legal Ethics Opinion 198 (Jan. 17, 1989) ("PIP benefits may not be included as part of any fund that is subject to a contingent fee agreement between the lawyer and the client who is in an automobile accident."). Instead, Disciplinary Counsel argues that Respondent was entitled to only one-third of $5,000 (or $1,666.67). We need not reach that issue because, even if Respondent was entitled to a $2,500 fee, he engaged in misappropriation on February 25, 2010, when the balance in his IOLTA fell below $2,659 (the amount of the check he had written to Mr. Sigmou, but had not yet given to him). *See* FF 19.

After proving misappropriation, Disciplinary Counsel must establish whether the misappropriation was intentional, reckless, or negligent. *See Anderson*, 778 A.2d at 336. Intentional misappropriation most obviously occurs where an attorney takes a client's funds for the attorney's personal use. *See id.* at 339 (citations omitted) (intentional misappropriation occurs where an attorney handles entrusted funds in a way "that reveals . . . an intent to treat the funds as the attorney's own"). In determining whether a respondent's unauthorized use of funds was reckless, one must ascertain whether the act "reveal[s] an unacceptable disregard for the safety and welfare of entrusted funds . . . . " *Id.* at 338; *see also id.* at 339 (internal citations and quotation marks omitted) ("[R]ecklessness is a state of mind in which a person does not care about the consequences of his or her action."). Further, "'[r]eckless misconduct requires a conscious choice of a course of action, either with knowledge of the serious danger to others involved in it or with knowledge of facts that would disclose this danger to any reasonable person.'" *Id.* at 339 (quoting 57 Am. Jur. 2d *Negligence* § 302 (1989)). Where Disciplinary Counsel establishes the first element of misappropriation (unauthorized use), but fails to establish that the misappropriation was intentional or reckless, "'then [Disciplinary] Counsel proved no more than simple negligence.'"

Anderson, 778 A.2d at 338 (quoting *In re Ray*, 675 A.2d 1381, 1388 (D.C. 1996)). In determining Respondent's state of mind, we "may weigh, together with all of the other evidence, an attorney's explanation for —*or conversely inability to explain satisfactorily*—the use of a client's funds in deciding whether Bar Counsel has met its burden of proving dishonest misappropriation by clear and convincing evidence." *In re Thompson,* 579 A.2d 218, 221 (D.C. 1990) (emphasis added); *see also In re Pels*, 653 A.2d 388, 395 (D.C. 1995) (attorney's inadequate or non-existent explanation for use of client funds properly considered in determination whether Disciplinary Counsel has met evidentiary burden).

With respect to Respondent's state of mind (*i.e.*, whether the misappropriation was intentional, reckless, or negligent), Respondent admitted in his response to Disciplinary Counsel that the first overdraft was a result of his "tampering" with the trust account and that he had no excuse for his conduct, and he sought mercy. *See* FF 5. While his letter does not explain precisely what he means by tampering, read in the context of his failure to offer any justification for the overdraft, it is clear that Respondent was acknowledging that he intentionally took money out of the trust account, knowing that such a withdrawal was not permitted. That is intentional misappropriation. Moreover, viewed in the light most favorable to Respondent, he was entitled to only $2,500 in fees. However, after depositing Mr. Sigmou's settlement checks worth $7,500, he wrote four checks to himself totaling $4,600, more than half of the gross settlement amount. *See* FF 15, 19, 21. Thus, the Hearing Committee concludes that Respondent engaged in intentional misappropriation, in violation of Rule 1.15(a), by clear and convincing evidence.

B. Failure to Maintain Records

Rule 1.15(a) provides that "[c]omplete records of [client and third-party] 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." D.C. Bar R. XI, § 19(f) provided:

> Every attorney subject to the disciplinary jurisdiction of this Court shall maintain complete records of the handling, maintenance, and disposition of all funds, securities, and other properties belonging to another person, or to a corporation, association, partnership, or other entity, at any time in the attorney's possession, from the time of receipt to the time of final distribution, and shall preserve such records for a period of five years after the final distribution of such funds, securities, or other properties or any portion thereof.

In *In re Edwards*, 990 A.2d 501, 522 (D.C. 2010) (per curiam), the Court explained that "[f]inancial records are complete only when an attorney's documents are 'sufficient to demonstrate [the attorney's] compliance with his ethical duties.'" 990 A.2d at 522 (quoting *In re Clower,* 831 A.2d 1030, 1034 (D.C. 2003) (finding Rule 1.15(a) and § 19(f) violations)). 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; *see also Pels*, 653 A.2d at 396 (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." *Edwards*, 990 A.2d at 522.

Respondent failed to keep required records of funds in the Sigmou, Solomon, and JD Nursing matters. Disciplinary Counsel requested records for 2010, the year in which he handled the Sigmou matter, and Respondent did not provide a full accounting; rather, he provided a set of documents that was insufficient to explain the transactions in his trust account. FF 30-32, 36-42. Disciplinary Counsel also requested records demonstrating whether he properly disbursed the JD

Nursing funds, but he failed to produce any records in response. FF 34. Finally, in the Solomon matter, Respondent produced no accounting or other records to account for the fee he withdrew. FF 43. Thus, the Hearing Committee concludes that Respondent failed to keep records of funds belonging to his clients and third-parties, in violation of Rule 1.15(a) and D.C. Bar R. XI, § 19(f), by clear and convincing evidence.

C. Failure to Provide a Disbursement Sheet

Rule 1.5(c) provides in relevant part:

> A contingent fee agreement shall be in writing and shall state the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial, or appeal, litigation, other expenses to be deducted from the recovery, whether such expenses are to be deducted before or after the contingent fee is calculated, and whether the client will be liable for expenses regardless of the outcome of the matter. Upon conclusion of a contingent fee matter, the lawyer shall provide the client with a written statement stating the outcome of the matter, and if there is a recovery, showing the remittance to the client and the method of its determination.

Comment [8] explains that 1.5(c) "requires that the contingent fee arrangement be in writing. This writing must explain the method by which the fee is to be computed, as well as the client's responsibility for expenses. The lawyer must also provide the client with a written statement at the conclusion of a contingent fee matter, stating the outcome of the matter and explaining the computation of any remittance made to the client." *See In re Bettis*, 855 A.2d 282 (D.C. 2004) (all contingent fee agreements must be recorded in writing); *In re Williams*, 693 A.2d 327 (D.C. 1997) (same); *see also In re Avery*, 926 A.2d 719 (D.C. 2007) (per curiam).

In Mr. Sigmou's case, Respondent failed to provide a writing upon conclusion of the matter setting forth the outcome, the amount of his fee, the amounts owed to third-parties, and the amount to which the client was entitled. *See* FF 10. Thus, the hearing Committee finds that Respondent failed to provide the required writing to Mr. Sigmou upon conclusion of the matter, in violation of

Rule 1.5(c), by clear and convincing evidence.[5]

IV. Recommended Sanction

In *In re Addams*, 579 A.2d 190, 191 (D.C. 1990) (en banc), the Court held disbarment is the presumptive sanction for intentional or reckless misappropriation, absent "extraordinary circumstances." The Court further held that "it is appropriate . . . to consider the surrounding circumstances regarding the misconduct and to evaluate whether the mitigating factors are highly significant and [whether] they substantially outweigh any aggravating factors such that the presumption of disbarment is rebutted." *Id.* at 195. However, "mitigating factors of the usual sort" are not sufficient to rebut the presumptive sanction of disbarment, and "[o]nly the most stringent of extenuating circumstances would justify a lesser disciplinary sanction." *Id.* at 191, 193.

Here, the Hearing Committee has found that Respondent intentionally misappropriated funds in Mr. Sigmou's case. *See* Section III.A, *supra*. Respondent has not participated in this proceeding, and he has not presented any evidence establishing that his misappropriation was caused by any extraordinary mitigating circumstances. Accordingly, pursuant to *Addams*, the Hearing Committee recommends that Respondent be disbarred.

[5] The Specification of Charges alleged that Respondent also violated Rule 1.5(c) when he failed to make the required disclosures in his fee agreement, including the rate of his fee in the event of an appeal. The record is not developed on this question, and Disciplinary Counsel did not raise this argument in its brief; thus we are unable to find clear and convincing evidence that Respondent violated Rule 1.5(c) based on his retainer agreement.

Conclusion

For the foregoing reasons, the Hearing Committee recommends that Respondent be disbarred due to his intentional misappropriation of client funds.

AD HOC HEARING COMMITTEE

/TSD/
Thomas S. DiLeonardo, Esquire
Chair

/SKB/
Sara K. Blumenthal
Public Member

/AJS/
Arlus J. Stephens, Esquire
Attorney Member

Dated: October 26, 2016