DISTRICT OF COLUMBIA COURT OF APPEALS
BOARD ON PROFESSIONAL RESPONSIBILITY

In the Matter of:	:	
	:	
SQUIRE PADGETT,	:	Board Docket Nos. 15-BD-039, 15-BD-040, 15-BD-041
Respondent.	:	
	:	Bar Docket Nos. 2013-D279, 2013-D374, 2013-D422, 2014-D150
A Member of the Bar of the District of Columbia Court of Appeals (Bar Registration No. 206128)	:	

REPORT AND RECOMMENDATION OF THE
BOARD ON PROFESSIONAL RESPONSIBILITY

Respondent, Squire Padgett, is charged with violations of the following D.C. Rules of Professional Conduct in connection with four separate disciplinary complaints: 1.15(a) (misappropriation); 1.3(a) (failure to exercise diligence and zeal); 1.3(b)(2) (intentional prejudice or damage to clients); 1.3(c) (failure to exercise reasonable promptness); 1.4(a) (failure to communicate); 1.4(b) (failure to explain matters to clients); 1.5(b) (failure to provide written statement of fee basis or rate); 1.15(a) (failure to keep records); 1.15(a) (commingling of funds); 1.15(d) (failure to return unearned fees); 1.16(d) (termination of representation); 5.1(a) (failure by partner to ensure firm's conformance to Rules of Professional Conduct); 5.1(b) (failure to ensure that subordinate lawyer conforms to Rules of Professional Conduct); 5.1(c)(2) (responsibility for Rule violation of another lawyer); 8.4(b) (criminal conduct that reflects adversely on the lawyer's honesty, trustworthiness, or fitness); 8.4(c) (dishonesty, fraud, deceit, or misrepresentation); and 8.4(d)

(serious interference with administration of justice); as well as D.C. Bar Rule XI, § 2(b) (failure to comply with Board and Court orders).

In its May 12, 2016, Report and Recommendation, which is adopted herein and appended hereto, the Ad Hoc Hearing Committee found that Disciplinary Counsel proved Respondent's violations of the above-specified Rules by clear and convincing evidence, and it recommended disbarment as the appropriate sanction. Disciplinary Counsel took no exception to the Ad Hoc Hearing Committee Report. Respondent filed a notice of exceptions, but did not file a brief in support of any exceptions. He therefore waived oral argument. The Board has decided the matter based on the available record. *See* Board Rule 13.4(a) (a party who fails to file a brief waives the right to oral argument, and the Board will decide the matter based on the available record).

Having reviewed the record, the Board finds that the Hearing Committee's findings of fact are supported by substantial evidence in the record, and concurs with its conclusions of law and the recommended sanction of disbarment.

As detailed by the Hearing Committee, the key facts may be summarized as follows. Respondent represented Charlotte Blount for several years in an employment discrimination case. Ms. Blount contacted Respondent directly and retained Respondent's firm for the representation. Although Respondent was not the primary attorney on the case, the primary attorney, Lathal Ponder, Jr. ("Ponder"), was an employee in Respondent's law firm, and Respondent was intimately involved in the representation, keeping informed of the progress, communicating directly with

Ms. Blount, and attending meetings with her, both alone and with Ponder. Throughout the course of the representation, Ms. Blount paid Respondent's firm in excess of $50,000. Ponder eventually filed a complaint on Ms. Blount's behalf, which was dismissed on summary judgment. After the Court of Appeals reversed the dismissal and remanded the case in 2001, Respondent took no further action in the litigation. As a result, the case was closed in 2004. None of this was communicated to Ms. Blount.

After the Court of Appeals remanded the case—and indeed, throughout the rest of the representation—Respondent and Ponder made numerous misrepresentations about work that was being performed and results that were being obtained. In effect, Respondent constructed and misrepresented a progression of Ms. Blount's case that had no basis in reality. Respondent's misrepresentations included repeating and reinforcing Ponder's misrepresentations to Ms. Blount regarding a non-existent settlement and prolonged efforts to collect that non-existent settlement, including repeated fabrications about litigation proceedings, court appearances, imminent wire deposits of $15 million in settlement proceeds, and phony settlement documents. Ms. Blount suffered severe financial harm from Respondent's actions.

In the second matter, Janet Grigsby retained Respondent and Ponder to represent her in an employment matter after she filed a request for a hearing before the Equal Employment Opportunity Commission. She gave Respondent a $3,000 check as an advance for legal fees, costs or both. On February 5, 2010, Respondent deposited the check in his operating account, which had a negative balance

of ($176.15) at the time. The $3,000 deposit brought the balance to $2,772.86, but from that point forward, the balance continued to fall until March 2, 2010, when the balance was below $100. There was no written fee agreement allowing Respondent to use Ms. Grigsby's retainer before he earned it, and there was no evidence that Respondent did any work on Ms. Grigsby's matter to justify use of the fee advance.

There was no hearing in the employment matter. Ms. Grigsby's employer, the United States General Services Administration, filed a motion for summary judgment, which was granted in March 2012. The summary judgment decision indicated that Ms. Grigsby did not file an opposition. Despite taking no action on Ms. Grigsby's claim, Respondent purported to have pursued the claim for three years. In May 2012, Ponder advised Ms. Grigsby that she had a claim against her former union for not representing her in the discrimination complaint, and he took $350 from her to file a complaint. Neither Ponder nor Respondent filed a complaint, but Ponder presented her with a false settlement agreement in the amount of $315,000, and had her sign it two days after he was suspended from the practice of law. Respondent never advised Ms. Grigsby that Ponder was suspended, even when Ms. Grigsby visited Respondent at his home in early 2013 in an attempt to obtain information about the status of her case.

In addition to the client-related misconduct discussed above, Respondent failed to "make reasonable efforts to ensure that [his] firm ha[d] in effect measures giving reasonable assurance" that his firm lawyers would conform to the Rules. There was no client list, no calendaring system, and no fee agreements with clients,

among other failings. Respondent also failed to take any remedial action to correct or mitigate Ponder's misconduct, even after Respondent knew that Ponder had been suspended from the practice of law. Respondent also failed to respond to Disciplinary Counsel's written inquiries, including inquiries in its investigation of Respondent's failure to ensure the protection of client files by not paying the storage fees for the files and attempting to pay storage fees with bad checks.

The Hearing Committee determined that Respondent did not testify credibly at the disciplinary hearing, finding that "[h]is responses were largely evasive rambling, contradictory, and—particularly with respect to questions posed by Disciplinary Counsel—argumentative and combative." H.C. Rpt. at 64.

For these and other reasons stated in the Hearing Committee's report, which the Board adopts and appends hereto, the Board recommends that Respondent be disbarred. The Board further recommends that the period of disbarment run for the purposes of reinstatement from the filing of the affidavit required by D.C. Bar Rule XI, § 14(g). D.C. Bar R. XI, § 16(c); *see In re Slosberg*, 650 A.2d 1329, 1331-33 (D.C. 1994).

BOARD ON PROFESSIONAL RESPONSIBILITY

By: /PGB/
Patricia G. Butler

Dated: February 1, 2017

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:	:	
	:	
SQUIRE PADGETT,	:	
	:	
Respondent.	:	Board Docket Nos. 15-BD-039, *et al.*
	:	Bar Docket Nos. 2013-D279, *et al.*
A Member of the Bar of the	:	
District of Columbia Court of Appeals	:	
(Bar Registration No. 206128)	:	

REPORT AND RECOMMENDATION OF THE AD HOC HEARING COMMITTEE

I. INTRODUCTION

Disciplinary Counsel[1] charges Respondent, Squire Padgett, a member of the District of Columbia Bar, with numerous violations of the District of Columbia Rules of Professional Conduct related to his representation of multiple clients over the past decade. Disciplinary Counsel filed Petitions Instituting Formal Disciplinary Proceedings and Specifications of Charges against Respondent in four matters, alleging that Respondent engaged in serious and pervasive misconduct – including intentional or reckless misappropriation of entrusted funds, criminal conduct by knowingly providing checks drawn on an account with insufficient funds, other dishonest acts directed at clients and third parties, abandoning firm clients and their matters after the courts suspended the other lawyer in his firm, taking and then failing to safekeep client files and documents, and other misconduct in his dealings with his clients. Disciplinary Counsel alleges that Respondent engaged in further misconduct during Disciplinary Counsel's investigations, by failing to respond to Disciplinary Counsel's inquiries, making false and

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

misleading statements when he did respond, failing to turn over documents and comply with subpoenas, and failing to comply with Board and Court orders, including an order directing him to produce files and documents relating to his firm's representation of 32 clients who had filed complaints against Respondent's firm. Disciplinary Counsel asserts that Respondent's misconduct during Disciplinary Counsel's investigations - continuing to this day - substantially aggravates his misconduct. Disciplinary Counsel argues that Respondent should be disbarred due to the nature, extent, and duration of Respondent's misconduct, the harm it caused, and other aggravating factors.

The four charges relate not only to Respondent's alleged misconduct, but also to misconduct by another attorney named Lathal Ponder, Jr. ("Ponder"), who practiced law at Respondent's law firm during the relevant time period. Mr. Ponder was disbarred in a separate proceeding in 2012. Respondent does not dispute most of the facts established by Disciplinary Counsel at the hearing of the instant matter, some of which involved Mr. Ponder's egregious misconduct while employed at Respondent's law firm. Instead of disputing the underlying facts, Respondent presents a legal dispute about Mr. Ponder's status at Respondent's law firm. Respondent argues that at various different times, Mr. Ponder was a subordinate employee of Respondent, then became a *de facto* partner, and finally a mere co-tenant who shared offices with Respondent. Respondent argues that he had no duty to supervise Mr. Ponder and that he owed no duties to Mr. Ponder's clients, from the late-1990s onward, because he had no attorney-client relationship with them. The thrust of Respondent's defense is that Disciplinary Counsel's charges inappropriately seek to hold Respondent vicariously liable for Mr. Ponder's misconduct, and that a failure of proof dooms Disciplinary Counsel's remaining specifications about Respondent's mishandling of client funds and the remaining allegations of his misconduct.

Respondent is charged with intentional or reckless misappropriation in violation of D.C. Rule of Professional Conduct ("Rule") 1.15(a), as well as violating Rules 1.3(a) (diligence and zeal), 1.3(b)(2) (intentional prejudice or damage to a client), 1.3(c) (reasonable promptness), 1.4(a) (communication), 1.4(b) (failure to explain matter to client), 1.5(b) (written statement of fee basis or rate), 1.15(a) (failure to keep records), 1.15(a) (commingling), 1.15(d) (unearned fees), 1.16(d) (termination of representation), 5.1(a) (failure by partner to ensure firm's conformance to Rules of Professional Conduct), 5.1(b) (failure to ensure that subordinate lawyer conforms to Rules of Professional Conduct), 5.1(c)(2) (responsibility for rule violation by another), 8.4(b) (criminal conduct that reflects adversely on the lawyer's honesty, trustworthiness, or fitness), 8.4(c) (dishonesty, fraud, deceit, or misrepresentation), and 8.4(d) (serious interference with administration of justice), as well as D.C. Bar. R. XI, § 2(b) (failure to comply with Board and Court orders).

Based on the largely undisputed evidence introduced by Disciplinary Counsel during a three-day hearing, and as set forth below, the Hearing Committee finds that Disciplinary Counsel proved by clear and convincing evidence that Respondent directly committed the violations asserted in the four charges at issue. Specification of Charges, Bar Docket No. 2013-D374 and 2014-D150; Specification of Charges, Bar Docket No. 2013-D422; Specification of Charges, Bar Docket No. 2013-D279. The Hearing Committee recommends that Respondent be disbarred in light of his serious ethical lapses and direct misconduct proven at the hearing, and other aggravating circumstances.

II. PROCEDURAL HISTORY

Between June and September 2014, Disciplinary Counsel submitted to the Board Office proposed Specifications of Charges against Mr. Padgett in four separate matters. Prior to that submission, Disciplinary Counsel sent the proposed Specifications to Respondent to review and

provide relevant documents or information. *See* Bar Exhibit ("BX") 27; BX 48; BX 103. The charges were approved by a Contact Member in April 2015 and Disciplinary Counsel filed them with the Board on April 17, 2015. BX 3-5. Respondent was personally served with the Petitions, Specifications of Charges, and other documents on April 20, 2015. BX 6.

On June 8, 2015, the Board Chair granted Disciplinary Counsel's motion to consolidate the four matters against Respondent and assign them to the same hearing committee. The Chair of the Ad Hoc Hearing Committee held a pre-hearing conference on June 29, 2015, and scheduled a hearing for July 27 and 28, 2015. Thereafter, Respondent retained counsel and, at his request, the hearing was postponed until September 2015.

The hearing was held on September 15 and 16, 2015, and November 4, 2015, before an Ad Hoc Hearing Committee composed of Robert L. Walker, Esquire, Chair; Ms. Nicole Evers; and Thomas E. Gilbertsen, Esquire. Respondent attended the hearing and was represented by counsel. Disciplinary Counsel called six witnesses: (1) Charlotte Blount, Respondent's former client; (2) Robert Moody, Ms. Blount's brother-in-law; (3) William Lewis, Sr., Ms. Blount's husband; (4) Daniel Cross, the Vice President of American Self Storage; (5) Kevin O'Connell, a Disciplinary Counsel investigator; and (6) Respondent.[2] Disciplinary Counsel also offered documentary evidence, BX 1-111, which the Hearing Committee admitted with the exception of BX 110. Transcript of Hearing ("Tr.") 315-20, 473-75, 669-70, 745-48, 758-59. Respondent testified when called as a witness by Disciplinary Counsel, but otherwise Mr. Padgett offered no witnesses nor documentary evidence at the hearing.

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[2] Disciplinary Counsel subpoenaed another witness, Janet Grigsby, to testify, but she failed to appear on the September 2015 hearing dates, stating her medical condition prevented her from doing so. Disciplinary Counsel delivered another subpoena to Ms. Grigsby for the final hearing day, but Ms. Grigsby again failed to appear. *See* Tr. 727-28 (O'Connell).

The Chair issued an order directing the parties to file, and setting deadlines for, their post-hearing briefs. Disciplinary Counsel's opening brief was timely filed on December 14, 2015, together with a motion to exceed the page limitations. Respondent did not oppose the motion, which the Chair granted. Respondent's brief was timely filed on December 14, 2015. Disciplinary Counsel and Respondent also filed reply briefs on December 31, 2015.

III. FINDINGS OF FACT

The Ad-Hoc Hearing Committee finds that Disciplinary Counsel established the following facts by clear and convincing evidence:

1. Respondent became a member of the Bar of the District of Columbia Court of Appeals in 1975. BX 1; Respondent's Proposed Findings of Fact, filed Dec. 14, 2015 ("RPF") at No. 1. Respondent is also licensed to practice in Michigan. *Id.*; Tr. 506 (Respondent).

2. In the mid 1980's Respondent was a member of the law firm of Baccus, James & Padgett. In 1988, Respondent formed his own law firm - the Law Office of Squire Padgett. RPF 2; Tr. 507-08 (Respondent).

3. Lathal Ponder, Jr., graduated from law school in 1983, but did not pass the Bar examination and become a member of the District of Columbia Bar until November 1992. BX 2; RPF 3. Respondent was aware of Mr. Ponder's unsuccessful attempts to pass the Bar, and served as one of his references for admission to practice law in the District of Columbia. Tr. 508-09 (Respondent).

4. While at Baccus, James & Padgett, and when he formed his own firm, Respondent employed Mr. Ponder as a law clerk from 1986 to 1992. Tr. 507-8 (Respondent). When Mr. Ponder was admitted to practice law in the District of

Columbia (the only jurisdiction where he was ever licensed to practice), he was an employee of Respondent. BX 2.

5. At or around the time Mr. Ponder passed the D.C. Bar exam (Nov. 1992), Respondent employed Mr. Ponder as an associate attorney in the Law Office of Squire Padgett. RPF 3; Tr. 510, 512, 534.

6. Respondent maintains that while he was the only partner or principal of the Law Office of Squire Padgett when Mr. Ponder began practicing there in late 1992, by 1996, he and Mr. Ponder became *de facto* partners in that firm, although no formal business association or partnership agreement was ever executed. RPF 4-5. But Respondent testified that he and Mr. Ponder began discussing a partnership arrangement in 1994 or 1995, and were still discussing an agreement in 2000. Tr. 536-37 (Respondent). And in his Answer to the Specifications of Charges, Respondent admitted that he was the only partner or principal in the Law Office of Squire Padgett and was the sole signatory on that firm's trust and operating accounts. BX 7 at 1 (¶ 4) (Respondent admits BX 3 at 2, ¶ 4). Respondent's firm was always called "Law Office of Squire Padgett" and did not mention any other attorney. Tr. 525, 549, 555 (Respondent); *but see* Tr. 191, 229, 256-58 (Blount: firm may have been called "Law Office of Squire Padgett and Associates" for a time). There is no documentary evidence that the Law Office of Squire Padgett or Respondent ever held out to the public any other lawyer's name as a partner in that firm at any time.

7. During the relevant time period, Mr. Ponder and one other lawyer practiced with Respondent at the Law Office of Squire Padgett: Mr. Ponder practiced

there from 1992 through 2012; Ardelia Davis practiced there for approximately four or five years in the 2000s. Tr. 535-536, 549, 552 (Respondent).[3]

8. Respondent always maintained exclusive control over the firm's administration and financial matters. RPF 6. Respondent received all funds and checks from firm clients, including payments made by those clients for whom Mr. Ponder was working. Tr. 525-26, 543-48 (Respondent). Respondent was the sole signatory on the firm's trust and operating accounts maintained at Bank of America. RPF 13. Respondent determined what money was deposited into and withdrawn from the accounts and to whom, and in what amounts, it was paid. Tr. 525-26, 543-48 (Respondent). Respondent offered no evidence that Mr. Ponder was held out as a partner in Respondent's firm, nor that the two lawyers engaged in profit and loss sharing, shared joint control of decision-making, or that Mr. Ponder made capital contributions to the Law Office of Squire Padgett.

9. Respondent testified that his firm's policy was to provide written fee agreements to firm clients. Tr. 574-79 (Respondent). However, a number of firm clients, including Robert Moody and Charlotte Blount, testified that they did not receive written fee agreements from Respondent or Mr. Ponder. Tr. 44, 228 (Blount); Tr. 313 (Moody); BX 101-02. Respondent was unable to produce a written fee agreement for Ms. Blount and another complainant, Janet Grigsby. BX 35. Respondent also did nothing to ensure that the firm had written fee agreements in place before accepting and taking client funds. *See* Tr. 428-29; 436-37 (O'Connell); Tr. 612-13 (Respondent).

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[3] Respondent's firm also leased space to a few lawyers over the years, but none of those lawyers practiced for the Law Offices of Squire Padgett. Tr. 550-553 (Respondent).

10. Respondent's hearing testimony indicated that his law firm billed some clients on an hourly basis. Tr. 578-79 (Respondent). But Respondent and his firm did not maintain adequate time records, invoices or other records reflecting the firm's charges and the amounts received from clients or third parties on behalf of clients. Tr. 44-45 (Blount: incomplete records received about representation were obtained only upon request and after substantial delay); Tr. 299 (Moody); *see* BX 107 (Grigsby file); *see also* BX 101-02 (description of contents of other client files Respondent produced to Disciplinary Counsel lacking invoice and time record detail).

11. Respondent testified at the hearing that his firm's files included written fee agreements, billing records, correspondence, pleadings and other records relevant to client representations. Tr. 560, 567, 573-74, 577, 585, 589 (Respondent). However, as Disciplinary Counsel's investigator O'Connell cogently and credibly testified, Respondent and Mr. Ponder failed to produce files of this type for a large number of clients who filed complaints with Disciplinary Counsel against the Law Office of Squire Padgett in recent years. Tr. 404-10, 464, 469-71 (O'Connell); Tr. 528-31, 571 (Respondent)

12. Even for those clients for whom Respondent's firm did produce records, the files usually included no fee agreements, financial records, nor any work product or documentation reflecting that Respondent or Mr. Ponder had ever done any work on the matters at issue. *See, e.g.*, BX 107 (client file for Ms. Grigsby); BX 101-02 (files for 14 of 32 complaining clients subject to Disciplinary Counsel subpoena did not include financial records or any documents reflecting any legal work had been performed).

13. Respondent claimed that, in 2012, Mr. Ponder was in court on a daily basis. Tr. 593 (Respondent). Respondent's firm allegedly had a tickler system, but Respondent's testimony does not indicate whether the tickler system was consistently operable or provided him with an awareness of the client matters in litigation, where the cases were pending, filing deadlines, or hearing dates and trials. Tr. 590-94 (Respondent).

14. Respondent and his firm also did not maintain a list of firm clients. Respondent alleged that the list of clients was contained in the billing records, but these records were not produced. Respondent testified at the hearing that sometime in 2012, a firm paralegal was tasked with compiling a list of current clients, but apparently never completed the job and there was no documentation to indicate that such a list was started. Tr. 555-60 (Respondent).

15. Over time, a number of firm clients complained to Respondent about Mr. Ponder. When the complaints continued and increased in number, Respondent took no steps to evaluate the complaints and determine the corrective action that was necessary. Tr. 5221-23, 603-605 (Respondent).

16. By August 10, 2012, Respondent knew that a number of firm clients had filed complaints with Disciplinary Counsel because they had no information about their matters and Mr. Ponder had stopped communicating with them. Respondent knew of the complaints and Mr. Ponder's failure to respond to Disciplinary Counsel, and told Disciplinary Counsel that he (Respondent) would file responses on Mr. Ponder's behalf. Tr. 398, 400-01, 455, 471 (O'Connell). Respondent never did so, nor did Mr. Ponder.

Tr. 400 (O'Connell); *see* Tr. 519-21 (Respondent: Disciplinary Counsel contacted him many times).

17. In his communication with Disciplinary Counsel Investigator Kevin O'Connell on August 10, 2012, Respondent represented that Mr. Ponder had matters before the D.C. Superior Court and United States District Court for the District of Columbia, and provided the purported case names and presiding judges for two of the purported matters in federal court. BX 77; Tr. 398 (O'Connell). Mr. O'Connell contacted the federal court and checked the court records and determined that Mr. Ponder had no matters pending before that court. The cases Respondent named did not exist, and the D.C. federal court had suspended Mr. Ponder. *Id*. Mr. O'Connell communicated these facts to Respondent that day; Mr. O'Connell also communicated the facts to Mr. Ponder when he served him with a subpoena and with Disciplinary Counsel's outstanding requests for information. BX 77; Tr. 399, 463-64 (O'Connell).

18. Respondent never took any steps to ascertain Mr. Ponder's eligibility to practice law in federal court, nor the status of firm client matters Mr. Ponder was allegedly litigating, other than to ask Mr. Ponder about the federal court suspension. Tr. 515-18, 523-24 (Respondent). According to Respondent, Mr. Ponder claimed he did not know about the suspension, and Respondent decided not to pursue the matter, notwithstanding Disciplinary Counsel's continued calls and e-mails to Respondent. Tr. 517-19, 521, 524 (Respondent).

19. Disciplinary Counsel continued to contact and communicate with Respondent about the clients' complaints, which increased after Respondent's firm was evicted on August 15, 2012. Tr. 401-2 (O'Connell); Tr. 519, 521 (Respondent). On

August 27, 2012, and again on September 6, 2013, Mr. O'Connell e-mailed Respondent about the complaints from clients who did not know the status of their matters, where their files were, or how to reach Mr. Ponder. BX 78; Tr. 402, 404-06 (O'Connell).

20. Respondent eventually responded by providing Disciplinary Counsel an invalid e-mail address for Mr. Ponder. Respondent later provided a working e-mail for Mr. Ponder, but Mr. Ponder refused to cooperate or communicate with Disciplinary Counsel. BX 79; Tr. 406 (O'Connell).

21. In early September 2012, Respondent visited Disciplinary Counsel's office to discuss the matters pending against Mr. Ponder. Disciplinary Counsel advised Respondent about the pending complaints and informed Respondent that his firm's clients did not know the status of their matters and needed their files and documents and that Mr. Ponder had provided false information and documents to many of them. Disciplinary Counsel also confirmed with Respondent that the federal court had suspended Mr. Ponder, that case names Respondent had provided to Disciplinary Counsel did not exist, and that Disciplinary Counsel would be seeking Mr. Ponder's suspension from the practice of law. Tr. 404-05, 407, 464, 469-71 (O'Connell); Tr. 513, 516, 520-21, 527, 533 (Respondent took Disciplinary Counsel's notification about its plan to suspend Mr. Ponder as evidencing its intent to also have him incarcerated.). After learning of these developments from Disciplinary Counsel, Respondent failed to take any remedial action to protect his firm's clients.

22. Disciplinary Counsel continued to telephone and e-mail Respondent in an effort to obtain information and documents for the firm's clients who had complained. BX 80; Tr. 519, 521-22 (Respondent). On September 12, 2012, Disciplinary Counsel

personally served Respondent with subpoenas *duces tecum* for client files and documents relating to his firm's representation of eight clients who had filed written complaints with Disciplinary Counsel. BX 81; Tr. 405-07 (O'Connell); Tr. 527 (Respondent).

23. Respondent did not provide any files or documents responsive to the subpoenas. Tr. 407 (O'Connell). Disciplinary Counsel continued to contact Respondent in an effort to obtain the files and documents and repeatedly told Respondent that Mr. Ponder had not provided any responsive documents and was refusing to cooperate with Disciplinary Counsel's investigation. BX 82 (Oct. 1, 2012 e-mail); Tr. 407 (O'Connell); *see* Tr. 519, 521 (Respondent). Respondent failed to comply with the subpoenas, although he testified that he and Mr. Ponder were regularly in the storage units where Respondent had put the client files. Tr. 528-31, 571 (Respondent).

24. On October 2, 2012, Mr. O'Connell served Mr. Ponder with a court order enforcing Disciplinary Counsel's subpoenas for client files and documents and with a motion filed pursuant to D.C. Bar R. XI, § 3(c) seeking a temporary suspension of his license to practice in D.C. BX 82; Tr. 408-09 (O'Connell). Within minutes, Respondent called O'Connell about Mr. Ponder and the subpoenaed client files. BX82; Tr. 408 (O'Connell); *see* Tr. 533-34 (Respondent). Mr. O'Connell discussed with Respondent the pending suspension motion against Mr. Ponder and reminded Respondent that he too was legally obligated to produce responsive firm files. BX 82; Tr. 408-9, 465 (O'Connell).

25. Despite further reminders, Respondent failed to produce responsive client files and other subpoenaed documents to Disciplinary Counsel. BX 85-86 (Oct. 17,

2012 e-mails to Respondent); Tr. 528-30, 648-49 (Respondent admits files were put in storage and remained there until late November 2013).

26. On October 16, 2012, having received a certified copy of an order of the United States District Court for the District of Columbia suspending Mr. Ponder from the practice of law, the D.C. Court of Appeals suspended Mr. Ponder pursuant to D.C. Bar R. XI, § 11(d), effective immediately. BX 83. Disciplinary Counsel served Mr. Ponder with the Court's suspension order two days later, on October 18, 2012, together with the five Specifications of Charges that had been filed against him (all of which were public record documents). BX 84; Tr. 410 (O'Connell). Respondent was aware of the suspension order at that time. Tr. 513 (Respondent); Tr. 410-11, 465 (O'Connell informed Respondent about Mr. Ponder's suspension).

27. Respondent took no steps in the fall of 2012 or any time thereafter to notify firm clients about Mr. Ponder's suspension, that Mr. Ponder could no longer represent them, or that Respondent was maintaining their client files and documents. According to Respondent, he did not have any obligations to the clients Mr. Ponder represented, even though Respondent was the only remaining lawyer in the firm and he knew Mr. Ponder had not turned over the files and had refused to cooperate with Disciplinary Counsel's investigation. Tr. 519, 521, 530-31, 555, 586, 604, 606-08, 648-50 (Respondent).

28. Even after Respondent was informed of Mr. Ponder's suspension by the federal court and, later, the D.C. Court of Appeals, Respondent never advised firm clients that Mr. Ponder could no longer represent them, and Respondent affirmatively

misled some firm clients that Mr. Ponder was presently litigating their matters in D.C. courts. Tr. 88, 121-22; 143-44; 203-04, 260 (Blount).

Representation of Charlotte Blount (2013-D279)

29. Ms. Blount was a client of Respondent's firm for several years in connection with an employment discrimination claim that Messrs. Ponder and Respondent were supposed to be pursuing on her behalf. In the summer of 1996, Ms. Blount accepted a position with the National Center for Tobacco-Free Kids (Center).[4] Approximately three months later, the Center discharged her. Tr. 39-40 (Blount). Because Ms. Blount believed that the Center had terminated her because of her race, in early October 1996, she contacted Respondent and retained his firm to pursue discrimination claims against the Center. BX 10 at 6-7; BX 31; Tr. 40-41, 206 (Blount). Ms. Blount's brother-in-law, Robert Moody, referred her to Respondent, as Respondent had represented Mr. Moody in a prior matter. RPF 19-20.

30. Respondent advised Ms. Blount that he would have Mr. Ponder, who he referred to as his associate, handle her matters. BX 23 at 1; BX 31 at 47 (Blount Aff.); Tr. 42-43, 169, 191-92, 218 (Blount); RPF 19-20. Although Respondent testified that he told Ms. Blount that Mr. Ponder was his partner (Tr. 537), Ms. Blount's testimony is more credible because (a) Mr. Ponder had been practicing law for only four years at this juncture, (b) Ms. Blount's payment was a check made out to Law Office of Squire Padgett; (c) Ms. Blount continued to communicate with Respondent about this matter

[4] Ms. Blount married William Lewis in August 2000, and thereafter was generally known as Charlotte Blount Lewis. Tr. 38, 218 (Blount). Disciplinary Counsel has referred to her by her surname Blount, which she used in the underlying employment litigation, BX 8, and her subsequent malpractice action against Mr. Ponder, Respondent, and Respondent's firm. BX 31.

throughout its long history; and (d) Respondent also testified that he and Mr. Ponder were still discussing formalizing a partnership arrangement four years later, in 2000. Tr. 43 (Blount); Tr. 285-86, 305-06 Moody); BX 2. *See also* RPF 20 (Respondent's proposed finding of Blount testimony about Padgett's representation).

31. Respondent and his firm did not provide Ms. Blount a written retainer agreement or other writing setting forth the basis or rate of the firm's fee. RPF 21; BX 31 at 4 (¶ 12); BX 31 at 47 (Blount Aff.); BX 31 at 265 (Moody Aff.); Tr. 44, 228 (Blount). Nor did Respondent and his firm provide Ms. Blount billing statements or invoices reflecting the time that Respondent, Mr. Ponder, and another firm lawyer (Ardelia Davis) spent on Ms. Blount's matter. Tr. 44-45 (Blount). Respondent's firm, however, did keep some records of the time its lawyers spent on Ms. Blount's matter through 1999, and maintained a computer system that could generate invoices, although it appears that no invoices were ever sent to Ms. Blount in the ordinary course of business. Ms. Blount did request and obtained from the firm's computer system some details about the firm's work on her matter in 1999, while her case was on appeal. BX 17; BX 31 at 4 (¶ 17), 20-22, 25-43; Tr. 45, 60-62, 64-65, 148, 217, 254-55 (Blount).

32. Respondent and Mr. Ponder requested periodic payments from Ms. Blount that she paid with cash and checks payable to Respondent or his firm, Law Office of Squire Padgett. RPF 22-23. Between 1996 and late 1998, Ms. Blount paid Respondent and his firm $50,000, for which she never received receipts. BX 31 at 3 (¶ 11), 23-24, BX 31 at 265 (Moody Aff.); Tr. 44-45, 50, 58-60 (Blount); Tr. 290 (Moody).

33. Although Respondent delegated to Mr. Ponder primary responsibility for representing Ms. Blount, Respondent continued to be involved in the representation as

an attorney at all times relevant to this engagement. Respondent periodically met with and communicated with Ms. Blount about her matter, even during the early years of the representation. RPF 34, 38-42 (acknowledging Respondent's ongoing role in this representation); BX 31 at 4 (¶ 16); Tr. 46, 48, 170-71 (Blount). Mr. Ponder would often consult with Respondent before meeting with Ms. Blount, and Respondent often joined these client meetings. BX 15 at 3; BX 31 at 12 (¶ 39), BX 31 at 48 (Blount Aff.); BX 31 at 266 (Moody Aff.); Tr. 46, 48-49 (Blount); Tr. 287 (Moody).

34. Neither Mr. Ponder nor Respondent advised Ms. Blount about an Equal Employment Opportunity agency process which Mr. Ponder pursued on her behalf. Tr. 54-55 (Blount). Also, no one at Respondent's firm informed Ms. Blount when Mr. Ponder filed a civil complaint with the D.C. Superior Court, *Blount v. National Center for Tobacco Free Kids*, 1997 CA 06468, which he did on August 15, 1997. BX 10; BX 31 at 4 (¶ 13); BX 31 at 47 (Blount Aff.).

35. Ms. Blount provided Mr. Ponder a chronology and other information about her case, but neither he nor Respondent provided her a copy of the complaint filed with the court. Tr. 51-52, 170 (Blount). As further detailed below, Respondent's firm did not provide Ms. Blount with any of the other pleadings filed in her case, including the defendant's summary judgment motion and an opposition thereto that the Law Office of Squire Padgett filed. The only documents that Ms. Blount received during the representation were a set of interrogatories and the D.C. Court of Appeals' decision overturning summary judgment for the defendant. Ms. Blount obtained copies of other court records on her own well after the fact, in 2013. BX 31 at 2; Tr. 51, 54-55, 77, 150-51 (Blount); Tr. 492-93 (Lewis).

36. On October 16, 1998, the Center filed a motion for summary judgment. Without discussing the motion with Ms. Blount, Mr. Ponder filed an opposition. BX 8 at 5; Tr. 55-56 (Blount). On December 2, 1998, the court granted summary judgment for the Center and dismissed Ms. Blount's action. *Id.*

37. Mr. Ponder called Ms. Blount and advised her of the adverse court decision and told her that he was evaluating the decision with Respondent. A week later, Ms. Blount met with Respondent and Mr. Ponder. Respondent, who led the discussion, advised Ms. Blount that she had a basis to appeal. Tr. 56-57, 224-25 (Blount).

38. Ms. Blount told Respondent that she could not afford to pay the firm's fees. Tr. 58-59 (Blount); Tr. 290 (Moody). Respondent said the firm would charge Ms. Blount $10,000 to pursue the appeal, but would wait until the case concluded to collect any additional fees and would take one-third of any recovery. BX 31 at 48 (Blount Aff.); Tr. 43, 57-59, 66, 224 (Blount); Tr. 298-91 (Moody); RPF 29 (Respondent's proposed finding acknowledging that he personally agreed to new fee arrangement for Ms. Blount's appeal). Respondent did not provide Ms. Blount anything in writing to reflect this new fee agreement. Tr. 59 (Blount); Tr. 582, 584 (Respondent); RPF 30 (acknowledging that no writing was provided to client about new fee arrangement).

39. With Mr. Moody's assistance, Ms. Blount paid Respondent and his firm an additional $10,000. BX 31 at 4 (¶ 17); BX 31 at 266 (Moody Aff.); Tr. 59-60, 255 (Blount); RPF 29.

40. On December 23, 1998, Mr. Ponder filed a notice of appeal on behalf of Ms. Blount and later filed a brief in support of the appeal with the D.C. Court of

Appeals. BX 8 at 5; BX 9 at 2; BX 23 at 2. Respondent assisted Mr. Ponder in preparing the appellate brief. BX 17 at 1 (entries referring to Respondent as Lawyer 1); Tr. 599 (Respondent acknowledging his work on client's appeal).

41. Neither Respondent nor Mr. Ponder provided Ms. Blount a copy of the appellate brief. Nor did they advise her about oral argument before the Court on April 5, 2000. BX 9 at 1; Tr. 73-74 (Blount).

42. On July 5, 2001, the D.C. Court of Appeals reversed the trial court's decision in favor of the Center and remanded the case to the trial court. BX 11.

43. Shortly thereafter, Mr. Ponder called and told Ms. Blount about the D.C. Court of Appeals' decision and advised her that her case could go forward. Tr. 74 (Blount). Thereafter, neither Respondent nor Mr. Ponder took any action to pursue Ms. Blount's remanded case against the Center. BX 31 at 5 (¶¶ 19-22); Tr. 76 (Blount); *see* BX 7 at 2 (¶¶ 18-21) (Respondent admitted BX 3 at 4 (¶ 19)). At some point, Respondent and Mr. Ponder represented to Ms. Blount that the trial court had lost or misplaced her case file. BX 31 at 5 (¶ 22); BX 31 at 49 (Blount Aff.); Tr. 78 (Blount); *see* BX 7 at 2 (¶¶ 18-21) (Respondent admitted BX 3 at 4 (¶ 20). After three years passed with no activity in Ms. Blount's case, on September 1, 2004, Mr. Ponder filed a praecipe requesting a status hearing. BX 13. But no status hearing was ever conducted, and Respondent and Mr. Ponder took no further steps to pursue Ms. Blount's case. BX 8 at 4; BX 7 at 2 (¶¶ 18-21) (Respondent admitted BX 3 at 4 (¶ 21)); RPF 32 (acknowledging that no court records indicate that Mr. Ponder took any steps to pursue Ms. Blount's case after filing 2004 praecipe).

44. Although neither Respondent nor Mr. Ponder took any action to pursue Ms. Blount's remanded case, they falsely represented to Ms. Blount, through word or action, that they were prosecuting it. Mr. Ponder continued to serve as Ms. Blount's principal contact at Respondent's firm, but Respondent communicated with Ms. Blount about her matter on numerous occasions during the post-remand period that stretched on for years without any work being done on Ms. Blount's case. BX 15 at 3; BX 23 at 1; BX 31 at 5-6 (¶¶ 20, 23); RPF 34 (acknowledging that Respondent served as a "conduit" for conveying information to Ms. Blount about her case).

45. Between 1998 and 2012, Ms. Blount was employed as the principal of IDEA Public Charter School – another client of the Law Office of Squire Padgett which Respondent personally served. Tr. 39, 103-105. (Blount). Because of Ms. Blount's schedule, many of her meetings at Respondent's firm were held on Saturdays. Mr. Ponder would check or confer with Respondent at the firm's offices before meeting with Ms. Blount, and Respondent would attend a portion of, or sometimes the entire, meeting. On occasion, Mr. Moody and later William Lewis, Ms. Blount's husband, would also sit in on these meetings with Ms. Blount. BX 15 at 3-4; BX 23 at 1; Tr. 46, 80, 171-73, 179, 207, 226, 247 (Blount); Tr. 295-300 (Moody); Tr. 480-81, 497 (Lewis).

46. Ms. Blount grew concerned about the long delays with her matter and considered finding other counsel to take over her case. But she decided to stay with Respondent's firm because of the fees she had already paid, and because Respondent and Mr. Ponder were familiar with her case. Tr. 82, 209-210 (Blount); *see* Tr. 309-10 (Moody).

47. In 2011, Mr. Ponder falsely represented to Ms. Blount that the Center had agreed to settle her claims by paying her $820,000 – $235,000 immediately and the balance in five annual installments of $117,000. RPF 35; BX 31 at 6 (¶ 25), BX 31 at 50 (Blount Aff.); BX 106 (draft version); Tr. 81, 83-84, 202 (Blount); Tr. 288 (Moody). In connection with this false representation, Mr. Ponder provided Ms. Blount a document entitled "Mutual Settlement Agreement and Release" which Ms. Blount later signed before a notary in August 2011. Ms. Blount never received a final version of the agreement. BX 23 at 2; BX 31 at 6 (¶ 25); Tr. 83, 85-87 (Blount); RPF 36.

48. Mr. Ponder told Ms. Blount that a lawyer named Jeffrey LaRocca was counsel for the Center, had negotiated the settlement, and was involved in the subsequent litigation. BX 15 at 4; BX 31 at 5-6 (¶ 22); Tr. 84, 87-88 (Blount). As Ms. Blount later learned, the Center had not agreed to a settlement and, at the time of the purported settlement, Ms. Blount's case against the Center had been inactive or closed for years. RPF 37; BX 23 at 2; BX 31 at 5-6 (¶ 20, 25); Tr. 87 (Blount). The Center had never been represented by a lawyer named Jeffrey LaRocca, and it appears this was a fictional persona of Mr. Ponder's creation. BX 31 at 6-7, 14 (¶ 25-26, 51); BX 31 at 50 (Blount Aff.).

49. Respondent was aware of Mr. Ponder's representations about a purported settlement and actively participated in conveying information about it to Ms. Blount. RPF 38; BX 31 at 50 (Blount Aff.); BX 31 at 266 (Moody Aff.); Tr. 47, 190-91, 227 (Blount). Although Respondent was an experienced employment lawyer, he never questioned Mr. Ponder about the timing of the purported settlement or its amount, notwithstanding a number of red flags that should have raised concerns about the

settlement's legitimacy, including the long period of inactivity in the underlying matter. Tr. 656-57 (Respondent).

50. Beginning in the latter half of 2011 and continuing through early 2013, Respondent and Mr. Ponder falsely represented to Ms. Blount that Mr. Ponder was regularly in court in her matter, seeking to enforce the settlement and obtaining sanctions against the Center that increased the recovery she would receive to a fantastic sum in excess of $14 million. RPF 38, 42 (acknowledging that Respondent told Ms. Blount that Mr. Ponder was taking action to enforce the settlement and was obtaining additional sanctions against the Center for failing to make settlement payments to her); BX 31 at 50-51 (Blount Aff.); Tr. 88, 90-92, 202-03, 230 (Blount). The Hearing Committee has determined that the totality of evidence in the record, and as discussed throughout this Report, clearly and convincingly establishes that Respondent often made these misrepresentations to Ms. Blount under circumstances demonstrating that he knew they must be false (at the very least the evidence establishes incontrovertibly that Respondent was willfully blind or reckless as to the patent falsity of these misrepresentations). During this period, Ms. Blount visited Respondent's offices on a regular basis to ascertain the status of her matter and the purported settlement, often meeting with Respondent to get his "interpretation" of events because Mr. Ponder was increasingly difficult for her to contact directly. RPF 42 (acknowledging that Respondent interpreted for Ms. Blount information that he purportedly received from Mr. Ponder); BX 15 at 3-4; Tr. 90-93, 141-42, 258-59 (Blount); 480-82, 497 (Lewis). Respondent often told Ms. Blount that Mr. Ponder was sending him text messages from court hearings, which Respondent would read to Ms. Blount and then respond to her

questions. RPF 42; BX 15 at 3-4; Tr. 89, 91-93, 116, 120-21, 142, 176, 180-81, 231-32, 251 (Blount); Tr. 482-84 (Lewis).

51. When Ms. Blount complained to Respondent about Mr. Ponder's lack of communication, Respondent told her that Mr. Ponder was in court on her matter, notwithstanding his knowledge of Mr. Ponder's suspension from the practice of law. BX 15 at 3; Tr. 90-91, 113-14, 142, 230-31 (Blount); Tr. 482 (Lewis); Tr. 660 (Respondent). Respondent conveyed to Ms. Blount the false reports of Mr. Ponder about the many judges supposedly involved in her case (including - purportedly, - Judges Mary Terrell, Maurice Ross, Anita Josey-Herring and Chief Judge Lee Satterfield of the D.C. Superior Court, and Judges Henry Kennedy and Paul Friedman of the federal district court). Tr. 88 (Blount); BX 15 at 5; BX 31 at 5-6 (¶¶ 22, 25-26); BX 31 at 49-50 (Blount Aff.); Tr. 88-89, 92, 146, 223, 227, 262-64, 268 (Blount). Respondent never questioned Mr. Ponder about the purported involvement of all these judges in Ms. Blount's case, nor about why Ms. Blount's case supposedly had moved from D.C. Superior Court to federal court. Tr. 661 (Respondent). Respondent told Ms. Blount that the case had become a federal criminal matter due to interference with the bank wire transfers of the funds owed her. Tr. 268-70 (Blount). The facial implausibility - indeed, the absurdity - of these representations alone supports the finding that Respondent, a seasoned trial attorney with decades of experience including at DOJ, knew they were false.

52. Respondent also conveyed to Ms. Blount the elaborately falsified reports of Mr. Ponder that the Center and its employees were interfering with the purported settlement's fulfillment, leading not only to sanctions but criminal charges against them.

Respondent's misrepresentations to his client expanded to include tales of banks that were supposedly holding the Center's funds, leading to court orders that the funds be transferred to the court registry. BX 15 at 4; BX 31 at 7 (¶ 26); BX 31 at 51 (Blount Aff.); Tr. 91-92, 116, 146, 264-65, 270 (Blount). Respondent actively participated in meetings with Ms. Blount and Mr. Ponder in which Ms. Blount was told an entirely fictitious tale about a court employee nicknamed "McGruff" who provided Mr. Ponder access to the court registry on Saturdays, so that Mr. Ponder could investigate how electronic transfers of Ms. Blount's fictitious settlement payments were being impeded. Tr. 226, 261-62 (Blount). Respondent never raised any doubts or concerns about this or any other patently falsified information that he or Mr. Ponder reported to this client. Tr. 197, 262, 265, 270-71 (Blount). Again, these misrepresentations are so far-flung and implausible that it was beyond reckless, and indeed constituted a knowing falsehood, for Respondent to convey such fantasies to his client without any attempt to verify the information. Indeed, Respondent's failure to attempt to verify such patent fictions is strong circumstantial proof that he knew they could not be verified because they were false.

53. By mid-2012, the settlement and sanction amounts that Mr. Ponder and Respondent claimed their client Ms. Blount would receive for her claims against the Center had grown from $820,000 to approximately $15 million. BX 31 at 6-7 (¶ 26-27); BX 31 at 51 (Blount Aff.); Tr. 202-03 (Blount). Respondent discussed this $15 million figure with Ms. Blount on a number of occasions, including discussions about how much of the $15 million would be retained by the Law Office of Squire Padgett as legal fees. BX 15 at 4; BX 203-04, 247, 259-69 (Blount); Tr. 583-84, 653-54 (Respondent).

At the hearing, Respondent admitted he was not aware of any employment case in which an award of this magnitude had been awarded or paid. Tr. 656-57 (Respondent). By his own admission, Respondent never saw any documentation substantiating the purported settlement or sanction awards, and he never questioned Mr. Ponder about them because Respondent claimed to be "blinded" by the prospect of receiving $5 million in fees. Tr. 599, 655-56 (Respondent); *see* Tr. 259-60 (Blount). But, again, Respondent's testimony fails to explain his conduct because it is not credible that a matter involving such a substantial sum of money never triggered a desire on Respondent's part to verify the facts. The credible inference and explanation is that Respondent knew there was no settlement and no further sanctions awards, and that is why Respondent found no need to verify the tales that Ponder - with Respondent's support and participation - was telling their client.

54. Respondent and Mr. Ponder repeatedly assured Ms. Blount that she would receive $15 million in settlement for her claims against the Center and the sanction awards, for which Respondent's firm was to receive one third as its fee. BX 15 at 3-4; Tr. 93-94 (Blount); Tr. 296-97 (Moody). In reliance on these misrepresentations, Ms. Blount arranged with Karpet King to install new flooring and carpeting in her home. BX 31 at 9-10 (¶ 32); Tr. 96-97 (Blount). Karpet King wanted some assurance from Ms. Blount that she had the funds to pay for the work and materials so, on August 2, 2012, Respondent sent an e-mail to Karpet King about the status of her case and the funds she would purportedly receive. Tr. 96-97 (Blount); Tr. 489 (Lewis). In the e-mail, Respondent represented:

> Our office represents Ms. Blount-Lewis in a civil matter that has been resolved by settlement and is before the court for addressing the final

> issues before the payouts on the settlement. Payout was to have occurred early this week after resolution of some final glitches, which are still being addressed. I would anticipate that the payout will occur very shortly – the next day or two.

BX 24 at 3. Respondent forwarded the email (which he referred to as a "text") to Ms. Blount. *Id.* There was no factual basis for Respondent's email about Ms. Blount's pending settlement payments, but Ms. Blount and Karpet King went forward with their transaction in reliance on Respondent's knowingly false, or at least reckless misrepresentation.[5] Ms. Blount provided Karpet King a check that was returned for insufficient funds, which led to a civil action and criminal complaint and conviction against Ms. Blount for passing a bad check. BX 31 at 271-72; Tr. 97-99 (Blount); Tr. 489 (Lewis).

55. In mid-August 2012, Respondent's law firm was evicted from its offices on 14th Street, N.W., for failure to pay rent. Neither Respondent nor Mr. Ponder advised Ms. Blount that the firm had closed its offices. Ms. Blount learned that Respondent no longer had law offices on 14th Street, when she went there to try to meet with him and Mr. Ponder, and saw Marshals and the firm's furniture and files on the sidewalk. Tr. 95 (Blount); BX 7 at 2 (¶ 30) (Respondent admitted he did not tell Ms. Blount of the eviction; claimed "she was not his client").

56. After the firm's eviction in mid-August 2012, Ms. Blount had even greater difficulty reaching Mr. Ponder. Ms. Blount continued to communicate with Respondent on a regular basis to get updates about the status of the fictional settlement payments

[5] Although Respondent represented to Ms. Blount and Karpet King that the funds would be paid imminently, he also told Mr. Moody that Ms. Blount should stop making purchases based on her anticipated receipt of the award. BX 15 at 4; Tr. 294 (Moody).

that Respondent led her to believe were forthcoming. During some of their calls, Respondent had Mr. Ponder with him at his home. Tr. 100-01, 185, 198-99, 265 (Blount); Tr. 484-85 (Lewis). On at least two occasions, Respondent visited Ms. Blount's house for meetings. BX 15 at 4; Tr. 95, 142-43 (Blount); Tr. 485, 488 (Lewis). Respondent misrepresented to Ms. Blount that Mr. Ponder continued to appear in court representing her in the matter and that Mr. Ponder continued to pursue the Center for the fictional settlement and sanction payments purportedly owed to her. BX 23 at 1; Tr. 185 (Blount). Based on the totality of circumstances, Respondent must have known that these misrepresentations were false.

57. Respondent continued to make these misrepresentations to Ms. Blount, even though he knew that the federal court had suspended Mr. Ponder from practice and even though he knew or should have known that there was no settlement and no sanction awards in his client's favor. BX 23 at 1; Tr. 88, 121-22 (Blount); *see* PFF 17-21. Respondent also knew about Disciplinary Counsel's motion to temporarily suspend Mr. Ponder from practicing law altogether and learned of the suspension order shortly thereafter. PFF 24-27. Neither Respondent nor Mr. Ponder ever advised Ms. Blount that the court temporarily suspended Mr. Ponder from the practice of law and that he could no longer represent her. Tr. 95-96, 177 (Blount).

58. Around the same time the D.C. Court of Appeals suspended Mr. Ponder from the practice of law in October 2012, Respondent and Mr. Ponder visited Ms. Blount's home to prepare a disbursement or closing document about the fictitious $15 million settlement/sanction award. BX 15 at 4; Tr. 143-44, 203-04, 260 (Blount); Tr. 485-86, 497 (Lewis). After preparing the document at Ms. Blount's home, Respondent

and Mr. Ponder continued to tell Ms. Blount that it was only a matter of time before she would receive the funds. BX 18; Tr. 200-02 (Blount). Although Respondent testified that he did not participate in the creation of the document or view it personally, he testified that he was aware of its contents. Tr. 582-84 (Respondent); Tr. 142-45 (Blount). When the funds were not forthcoming, Respondent and Mr. Ponder told Ms. Blount that "hackers" had interfered with the banks and prevented fund transfers to the court registry. Tr. 238 (Blount). Respondent himself embellished the false claims about hackers by telling Ms. Blount that her settlement/sanction award funds were electronically transferred to his trust account and that he had seen indications of this on his computer screen, but that the funds had mysteriously "disappeared" and he was working with the bank to resolve the problem. BX 15 at 4-5; Tr. 144-45 (Blount).

59. As time went on and as part of the overarching scheme to deceive Ms. Blount about the existence and status of a settlement and additional awards relating to her employment discrimination claims against the Center, Respondent and Mr. Ponder began giving Ms. Blount ever more outlandish explanations for why she had not received the Center's settlement payments and sanction awards. Respondent and Mr. Ponder told Ms. Blount that special court proceedings were being convened to investigate and prosecute imaginary "rogues" who were trying to prevent her from getting the settlement and sanction payments, that additional security measures including Brinks trucks and police guards were being provided, that she and her husband were in danger from the Center's rogues and should stay in hiding. Respondent directly participated in conveying some of these fantastic tales to his client and knew about the

other tall tales that Mr. Ponder was telling their client. BX 31 at 10-11 (¶ 34); Tr. 92-93, 106-07, 112, 125, 146. (Blount).

60. For months, Ms. Blount lived in fear. BX 31 at 16 (¶ 61); Tr. 106, 186 (Blount). By late 2012, Ms. Blount and her husband decided they needed to move from their home, which Mr. Ponder encouraged with his fictitious tales about "rogues" knowing where she lived and claims that it was no longer safe for her to remain. In late 2012, someone attempted to break into Ms. Blount's home, and on another occasion someone took the tires from her car. Mr. Ponder led Ms. Blount to believe that the rogues were behind the attempted break-in and vandalism. BX 15 at 4; BX 31 at 10-11 (¶ 34), 16 (¶ 61); BX 31 at 52 (Blount Aff.); Tr. 94, 106 (Blount).

61. In late November 2012, Ms. Blount and her husband entered into a contract to purchase a new home for $1.8 million (BX 31 at 196-201) - an amount they could not possibly afford without the fictitious $15 million award that Respondent and Mr. Ponder continued to assure Ms. Blount was forthcoming from the Center. BX 31 at 8 (¶ 28); BX 31 at 51 (Blount Aff.); BX 31 at 192-93 (HUD-1); Tr. 102, 106-07, 183 (Blount).

62. Ms. Blount and her husband paid an earnest money, non-refundable deposit of over $18,000 to purchase the new house. Mr. Ponder contacted the settlement attorney and assured her that Ms. Blount would soon receive the fictitious $15 million settlement and sanction award payment. BX 31 at 8 (¶ 28); BX 31 at 51(Blount Aff.); BX 31 at 205 (e-mail); Tr. 108-09 (Blount).

63. It was through the builder that Ms. Blount first learned that Disciplinary Counsel charges were pending against Mr. Ponder and about Mr. Ponder's suspension

from practicing law before the federal court and the D.C. Court of Appeals. BX 31 at 52 (Blount Aff.); Tr. 95-96, 110-12, 237 (Blount). On February 6, 2013, the builder sent Ms. Blount an e-mail attaching copies of the charges that Disciplinary Counsel had filed against Mr. Ponder and the suspension order of October 16, 2012. BX 31 at 207-63 (e-mail with attachments); Tr. 110-12 (Blount). When Ms. Blount asked Respondent about the charges and suspension order, Respondent reassured her that there was nothing wrong and that it was not true that Mr. Ponder had been suspended. Respondent told Ms. Blount that he would "get to the bottom of things," but that the same rogues who were purportedly after her had again hacked into the firm's computer systems. BX 15 at 5; BX 31 at 9 (¶ 31); BX 31 at 52 (Blount Aff.); Tr. 112-14, 147, 182, 238, 241, 249-50, 272-73 (Blount); Tr. 490 (Lewis).

64. Although Ms. Blount was suspicious in early February 2013, she continued to believe - based on Respondent's and Mr. Ponder's repeated claims - that her $15 million payment was imminent. BX 15 at 1; BX 31 at 52-53 (Blount Aff.); Tr. 113-14, 237-38, 251 (Blount). Mr. Ponder and Respondent continued to tell Ms. Blount that he was attending court proceedings in her matter (although there were none). Between January and February 2013, Mr. Ponder sent Ms. Blount dozens of e-mails reporting about fictitious court hearings, FBI agents and U.S. Marshals involved in her case, fugitives who had been arrested and then escaped, failed wired transfers, rogues dressed as police officers, and other alleged activities being addressed by the court in her case. Mr. Ponder also sent Ms. Blount fabricated court papers and pleadings, to substantiate his claims. BX 31 at 56-174; Tr. 114-16, 119, 124-33 (Blount); Tr. 423-24 (O'Connell: never a federal court action involving Blount and Center; captions on

pleadings were fabricated). Although not directly copied on these e-mails between Ms. Blount and Mr. Ponder in January and February 2013, Respondent continued to be in regular contact with Mr. Ponder and knew that Mr. Ponder claimed to be in court in Ms. Blount's matter. BX 15 at 1; BX 31 at 11 (¶ 35); BX 31 at 52-53 (Blount Aff.); Tr. 113-14, 119, 121-22, 230-31, 238-39 (Blount).

65. By late-February 2013, having still not received any payments of the fictitious $15 million allegedly due her, Ms. Blount began to question more vigorously what Respondent and Mr. Ponder were communicating to her about the on-going court proceedings. With the assistance of her husband, sister, and brother-in-law, Ms. Blount learned that there was no federal court case against the Center or any of its agents. BX 31 at 11 (¶ 35); BX 31 at 52-53, 134-35 (Blount); Tr. 291-92 (Moody); Tr. 490-91 (Lewis). Ms. Blount also learned that neither Respondent nor Mr. Ponder had done anything to pursue her claims against the Center in the D.C. Superior Court since 2001. BX 31 at 11 (¶ 35); Tr. 152, 209 (Blount).

66. Ms. Blount and Mr. Moody told Respondent of what they had learned - *i.e.*, that there was no settlement, no court award, no ongoing court proceedings. Ms. Blount told Respondent she never wanted to speak to Mr. Ponder again and asked for her file. BX 15 at 5; BX 31 at 11 (¶ 36); BX 31 at 53 (Blount Aff.); Tr. 193-94 (Blount); RPF 49 (acknowledging client's request for file and admitting it was not provided). Respondent said that he would find out what was going on and get back to Ms. Blount and Mr. Moody. But Respondent never contacted Ms. Blount again. BX 31 at 11 (¶ 36); BX 31 at 53 (Blount Aff.); BX 31 at 267 (Moody Aff.); Tr. 135, 147, 193-94 (Blount); Tr. 293-94, 304 (Moody). Ms. Blount never received any money for her

claims while Respondent and his firm represented her. BX 23 at 2; BX 31 at 7-8, 12-13 (¶¶ 27, 40, 44); BX 31 at 51-53 (Blount Aff.); Tr. 87 (Blount).

67. Respondent's and Mr. Ponder's claims about a $15 million settlement (as enhanced by numerous fictitious sanction awards) and about hackers and "rogues" that prevented their client from receiving these fictional payments, impacted Ms. Blount, both emotionally and financially. Ms. Blount suffered a heart attack in early 2012, and had other health problems from which she has never recovered. BX 31 at 51 (Blount Aff.); Tr. 163, 165-66 (Blount); Tr. 291 (Moody). Ms. Blount's reliance on Respondent's and Mr. Ponder's representations also injured her financially. As noted above, based on Respondent's aforementioned personal assurances to Ms. Blount and Karpet King, Ms. Blount wrote a check for which she did not have and never received the funds to pay. Karpet King sued Ms. Blount and obtained a judgment against her for more than $23,000. BX 31 at 9-10 (¶¶32-33); Tr. 97-98, 156-57 (Blount). Karpet King also filed a criminal complaint against Ms. Blount, which led to criminal charges and a finding of guilt. At the time of the hearing in this disciplinary proceeding, Ms. Blount remained on probation. BX 31 at 280; Tr. 98, 165-66, 235-36 (Blount). Ms. Blount and her husband also lost the $18,000 security deposit and other funds they paid when contracting to purchase a new house in December 2012, also in reliance on Respondent's and Mr. Ponder's representations that she would receive $15 million. Tr. 109-10, 236 (Blount). Ms. Blount and her husband were forced to file for bankruptcy due to their lost security deposit and inability to pay Karpet King's judgment, and other debts incurred in the false belief that a large settlement payment would soon be provided to Ms. Blount. Tr. 162-63, 197 (Blount).

Ms. Blount's Bar Complaint and Civil Action against Respondent and Mr. Ponder

68. In March 2013, Ms. Blount filed a complaint against Mr. Ponder with Disciplinary Counsel, but by then Disciplinary Counsel was already pursuing five other disciplinary complaints against Mr. Ponder, which ultimately led to his disbarment. BX 31 at 53 (Blount Aff.), BX 31 at 177-81; Tr. 138, 189-90, 213-14 (Blount).

69. In July 2013, Ms. Blount filed a complaint with Disciplinary Counsel against Respondent. BX 15; BX 31 at 53 (Blount Aff.); Tr. 139, 190, 214 (Blount).

70. Disciplinary Counsel sent Respondent letters on July 23, 2013, August 5, 2013, and August 27, 2013, enclosing Ms. Blount's complaint, and requesting him to respond. BX 16; BX 19; BX 21.

71. On August 5, 2013, and September 18, 2013, Disciplinary Counsel also sent Respondent a subpoena *duces tecum* for Ms. Blount's client file and all documents relating to her representation, including the firm's financial records. RPF 88 (acknowledging receipt of Disciplinary Counsel subpoenas); BX 19; BX 87.

72. Respondent did not respond to Ms. Blount's complaint until September 23, 2013. BX 22. In the response that Respondent submitted to Disciplinary Counsel, Respondent misrepresented that his client Ms. Blount would indeed receive settlement funds from her case against the Center "once issues and problems with the accounts are resolved by Bank of America" - the bank in which Respondent maintained his own and his firm's accounts. *Id*. Respondent knew at this time that he and Mr. Ponder had not pursued Ms. Blount's court case, that Mr. Ponder had been suspended the previous year, and that there was no settlement or sanction award in favor of Ms. Blount. *See* BX 21; *see also* Tr. 275-76 (Blount); Tr. 263-65 (Respondent).

73. On September 23, 2013, Respondent also provided Disciplinary Counsel a flash drive containing electronic copies of documents (BX 22 at 13), almost all of which were copies of pleadings or correspondence in Ms. Blount's case pre-dating the D.C. Court of Appeals decision in July 2001. Tr. 152 (Blount); Tr. 424-25 (O'Connell). Respondent otherwise failed to comply with Disciplinary Counsel's subpoena seeking the production of Ms. Blount's file and other responsive documents, including those relating to the purported settlement, the billing and financial records reflecting the fees Respondent's firm charged her, the payments she made, and Respondent's handling of her funds. BX 31 at 176; Tr. 425-26 (O'Connell); *see* BX 7 at 2 (¶¶ 43-48) (Respondent admitted BX 3 at 7 (¶ 43)).

74. On November 6, 2013, Disciplinary Counsel filed with the Court and served on Respondent a motion to enforce Disciplinary Counsel's subpoenas for the files of Ms. Blount and other specified clients. BX 89; RPF 90 (acknowledging receipt of Disciplinary Counsel's enforcement motion). Respondent did not respond to the motion. RPF 91 (admitting no formal response to Disciplinary Counsel enforcement motion); BX 7 at 2 (¶¶ 43-48) (Respondent admitted BX 3 at 7 (¶ 45)).

75. On December 18, 2013, the D.C. Court of Appeals ordered Respondent to produce all documents and files described in Disciplinary Counsel's subpoenas for Ms. Blount's files, as well as the files of other specified clients, within 14 days. BX 97; RPF 92.

76. On January 6, 2014, Respondent untimely delivered to Disciplinary Counsel additional documents relating to his firm's representation of Ms. Blount. Tr. 420 (O'Connell). Virtually all the documents that Respondent produced on January 6,

2014, also pre-dated the Court's decision in July 2001. BX 31 at 176; Tr. 151-52 (Blount); Tr. 427-28 (O'Connell); *see* BX 7 at 2 (¶¶ 43-48) (Respondent admitted BX 3 at 7 (¶ 47)). Respondent never turned over the other documents in Ms. Blount's file either to Ms. Blount, as she requested, or to Disciplinary Counsel. Tr. 151-52, 155, 193 (Blount); BX 31 at 176. Ms. Blount herself obtained copies of all the court records from the court clerk's office. Tr. 492-93 (Lewis).

77. In September 2013, after filing the Disciplinary Counsel complaint, Ms. Blount wrote the D.C. Court of Appeals concerning the actions of Respondent and Mr. Ponder, and asked the Court to reinstate her case against the Center. BX 14. Three months later, the Court reissued the mandate in Ms. Blount's case, and Ms. Blount was able to pursue her claims against the Center. BX 31 at 45; Tr. 153-55 (Blount). Ms. Blount later retained and paid other counsel to represent her and, in January 2015, reached a settlement with the Center. Tr. 155 (Blount).

78. In March 2014, Ms. Blount filed a civil malpractice action against Mr. Ponder, Respondent, and Respondent's firm. BX 31; BX 30 at 5. Ms. Blount attached supporting evidence to her complaint including the e-mails that Mr. Ponder had sent her in January and February 2013, making false claims about the court proceedings and other activities in her case. BX 31 at 55-174. Respondent received copies of these e-mails, as well as the other documents attached to the complaint, when Ms. Blount served him with the summons, the complaint, and the attachments. Tr. 62, 159-60, 274 (Blount).

79. Respondent represented himself *and* Mr. Ponder in Ms. Blount's civil malpractice action. BX 33; Tr. 159-60 (Blount). Respondent never contended in that

action that he was unaware of or surprised by any of Mr. Ponder's actions or statements, including those contained in the subject e-mails. In that action, Respondent did not express any remorse or regret to Ms. Blount and did not acknowledge any wrongdoing on his or Mr. Ponder's part. Tr. 166, 276 (Blount).

80. Respondent testified that, although he was aware of Mr. Ponder's actions and misrepresentations to Ms. Blount, he did not have a conflict representing Mr. Ponder in the civil malpractice action, which he did through September 2015. Tr. 668 (Respondent). Respondent filed an answer denying that he or Mr. Ponder had done anything wrong and asked the court to dismiss Ms. Blount's claims. BX 33; Tr. 159-60 (Blount); Tr. 666-69 (Respondent).

81. Respondent refused to respond to discovery in the malpractice action, and the court sanctioned Respondent and Mr. Ponder, which sanction they refused and failed to pay. BX 30 at 4; Tr. 161 (Blount).

82. In April 10, 2015, at a hearing of which Respondent had notice, the court entered a default judgment against Respondent and Mr. Ponder based on their failure to attend the discovery hearing and comply with that court's order. BX 30 at 3, Tr. 161-62 (Blount).

83. On June 26, 2015, the court held a hearing to determine the extent of Ms. Blount's damages. BX 30 at 1. The court provided notice of the hearing to Respondent, but neither he nor Mr. Ponder attended. Tr. 161-62 (Blount). Ms. Blount testified and presented other evidence establishing the damages and harm that Respondent and Mr. Ponder caused her. At the conclusion of the hearing, the court awarded Ms. Blount $1,000,083, finding Respondent and Mr. Ponder jointly and severally liable to her. BX

30 at 2; BX 34; Tr. 161-62, 194, 242 (Blount).

84. Respondent filed an untimely motion to vacate the judgment on behalf of himself and Mr. Ponder, which the court denied in July 2015. BX 30 at 2; Tr. 194 (Blount). Respondent then filed an untimely notice of appeal on behalf of himself and Mr. Ponder. BX 30 at 1; Tr. 195-95 (Blount). On October 6, 2015, the D.C. Court of Appeals dismissed Respondent's appeal as untimely. Respondent has not made any payment to Ms. Blount in satisfaction of this judgment. Tr. 164 (Blount).

Respondent's Representation of Janet Grigsby and Misappropriation of $3,000

85. Janet Grigsby is another former client of Respondent's law firm Law Office of Squire Padgett. While Ms. Grigsby failed to appear to testify in response to Disciplinary Counsel's subpoena in this matter, most of the underlying facts are ultimately admitted in Respondent's Answer, or are uncontested in the Proposed Findings and Reply Brief that Respondent filed in this matter. The uncontested facts demonstrate that in June 2009, Janet Grigsby filed a *pro se* complaint against her employer, the United States General Services Administration (GSA), alleging that GSA had discriminated and retaliated against her. BX 107 at 3-5; *see also* BX 107 at 44.[6]

[6] The file that Respondent produced for Ms. Grigsby contained e-mails reflecting that in April 2009, Ms. Grigsby considered retaining counsel to represent her in the agency investigation, but decided to proceed *pro se*. In early April 2009, June Kalijarvi completed and filed a designation of representative form indicating that she would be representing Ms. Grigsby. BX 107 at 46-48. Later that same month, on April 27, 2009, Mr. Ponder e-mailed GSA about entering his appearance. BX 107 at 45. But there is no evidence that Mr. Ponder ever entered his appearance, or that Ms. Kalijarvi or Mr. Ponder did anything to assist Ms. Grigsby in April or May 2009, before Ms. Grigsby told the GSA on June 3, 2009, that she was proceeding *pro se*, and "d[id]n't have legal counsel at th[at] time." BX 107 at 44.

86. On November 24, 2009, the GSA sent Ms. Grigsby a letter advising her that the agency had completed its investigation and that she had a right to request a hearing before an Equal Employment Opportunity Commission (EEOC) Administrative Judge, or could request an immediate final agency decision "without a hearing." BX 104 at 3. The GSA advised Ms. Grigsby that if she wished to have a hearing before an EEOC Administrative Judge, she had to file a hearing request within 30 days. BX 107 at 3-5.

87. Ms. Grigsby, on her own, filed a request for a hearing on her complaint alleging racial discrimination and retaliation. On January 27, 2010, the EEOC sent Ms. Grigsby an Acknowledgment and Order, in which it acknowledged receipt of her request for a hearing, advised her of the Administrative Judge who would preside over her case, and provided her information about the process, including her right to counsel, take discovery, amend her complaint, and the possibility that her matter could be decided without a hearing if the Administrative Judge granted summary judgment. BX 107 at 9-13 (order sent to Ms. Grigsby, with attached designation of representative).[7]

88. Within a few days of receiving the EEOC's January 27, 2010 Acknowledgment and Order, Ms. Grigsby met with Respondent and Mr. Ponder and retained the Law Office of Squire Padgett to represent her in this employment discrimination matter. BX 35 at 1 (Ms. Grigsby's description of meeting); BX 35 at 4 (check dated February 3, 2010); RPF 51-52 (acknowledging retention began February

[7] Sometime after January 27, 2010, Mr. Ponder completed the Designation of Representative form that the EEOC had attached to the January 27, 2010 Acknowledgment and Order sent to Ms. Grigsby. BX 107 at 14; BX 46 at 15. Mr. Ponder did not date the form and there is nothing to indicate when or whether he filed it with the EEOC. BX 107 at 14.

2010, prior to which Ms. Grigsby pursued her claim *pro se*). At their meeting, Ms. Grigsby gave Respondent a check for $3,000 payable to "The Law Office of Squire Padgett" as an advance for either legal fees, costs or both. BX 35 at 1; BX 35 at 4 ($3,000 check); RPF 53 (acknowledging Ms. Grigsby provided $3,000 check "payable to Law Office of Squire Padgett for representation by Mr. Ponder.")

89. The record is unclear whether Ms. Grigsby was provided with any writing setting forth the terms of this legal engagement. Although Ms. Grigsby thought she might have received something in writing from Respondent's firm, she did not have a copy when she filed her complaint with Disciplinary Counsel. BX 35 at 1. There was no fee agreement or anything else in Respondent's firm file concerning the firm's fee or Respondent's receipt of Ms. Grigsby's $3,000, and what he did with her funds. BX 107; Tr. 429 (O'Connell).

90. On February 5, 2010, Respondent deposited Ms. Grigsby's $3,000 check in his operating account at Bank of America, account no. xxxx-xxxx-3137 (Operating Account). BX 49 at 6, 9-10; Tr. 439-40 (O'Connell). Respondent was the sole signatory on the Operating Account and had exclusive control of what funds were deposited into and withdrawn from the account. Tr. 439 (O'Connell); RPF 6. Respondent's deposit of Ms. Grigsby's check into his Operating Account was credited to the account the next business day, February 8, 2010. BX 49 at 6.

91. When Respondent deposited Ms. Grigsby's funds into his Operating Account, the account had a negative balance of -$176.15. After the deposit, the balance increased to $2,772.86. BX 49 at 6-9. By February 26, 2010, the balance had fallen to

$331.43, and by March 2, 2010, the balance was below $100. BX 49 at 7, 13; Tr. 440 (O'Connell).

92. Respondent never requested and Ms. Grigsby never authorized Respondent to take any portion of her $3,000 payment, much less the entire $3,000, without prosecuting her claims against the GSA. Tr. 611-12 (Respondent testified that he never spoke to Ms. Grigsby before taking her money for himself, claiming that she was not his client).

93. When Respondent took Ms. Grigsby's funds, he did not have a fee agreement or any other documents or evidence that Ms. Grigsby had agreed that he and his firm could treat the funds as Respondent's or the firm's property. BX 107; Tr. 612-13 (Respondent). Respondent also did not have any documents or evidence that Mr. Ponder had done any work in the matter that would entitle the firm to take any portion of the $3,000 in February 2010, or anytime thereafter. BX 49 at 6-12; BX 107; Tr. 613-14 (Respondent).

94. At the hearing, Respondent testified that he took Ms. Grigsby's money based on Mr. Ponder's assertion that *he* had done work for the client, including reading a 700-page hearing transcript. Tr. 615-16; *see also* BX 45. But there had been *no* hearing in Ms. Grigsby's employment matter against the GSA prior to February 2010, when she retained and paid Respondent's firm. BX 107 at 3-5. Thus, no transcript existed prior to February 2010. There also was no hearing - and thus no transcript - in Ms. Grigsby's matter in and after February 2010. When the matter was before the EEOC, the GSA filed a motion for summary judgment, which neither Mr. Ponder nor Respondent

opposed. BX 46 at 2. The EEOC Administrative Judge granted the motion and ruled in favor of the GSA, without hearing. BX 46 at 2-9.

95. If Respondent's firm were charging Ms. Grigsby hourly fees, as Respondent's testimony suggested, then Respondent's firm should have maintained a retainer agreement setting forth the lawyers' hourly fees, and time records and invoices reflecting the fees allegedly earned. Respondent and his firm had no such records. BX 107; Tr. 428-29, 436-37 (O'Connell); Tr. 612-13 (Respondent).

96. For the three years that Respondent's firm purported to pursue Ms. Grigsby's claim, neither Respondent nor Mr. Ponder took any steps to advance her employment discrimination case. BX 107 (Respondent's firm file for Grigsby contains no work product and consists entirely of documents created before February 2010); BX 107; Tr. 428-29, 436-37 (O'Connell).

97. In March 2012, the EEOC Administrative Judge issued a written decision granting judgment in favor of the GSA, indicating that complainant (Ms. Grigsby) had not filed an opposition to the GSA's summary judgment motion. BX 46 at 2-8; Tr. 438 (O'Connell). The decision was sent to Mr. Ponder at Respondent's firm, Law Office of Squire Padgett. BX 46 at 9.[8]

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[8] The EEOC mailed the March 2012 decision to Mr. Ponder, indicating that either Ms. Grigsby or Mr. Ponder made the EEOC aware of his involvement. The firm's file and the decision itself, however, do not reflect that Mr. Ponder or Respondent did any work, including conducting discovery or filing any motions, or a response to GSA's motion for summary judgment. BX 107. The Law Office Squire Padgett file on this matter included only the Designation of Representative form that Mr. Ponder had completed at some point after the representation began. BX 107 at 14; *see also* BX 46 at 15 (form provided by EEOC in response to FOIA request, which was blank and not completed by Mr. Ponder).

98. There is no evidence, including in the file that Respondent's firm maintained, that Mr. Ponder or Respondent notified Ms. Grigsby of the EEOC's adverse decision. Respondent and Mr. Ponder took no steps after the decision to pursue Ms. Grigsby's discrimination claims. BX 107; Tr. 433-35 (O'Connell: no record of court case for Ms. Grigsby).

99. In or around May 2012, while purporting to pursue Ms. Grigsby's claim against the GSA, Mr. Ponder advised Ms. Grigsby that she should pursue a claim against her former union, the American Federation of Government Employees (AFGE), based on its alleged failure to represent her in her employment discrimination claim against GSA. BX 35. On May 8, 2012, Mr. Ponder induced Ms. Grigsby to give him a check for $350 to pay filing fees for an action against the AFGE. Ms. Grigsby made this check payable to Mr. Ponder, and he cashed the check and took the funds for himself. BX 35 at 2-3.

100. Neither Mr. Ponder nor Respondent pursued any claims against the AFGE on behalf of Ms. Grigsby. Mr. Ponder, however, represented to Ms. Grigsby that he had filed an action against the AFGE in the United States District Court for the District of Columbia and, sometime after May 2012, provided her with a falsified complaint that he prepared and signed. BX 35 at 62-67. But neither Mr. Ponder nor Respondent filed any action on behalf of Ms. Grigsby in federal court, nor in the D.C. Superior Court, against AFGE or any other entity or person. BX 47; Tr. 433-35 (O'Connell).

101. In October 2013, Mr. Ponder provided Ms. Grigsby a falsified document purporting to be a settlement agreement with the AFGE, pursuant to which she was to receive $315,000, in exchange for dismissing her non-existent action against the AFGE.

BX 35 at 19-26. Mr. Ponder caused Ms. Grigsby to sign the settlement agreement on October 18, 2012, two days *after* the D.C. Court suspended him from practice, and the same day he was served with the Court's suspension order. BX 35 at 26; PFF 28.

102. Although there was no action against the AFGE, or any settlement, Mr. Ponder continued to falsely represent to Ms. Grigsby there was. BX 35 at 2.

103. Neither Mr. Ponder nor Respondent ever advised Ms. Grigsby that Mr. Ponder was suspended and could no longer represent her. BX 107; Tr. 519-20 (Respondent). Respondent, who had possession of Ms. Grigsby's client file, made no effort to return it to her in the fall of 2012, when Mr. Ponder was suspended, or at any time thereafter. Tr. 606-07 (Respondent). Nor did Respondent do anything to ascertain the status of Ms. Grigsby's matter, seek to assist Ms. Grigsby, or advise her to seek successor counsel.

104. Between December 2012 and January 2013, Mr. Ponder sent Ms. Grigsby dozens of text messages about the purported settlement with the AFGE. BX 35 at 28-61. Mr. Ponder claimed he was having problems getting the check from opposing counsel, whom he later identified as Robert LaRocha. BX 35 at 33. Mr. Ponder sought to excuse his inability to attend to Ms. Grigsby's matter by telling her that he was out of town or involved in other legal proceedings. BX 35 at 28-61. In a number of the text messages he sent to Ms. Grigsby, Mr. Ponder told her that he was going to court in her matter to enforce the settlement. BX 35 at 44, 46-49, 51, 54-60. Mr. Ponder also provided her a falsified motion to enforce the fictional settlement agreement, on which he included a fake caption and case number. BX 35 at 5-9; BX 47; Tr. 433-34 (O'Connell: case

number Mr. Ponder included on motion for unrelated case filed in the Eastern District of Pennsylvania).

105. In her text messages to Mr. Ponder, Ms. Grigsby expressed increasing frustration with his excuses and failure to provide the settlement check he claimed was forthcoming. BX 35 at 28-61. Ms. Grigsby asked Mr. Ponder to provide her with Respondent's number, so she could call Respondent, but Mr. Ponder failed to do so. BX 35 at 31.

106. In early 2013, Ms. Grigsby went to visit Respondent at his home in Alexandria, Virginia, seeking Respondent's assistance on this matter. Tr. 621-23 (Respondent). But Respondent did nothing to assist Ms. Grigsby during or after her visit, such as finding out what happened in her matter, conveying that information to her, or returning her papers and the fee she had paid to Law Office of Squire Padgett. BX 35, BX 38, BX39, BX 45. Respondent also did not tell Ms. Grigsby that both the federal court and D.C. Court of Appeals had suspended Mr. Ponder in 2012. *See* Tr. 519-20 (Respondent); BX 7 at 3 (¶ 28) (Respondent admitted BX 4 at 5 (¶ 28)).

107. When Ms. Grigsby later filed a Disciplinary Counsel complaint against Respondent, to which she attached the fabricated pleadings and text messages from Mr. Ponder months after his suspension, Respondent still took no steps to assist his firm's client Ms. Grigsby. BX 38, BX 39, BX 45.

Ms. Grigsby's Complaint to Disciplinary Counsel and Respondent's Failure to Cooperate

108. In September 2013, Ms. Grigsby filed a complaint with Disciplinary Counsel against Respondent and Mr. Ponder. BX 35; Tr. 744-45 (O'Connell).

109. On October 2, 2013, Disciplinary Counsel sent Respondent a letter, enclosing a copy of Ms. Grigsby's complaint with attachments, and a subpoena *duces tecum*. In the letter, Disciplinary Counsel requested that Respondent respond to the allegations in the complaint by October 18, 2013. BX 36.

110. Respondent received Disciplinary Counsel's letter and enclosures, and the subpoena, but did not respond by October 18, 2013, nor did he seek additional time to do so. RPF 58 (acknowledging receipt of October 2, 2012 Disciplinary Counsel letter, Grigsby complaint and subpoena); BX 37.

111. On October 22, 2013, Respondent sent Disciplinary Counsel a letter requesting additional time to respond. BX 38; RPF 59.

112. Disciplinary Counsel sent Respondent another letter on October 24, 2013, enclosing another copy of Ms. Grigsby's complaint, Disciplinary Counsel's previous letter, and the subpoena *duces tecum*. BX 37.

113. On October 28, 2013, Disciplinary Counsel received a letter from Respondent dated October 22, 2013, requesting an extension of time to November 15, 2013, to respond. BX 38.

114. On November 19, 2013, Disciplinary Counsel received another letter from Respondent. In this letter, which was dated November 15, 2013, Respondent did not respond to the allegations in the complaint. Instead, he contended that the complaint raised a "fee dispute" and requested that it be referred for arbitration and that Disciplinary Counsel withdraw its subpoena *duces tecum*. RPF 60; BX 39.

115. On November 19, 2013, Disciplinary Counsel sent Respondent a letter requesting him to respond to the allegations in the complaint and comply with

Disciplinary Counsel's subpoena *duces tecum*. BX 40. Respondent did neither. BX 41, BX 42; Tr. 435 (O'Connell).

116. On December 3, 2013, Disciplinary Counsel filed with the Board and served on Respondent a motion to compel his response. BX 41. On the same day, Disciplinary Counsel filed with the Court and served on Respondent a motion to enforce Disciplinary Counsel's subpoena. BX 42.

117. Respondent did not respond to either motion. Tr. 435 (O'Connell).

118. On January 6, 2014, Respondent delivered to Disciplinary Counsel a file containing documents or portions of documents that Ms. Grigsby had provided to the Law Office Squire Padgett. BX 107; Tr. 428 (O'Connell). These Law Office of Squire Padgett files did not include a retainer agreement, financial records, documents reflecting any work that Respondent or his firm performed for Ms. Grigsby, or any other documents responsive to Disciplinary Counsel's subpoena. BX 107; Tr. 428-32 (O'Connell).

119. On January 9, 2014, the Board granted Disciplinary Counsel's motion to compel and directed Respondent to file a response within 10 calendar days. BX 43. Respondent failed to do so. Tr. 435 (O'Connell). Also on January 9, 2014, the Court granted Disciplinary Counsel's motion to enforce the subpoena and directed Respondent to turn over all remaining files and documents described in the subpoena within 10 days. BX 44. Respondent failed to do so. Tr. 421 (O'Connell).

120. On January 30, 2014, Disciplinary Counsel received a letter from Respondent, dated January 27, 2014, falsely claiming that Ms. Grigsby owed his firm funds, claiming that Mr. Ponder read a 500-700 page transcript, and "[t]here were also

meetings and telephone calls etc. made on behalf of Ms. Grigsby in addressing her claim" - for which he provided no information or supporting documents, including time and billing records. RPF 61 (acknowledging Respondent's position in opposition to Grigsby complaint and Disciplinary Counsel subpoena was that Ms. Grigsby "*owed the firm*" for legal services provided and that her "fee dispute" should be referred to arbitration) (emphasis added); BX 45;[9] Tr. 624 (Respondent).

121. Respondent knew there was no basis for his claim that Ms. Grigsby owed money to Law Office Squire Padgett, as confirmed by his own firm's file (BX 107) and the documents and information provided by Ms. Grigsby. BX 35; Tr. 619, 621, 624-25, 628-29 (Respondent).[10]

122. Ms. Grigsby was subpoenaed to testify but did not attend the hearing on November 4, 2015. Tr. 726-28. But the statements in her complaint were not contested by Respondent in his Answer to the relevant charges nor in his post-hearing Proposed Findings. Respondent's defense to the related charges are only that (a) he did not have

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[9] Respondent also represented in his response that American Self Storage or Disciplinary Counsel had not turned over all the files that he had placed in storage, and that American Self Storage was not responding to his efforts to pay for the rent he owed. BX 45. Given the totality of the evidence on this point, Respondent had no basis for these representations and these representations cannot be credited. *See* Tr. 420 (O'Connell); Tr. 377 (Cross).

[10] As discussed, the client file that Respondent and his firm maintained for Ms. Grigsby did not include any work product or evidence that Mr. Ponder or Respondent did any work or had taken any action to pursue her claims against the GSA. The evidence in this matter establishes that the file did not include a transcript because a hearing was never held, and the documents it did include pre-dated the firm's involvement. BX 107. Assuming Mr. Ponder located any of the materials that Ms. Grigsby had provided Respondent's firm (which given the size of the file could not have taken more than one hour), neither he nor Respondent pursued her employment matter or provided any service of any benefit. But Mr. Ponder pretended to do so, later presenting Ms. Grigsby with a falsified complaint and settlement documents and, significantly, without seeking additional fees from her.

an attorney-client relationship with Ms. Grigsby; and (b) Mr. Ponder reviewed a 700-page hearing transcript which represented past legal services for which Ms. Grigsby's initial $3000 payment to Law Office of Squire Padgett was rightly applied. *See* RPF 51-62. As we conclude below, the undisputed facts demonstrate that an attorney-client relationship existed between Respondent and Ms. Grigsby and that there never was a 700-page hearing transcript for Mr. Ponder to review.

Respondent's Abandonment of Clients and Client Files, Knowing Provision of Bad Checks to American Self Storage, and Failure to Cooperate with Disciplinary Counsel

123. Prior to August 2012, the Law Office of Squire Padgett maintained an office at 1111 14th Street, NW, Washington, D.C. Both Respondent and Mr. Ponder practiced out of that 14th Street, N.W. location as the Law Office of Squire Padgett. BX 7 at 5 (¶¶ 2-3) (Respondent admitted BX 5 at 1 (¶¶ 2-3)).

124. In 2011, the landlord of that office obtained a $40,000 judgment against Respondent for failure to pay rent. Tr. 403 (O'Connell); Tr. 595 (Respondent). By August 2012, Respondent owed the landlord $100,000. Tr. 402 (O'Connell); *see also* Tr. 595 (Respondent).

125. On August 15, 2012, after several notices to Respondent, Marshals evicted the Law Office of Squire Padgett (including Respondent and Mr. Ponder) as well as one or two other lawyers who were subleasing or sharing space with Respondent's firm. During the eviction, Marshals removed the law office's furniture, files and other materials, placing them on the sidewalk outside the building. Respondent was present when the eviction occurred and arranged for the files and contents of the office to be picked up and then stored. Tr. 402 (O'Connell), Tr. 641-42 (Respondent); RPF 76.

126. On August 15 and 17, 2012, Respondent entered into rental agreements with American Self Storage in Alexandria, Virginia, for storage unit nos. 831 and 879, with monthly fees of $399.50 and $279.50, respectively. BX 60-61. Respondent signed the rental agreements for both units, on which he included his home address in Alexandria, Virginia, and paid the first month's rent with a credit card. BX 62, BX 63; Tr. 363-65 (Cross); RPF 78-81.

127. Respondent placed the firm's client files in the storage units. Tr. 528-29 (Respondent).

128. Respondent never notified his firm's clients: that he and his firm had closed their offices at 14th Street; that his firm would no longer represent them; that as of October 2012, Mr. Ponder could not represent them because the D.C. Court of Appeals had suspended him; that he had placed client files in a storage facility in Alexandria, Virginia; or that his firm's clients had a right to reclaim their documents and files. Tr. 649-50 (Respondent). Respondent failed to provide his firm's clients with their files and documents that remained in the storage units in Alexandria, Virginia, through late November 2013. Tr. 414 (O'Connell).

129. On September 12, 2012, Disciplinary Counsel personally served Respondent with subpoenas for the files and all documents relating to his firm's representation of eight clients who had filed written complaints with Disciplinary Counsel. BX 81; RPF 84. Respondent testified that he regularly went the storage unit in 2012 and was preparing an inventory of the client files and other firm records. Tr. 586 (Respondent). Contrary to his statements to Disciplinary Counsel, Respondent never

produced any responsive client files in response to this subpoena. Tr. 406-07 (O'Connell).

130. After storing his firm's client files and other documents in units at American Self Storage, Respondent failed to pay the monthly rental fees. Between October and December 2012, Respondent did not make any payments to American Self Storage. BX 62, BX63; Tr. 369-70 (Cross); BX 7 at 5 (¶ 11) (Respondent admitted BX 5 at 2 (¶ 11)). See generally RPF 85; 106-110.

131. American Self Storage sent Respondent notices that the rent was past due, which Respondent ignored. BX 64 at 1-3; BX 65 at 1-2; Tr. 369-72 (Cross). In November and December 2012, American Self Storage sent Respondent statutorily required notices of default and lien sales, advising him that the contents of the units would be sold in January 2013. BX 64 at 4-7; BX 65 at 3-4; Tr. 370-71 (Cross).

132. In January 2013, Respondent finally paid American Self Storage $1,238.45 and $922.25 for the two units, with checks drawn on his Operating Account. BX 62 at 1; BX 63 at 1; BX 49 at 127; Tr. 371 (Cross); RPF 111.

133. After January 2013, Respondent again failed to make monthly rental payments. BX 62-63. American Self Storage again sent Respondent notices of the past rent due, and thereafter notices of default and another lien sale for April 11, 2013. BX 64 at 8-13; BX 65 at 5-10; Tr. 371-72 (Cross).

134. On April 10, 2013, one day before the scheduled lien sale, Respondent provided American Self Storage two checks, one for $1,238.45 and another for $922.25, both drawn on his Operating Account. BX 62 at 3; BX 63 at 3; Tr. 367-68 (Cross); RPF 112.

135. Respondent knew when he delivered the checks to American Self Storage that he had less than $25 in his Operating Account. On April 8, 2013, two days before writing the checks, Respondent made an online transfer of $12 from his trust account to his Operating Account, bringing the balance of the Operating Account to $24.23. BX 49 at 135-36; Tr. 440-41 (O'Connell). Respondent admitted that when he made the online transfer he knew how much was in his trust account and the amount in his Operating Account, both before and after the transfer. Tr. 646-48 (Respondent).

136. After making the transfer to the Operating Account, Respondent used his bank card to draw funds from that account for two payments totaling $24.44, and caused an additional $258.93 to be withdrawn to pay his water bill. BX 49 at 135.

137. By the time American Self Storage presented Respondent's checks for payment on April 18, 2013, Respondent's Operating Account was overdrawn by more than $250. BX 49 at 136. The bank assessed fees against Respondent due to the "extended overdrawn balance" in the Operating Account, providing Respondent further notice that the checks he provided to American Self Storage were not paid. BX 49 at 135.

138. Respondent never made any further deposits in his Operating Account to cover the checks he gave to American Self Storage. BX 49 at 139-153. Nor did Respondent ever make any payment to American Self Storage to cover either the NSF checks he provided them or the additional rent that accrued after April 2013. BX 62, BX63; Tr. 363, 369, 372 (Cross). Bank of America eventually closed Respondent's

Operating Account because it had been overdrawn for several months. BX 49 at 152; Tr. 446 (O'Connell).[11]

139. In the interim, American Self Storage continued to make demands on Respondent to pay the required rental fees for the units. BX 62, BX 63. In late April 2013, American Self Storage sent Respondent notices of default, and in May and June 2013 sent him notices of a lien sale for the units, all of which Respondent ignored. BX 64 at 14-19; BX 65 at 11-16; Tr. 371-73 (Cross).

140. By July 25, 2013, the date that American Self Storage had advised Respondent it would sell and empty the contents of the units, Respondent still had not taken any steps to preserve and protect the client files, nor pay the rental fees, including those for which he knowingly provided NSF checks in April 2013. BX 62, BX 63; BX 66; Tr. 371-72 (Cross).

141. On July 25, 2013, when American Self Storage sought to empty the contents of the units, it learned that many of the boxes Respondent had placed in the units contained client files. American Self Storage was concerned about the confidential nature of the documents and therefore did not dispose of them. BX 66; Tr. 363, 373-74 (Cross). American Self Storage called Respondent, but he would not take or respond to its calls. Tr. 374, 388 (Cross).

142. In September 2013, American Self Storage advised Disciplinary Counsel that Respondent had abandoned client files and had not paid the storage fees since

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[11] Before the bank closed his Operating Account, Respondent continued to make electronic payments from the account for his utilities and Verizon bills, notwithstanding that he knew the account was overdrawn, and he had not deposited any funds in the account to make up the negative balance, which continued to increase. BX 49 at 140.

January 2013. BX 67; Tr. 363-64, 375 (Cross). Disciplinary Counsel requested, and American Self Storage agreed, not to dispose of the client files and documents until arrangements could be made. BX 67.

143. When Disciplinary Counsel contacted Respondent about the client files and documents, he represented he would make arrangements to pay American Self Storage and retrieve the client files. BX 67. Respondent failed to do so. BX 68 at 2; BX 73, BX 74; Tr. 374-75 (Cross).

144. On November 3, 2013, American Self Storage sent Disciplinary Counsel a letter describing its history with Respondent, the client files and documents he had abandoned, its unsuccessful efforts to have him pay the fees for the units, and the bad checks that he had provided and failed to make good. American Self Storage advised Disciplinary Counsel that it could no longer keep the files and needed help because it did not want to discard the clients' documents. BX 68; Tr. 375-76 (Cross).

145. On September 18, 2013, more than a month before receiving American Self Storage's letter, Disciplinary Counsel had sent Respondent a subpoena in a further effort to obtain the client files and documents. Disciplinary Counsel's subpoena directed Respondent to produce the client files and all documents relating to his firm's representation of 32 clients who had filed complaints with Disciplinary Counsel (this included the eight client files that Disciplinary Counsel had previously subpoenaed). BX 87 at 1-5; Tr. 412-13 (O'Connell). Respondent signed the receipts for the subpoenas sent by certified mail to his home address and the P.O. Box he was using for his firm. BX 87 at 6-7.

146. Respondent failed to comply with the subpoena. BX 89; Tr. 412-13 (O'Connell).

147. On November 6, 2013, Disciplinary Counsel filed a motion with the Court for an order directing Respondent to comply with the September 18, 2013 subpoena. BX 89. Respondent did not oppose or respond to the motion. Respondent also did not comply with the subpoena. Tr. 412-13 (O'Connell).

148. On November 18, 2013 American Self Storage advised Disciplinary Counsel that it still had not heard from Respondent and that by November 23, 2103, it would be disposing of all the files and other contents in the storage units that Respondent rented. BX 69. In response, Disciplinary Counsel served American Self Storage with a subpoena for Respondent's client files and records that were left in the storage units. BX 70; 377-78 (Cross); Tr. 414 (O'Connell). Executing on its subpoena, Disciplinary Counsel collected all responsive files and documents to prevent them from being discarded or destroyed. Tr. 374-77 (Cross); Tr. 414-15; 460 (O'Connell); BX 71-72 (photos of units before and during move).

149. Disciplinary Counsel's investigator Mr. O'Connell examined everything in the two storage units, including all file cabinets, and collected every file and document related to Respondent's clients. With the assistance of movers that Disciplinary Counsel hired, Mr. O'Connell transported 125 boxes of files and documents from American Self Storage to a locked room in the D.C. Superior Court, Building B. BX 94 (mover's invoice); Tr. 415-16, 420, 458-59 (O'Connell); Tr. 377, 383 (Cross: careful to ensure all files taken; no documents were left behind).

150. Disciplinary Counsel notified Respondent on December 2, 2013, that it had the client files and documents he had stored at America Self Storage, and requested him to collect them. BX 95.

151. All the boxes containing Respondent's firm client files and documents remained in Building B until December 20, 2013, when Respondent took possession of them. Tr. 416-18 (O'Connell). Meanwhile, on December 18, 2013, the court issued an order enforcing Disciplinary Counsel's subpoenas for the 32 client files and other related documents, and directing Respondent to comply within 14 days. BX 97. Respondent confirmed that he received that court order. BX 97; Tr. 419 (O'Connell).

152. On January 6, 2014, Respondent delivered to Disciplinary Counsel some of the documents responsive to Disciplinary Counsel's subpoenas and the court's order, but for only 14 clients. BX 100; Tr. 420-21 (O'Connell). Respondent failed to produce other documents responsive to Disciplinary Counsel's subpoenas for those 14 clients for whom he provided some documentation, including retainer agreements and financial records. BX 101; BX 102 (describing file contents); Tr. 472 (O'Connell). Respondent failed to produce responsive materials for the 18 other firm clients listed in the September 18, 2013 subpoena. BX 100; Tr. 421 (O'Connell).

Disciplinary Counsel's Investigation of Respondent's Abandonment of Client Files and Failure to Pay Storage Fees

153. In November 2013, Disciplinary Counsel opened another investigation of Respondent based on the November 3, 2013 letter from American Self Storage. On November 14, 2013, Disciplinary Counsel sent Respondent a letter directing him to respond to American Self Storage's allegations that he had abandoned client files, failed to pay required rent or retrieve client files and documents, and provided it checks written

on an account with insufficient funds. BX 90. Disciplinary Counsel sent Respondent another letter on November 26, 2013, directing him to respond to the same allegations. BX 93. When Respondent failed to submit a response, Disciplinary Counsel sent him a third letter on December 11, 2013, again directing him to respond and enclosing copies of its earlier letters with the complaint letter from America Self Storage. BX 96.

154. Respondent finally responded to Disciplinary Counsel on January 6, 2014. BX 99. Respondent stated that he had possession of the 150-175 boxes of files and documents that Disciplinary Counsel had retrieved from the storage units, but that American Self Storage somehow still had additional files. BX 99 at 1. Respondent had no basis for making this assertion. BX 101.

155. Respondent claimed to Disciplinary Counsel that there were insufficient funds in the Operating Account because "other parties" (who he did not name) had given him checks that were not good. BX 99 at 2. Bank records for Respondent's Operating Account, however, reflect no such deposits during this period, but only a $12 online transfer from Respondent's Trust Account. BX 49 at 134-38; *see also* BX 101.

156. Respondent also falsely characterized his communications with American Self Storage, including his purported willingness to pay the rent due and American Self Storage's failure to communicate with him. BX 99 at 2; *see* BX 101.

157. Respondent never paid American Self Storage for the rental payments that were due, including the bad checks he passed in April 2013. BX 62, BX 63; Tr. 372, 381-82 (Cross).

158. On June 3, 2015, Respondent sent American Self Storage a letter purporting to ask about the status of contents of the two units he rented and amounts he

owed. BX 75. Respondent wrote this letter knowing that Disciplinary Counsel had retrieved and turned over to him all of his client files and documents from the American Self Storage units eighteen months earlier (BX 101), and more than a year *after* Disciplinary Counsel sent Respondent proposed charges (BX 103).

159. American Self Storage promptly responded to Respondent by letter dated June 17, 2015. It confirmed what Respondent already knew – Disciplinary Counsel had provided him all the files and documents in the units – and that he owed $4,978.70 in rental fees, which Respondent still did not pay. BX 76; Tr. 380, 382 (Cross).

Respondent's Numerous Overdrafts and Misuse of His Trust Account

160. While Respondent was practicing law with Mr. Ponder and thereafter at the Law Office of Squire Padgett, Respondent solely handled all of the firm's financial affairs, including receiving all fees and payments on behalf of clients, determining in what account the fees and funds would be deposited, and when and to whom to disburse them and in what amounts. Tr. 542-44 (Respondent).

161. By no later than 2010, Respondent maintained a trust account, an operating account, and a personal account at Bank of America. The trust account was denominated "Squire Padgett Attorney at Law Trust Account," account no. xxxx-xxxx-3129 (Trust Account). BX 50. The operating account was denominated "Squire Padgett Attorney at Law," account no. xxxx-xxxx-3137 (Operating Account). BX 49. The personal account was denominated "Squire Padgett," account no. xxxx-xxxx-2878 (Personal Account). BX 51. Respondent was the sole signatory on each of these three accounts. Tr. 439, 441 (O'Connell); BX 51 at 1.

162. Respondent did not maintain any records of the funds he deposited in the Trust Account, over which he maintained exclusive control. Tr. 632 (Respondent). Respondent also did not maintain records of funds he deposited in the firm's Operating Account. *See* PFF 146; BX 107.

163. By no later than 2011, Respondent was incurring substantial debts. The landlord for his law offices on 14th Street, N.W. had obtained a judgment against him in 2011, and by August 2012, he owed the landlord more than $100,000. Tr. 402 (O'Connell).

164. Beginning no later than 2012, Respondent also knew about complaints filed with Disciplinary Counsel against Mr. Ponder by firm clients, and Respondent also knew that some of those firm clients (*i.e.*, Ms. Blount and Ms. Grigsby) had filed complaints against him (Respondent). By early 2014, Ms. Blount and other clients had sued Mr. Ponder, Respondent, and Respondent's firm. BX 30.

165. American Self Storage became another creditor of Respondent during this period. Given the numerous notices for overdue rent in 2013, Respondent knew that he owed American Self Storage almost $5,000. BX 62, BX 63.

166. In 2013 and through the summer of 2014, Respondent received substantial fees from clients, including approximately $175,000 between December 2013 and July 2014 from Calvert County Public Schools. BX 109 at 4, 6, 12, 16, 18. Respondent did not report his income to the IRS, and failed to a file tax return for 2014 or previous years, although he claimed he had requested extensions. Tr. 643 (Respondent).

167. During the time Respondent maintained three accounts at Bank of America, he regularly transferred funds among his and his firm's accounts. Respondent

made most of the transfers online and thus knew the balances in the accounts before and after he made the transfers. Tr. 646-48 (Respondent).

168. Respondent made a number of transfers from his firm's Trust Account to its Operating Account at a time when the Operating Account was overdrawn or the balance was low. The transfers Respondent made online were always in round numbers, *e.g.*, $200, $500, $1,000, etc., indicating the amounts were not based on bills to clients for earned fees and expenses. *Compare* BX 49 at 12, 18, 24, 32, 36, 40, 43, 47, 50, 53, 59, 62, 72, 75, 102, *with* BX 109 at 4, 6, 12, 16, 18 (bills and amounts received not in round numbers).

169. Respondent also deposited entrusted funds directly in his firm's Operating Account when it was overdrawn, including the $3,000 advance fee that Ms. Grigsby paid in February 2010. BX 49 at 9-10.

170. On a number of occasions, Respondent also transferred funds from his Personal Account to the firm's Operating Account, usually after he had overdrawn his Operating Account or when its balance was very low and there were outstanding checks or electronic payments scheduled. BX 49 at 85, 88, 114, 117-18, 123, 127, 132.; BX 51 at 36, 44, 50, 70, 73, 76-77, 84

171. On other occasions, Respondent transferred funds from his firm's Operating Account to his own Personal Account when the latter account's balance was low and there were outstanding checks or electronic payments scheduled. BX 51 at 50, 57, 63, 65, 67, 70, 80, 89.

172. Respondent also freely transferred funds from his Personal Account to his firm's Trust Account, and vice versa. BX 51 at 60, 70, 84; BX 50 at 2, 12 (transfers

from Personal Account to Trust Account to cover overdraft and bank fees).

173. During the 44-month period for which Disciplinary Counsel obtained bank records for Respondent's Operating Account, the account was overdrawn in 38 of the 44 months. In only two months in 2010 (March and November), two months in 2011 (April and July), and two months in 2012 (May and October) did the account have a positive balance the entire month. BX 49. Respondent wrote numerous checks on the account that were returned because he had insufficient funds to cover them - including the two checks he wrote to American Self Storage in April 2013. BX 49 at 135-38. In August 2013, Bank of America closed Respondent's Operating Account, which had been overdrawn for four consecutive months. BX 49 at 152; Tr. 446 (O'Connell).

174. Respondent's Personal Account was also frequently overdrawn in 2011 and 2012. BX 51 at 29, 31, 42, 44-45, 47, 52, 60, 67, 73, 77, 79-80, 92, 95, 97. In September 2013, Bank of America closed Respondent's Personal Account because it too had been overdrawn for four consecutive months. BX 51 at 104; Tr. 446 (O'Connell).

175. Bank of America did not close Respondent's firm Trust Account, although it too was overdrawn on occasion. BX 50 at 21, 79; Tr. 630-31 (Respondent).

176. Respondent knew that a trust account is for safekeeping the funds of clients and third parties and that funds in the account were not subject to attachment to creditors. Tr. 640 (Respondent). Yet, in 2013 and 2014, Respondent deposited checks for fees and expenses he already had earned and incurred in his Trust Account. PFF 213-14. He did so knowing that he had a number of creditors and notwithstanding that he had another personal account at Eagle Bank. Tr. 600, 631 (Respondent).

177. On December 19, 2013, Respondent deposited $37,847.36 in fees he had received from Calvert County Public Schools into his firm Trust Account. BX 50 at 45-46; BX 109A; Tr. 644 (Respondent). Respondent withdrew most of the money by writing checks to himself and to the bank totaling $35,000. BX 50 at 47-48; Tr. 450-51 (O'Connell).

178. On January 31, 2014, Respondent deposited a check for $13,735.40 into his firm's Trust Account. Those funds were not entrusted funds, but were yet another payment from Calvert County Public Schools based on Respondent's invoice for fees and expenses. BX 50 at 53-54; BX 109B; Tr. 722-23 (O'Connell). Respondent withdrew most of the funds by writing checks to himself or for cash. BX 50 at 60-63, 68-69; Tr. 452 (O'Connell).

179. On May 9, 2014, Respondent deposited a check for $82,500.51 into his firm's Trust Account. BX 50 at 83-85.[12] This check too was a payment from Calvert County Public Schools based on Respondent's invoice for fees and expenses and not entrusted funds. BX 50 at 85; BX 109C; Tr. 723-25 (O'Connell). When he made the deposit, Respondent immediately withdrew $4,736 in cash, and later disbursed most of the remaining funds to himself and family members. BX 50 at 82-86, 90-93, 98-102; Tr. 453-54 (O'Connell).

180. Respondent testified at the hearing that he deposited the earned fees into his firm's Trust Account because it was the only account he had and he was not sure that

[12] Prior to depositing the $82,000 check, Respondent wrote checks to Mr. Ponder for $65, and Nicole Harris for $85. BX 50 at 80-81. Respondent had provided Ms. Harris a check for $150 drawn on the Trust Account a couple weeks earlier. BX 50 at 74.

he was entitled to all of the funds. Tr. 636-39 (Respondent). He admitted, however, that he had a personal checking account at Eagle Bank during this time. Tr. 635 (Respondent). Padgett also knew that Calvert County was not disputing his entitlement to the funds because it made the payments based on Respondent's invoices for services already rendered. BX 109; Tr. 639-40 (Respondent).[13]

Respondent's Failure to Cooperate with Disciplinary Counsel's Investigation of Overdrafts

181. On May 9, 2014, the day Respondent deposited the Calvert County check for $82,500.51, he wrote himself a check for $10,000 drawn on the firm's Trust Account. Because the bank had not credited the check to the account, Respondent's negotiation of the $10,000 check caused an overdraft, generating a notice to Disciplinary Counsel. BX 50 at 79; BX 52. On May 19, 2014, Disciplinary Counsel received the overdraft notice for Respondent's Trust Account and opened an investigation. BX 52, BX 53; Tr. 447 (O'Connell).

182. On May 21, 2014, Disciplinary Counsel sent Respondent a request for information asking him to explain the overdraft and attaching a copy of the bank's overdraft notice. Disciplinary Counsel requested Respondent to respond in writing by June 2, 2014. BX 53. Respondent did not respond or seek additional time to do so. On June 4, 2014, Disciplinary Counsel sent Respondent another letter, enclosing its earlier correspondence and the bank's overdraft notice, reminding him of his obligation to respond and requesting he do so by June 13, 2014. BX 54.

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[13] In 2010, before Respondent had such substantial debts (Tr. 600), he typically deposited checks from his school system clients into his firm's Operating Account. BX 49 at 15-16, 20-22, 26-27; Tr. 103-05, 210-11 (Blount: checks from IDEA Public Charter School were for services rendered).

183. Respondent sent Disciplinary Counsel a letter on June 6, 2014, but did not explain the overdraft and simply requested more time to do so. BX 55. In a subsequent letter dated June 26, 2014, Respondent represented that "no client funds were in the account or involved in the alleged overdraft." BX 56. Respondent admitted that he had a personal account at another bank, but did not identify the bank. Respondent did not explain why he had deposited the check from Calvert County, which he admitted were not client funds, in the firm's Trust Account. BX 56 at 1; Tr. 448 (O'Connell). The only documents Respondent attached to his letter were (1) the overdraft notice that Disciplinary Counsel sent him; (2) a copy of the $82,500.51 check; and (3) a May 9, 2014 receipt reflecting that $77,764.51 was a "Credit Pending Posts on 05/09/14" for the Trust Account, and that $0.00 was "Available Now." BX 56 at 3-8.

184. On June 30, 2014, Disciplinary Counsel sent Respondent a letter asking him to explain why he had deposited the check for $82,500.51 into his firm's Trust Account. BX 57. Respondent did not respond. BX 58; Tr. 449 (O'Connell). On August 25, 2014, Disciplinary Counsel sent Respondent another letter requesting a response to its previous correspondence and enclosing a subpoena *duces tecum* directing Respondent to produce complete records relating to three deposits he made into his firm's Trust Account in December 2013, January 2014, and May 2014, and the relevant bank records. BX 58.

185. Respondent did not respond to Disciplinary Counsel's inquiry and did not produce any documents responsive to the subpoena. Tr. 451-53, 716 (O'Connell).

186. On September 26, 2014, Disciplinary Counsel sent Respondent another letter, enclosing its earlier letter and subpoena and requesting Respondent to respond. BX 59. Respondent again refused to do so. Tr. 451-53, 716 (O'Connell).

187. At the hearing on September 16, 2015, Respondent admitted he had documents responsive to Disciplinary Counsel's subpoena that he had not produced. Tr. 635, 644-45 (Respondent).

188. On September 17, 2015, Disciplinary Counsel sent Respondent, through his counsel, a letter requesting him to provide the documents responsive to its subpoena. Tr. 716 (O'Connell).

189. On October 29, 2015, less than a week before the hearing was scheduled to resume, Respondent, though his counsel, provided: (1) some monthly bank statements for the Trust Account, and 24 checks written on the account, but no records relating to the deposits; (2) monthly statements and some checks written on his personal account at Eagle Bank for the period January 2014 through July 2015; and (3) records relating to a trust account he maintained at Eagle Bank from April 2007 through January 2011. Tr. 716-18 (O'Connell). None of the documents Respondent produced were responsive to Disciplinary Counsel's subpoena or provided any information about the source and his handling of the funds deposited in his Trust Account. Tr. 718-19 (O'Connell).

190. Respondent also produced a single hard drive from an unknown computer. Disciplinary Counsel sent the hard drive to Sensei, a forensic computer company, which was unable to retrieve any information or documents from the hard drive. Tr. 719-20 (O'Connell).

191. On November 2, 2015, Disciplinary Counsel again requested that Respondent provide documents responsive to its subpoena (BX 58). The following day, November 3, 2015, Respondent provided five invoices that he sent to Calvert County Public Schools between December 2013 and July 2014. BX 109A-E; Tr. 721 (O'Connell). Other than the invoices, Respondent did not provide any additional documents, including copies of checks or documents relating to the payments he received, and bank or other financial records reflecting his deposit and handling of the funds. Tr. 721-26 (O'Connell).

192. Respondent did not appear credible during his testimony at the hearing. His responses were largely evasive, rambling, contradictory, and – particularly with respect to questions posed by Disciplinary Counsel – argumentative and combative. The other witnesses at the hearing, in contrast, appeared credible, both in their demeanor and, generally, in their responses.

IV. CONCLUSIONS OF LAW

The record demonstrates by clear and convincing evidence that Mr. Padgett committed numerous violations of the Rules of Professional Conduct over a prolonged period of several years. The exhibits and witness testimony constitute clear and convincing evidence that Respondent committed all the violations of all the rules charged in Disciplinary Counsel's four Specifications of Charges, that is: violations of Rules 1.3(a), 1.3(b)(2), 1.3(c), 1.4(a)-(b), 1.5(b), 1.16(d), 5.1(a), 5.1(b), 5.1(c)(2), 8.4(c), and 8.4(d), and D.C. Bar R. XI, § (2)(b), in the Blount representation and in his deceptive responses and failures to timely cooperate with Disciplinary Counsel's related investigations; violations of Rules 1.4(a)-(b), 1.15(a) and (d), 1.16(d), 5.1(a), 5.1(b), 8.4(c), and 8.4(d), and D.C. Bar R. XI, § (2)(b), in the Grigsby representation and in his deceptive responses and failures to timely cooperate with Disciplinary Counsel; violations of

Rules 1.16(d), 8.4(b), 8.4(c), 8.4(d), and D.C. Bar R. XI, § (2)(b), in his handling of client files, his failure to pay American Self Storage, and his deceptive responses and failures to timely cooperate with Disciplinary Counsel; and violations of Rules 1.15(a), 8.4(c), and 8.4(d), in his handling of his trust and other accounts and in his deceptive responses and failures to timely cooperate with Disciplinary Counsel's related investigations.

A. Mr. Ponder's Status as Respondent's Employee

Respondent's principal argument in response to most of the charges is that Disciplinary Counsel failed to prove an attorney-client relationship existed between him and the complaining clients and that only Mr. Ponder was representing Ms. Blount and Ms. Grigsby.[14] In his efforts to shift blame for his wrongdoing, Respondent claims that Mr. Ponder was a *de facto* partner in Law Office of Squire Padgett, and therefore Respondent had no duty to supervise his conduct and cannot be charged for Ponder's conduct. This argument is unavailing. Most of the Rules violations at issue involve Mr. Padgett's direct conduct, and where Mr. Ponder is concerned, the evidence does not establish that he was ever a partner of Respondent's, *de facto* or otherwise. Instead, the evidence demonstrates that Mr. Ponder was at all times an associated attorney at Respondent's firm.

Beckman v. Farmer, 579 A.2d 618 (D.D.C. 1990) identifies relevant factors for assessing whether or not a partnership exists between two or more persons. *Id.* at 627-28. To determine objective partnership intent, courts "look for the presence or absence of attributes of co-

[14] Respondent's principal argument against the alleged violations of Rules 1.3(a), 1.3(b)(2), 1.3(c), 1.4(a) and (b), 1.5(b), and 1.15(a) and (d) is that: "Disciplinary Counsel failed to prove that an attorney client relationship ever existed between Respondent and Ms. Blount Lewis. The record demonstrates that Ms. Blount Lewis retained Mr. Ponder for her representation in her cause of action against the Center." Resp't Proposed Findings and Conclusion to the Charges and Specifications, Board Docket Nos. 15-BD-039, et al. and 2013-D279 et. al. at 18-23 (BPR Dec. 14, 2015).

ownership, including profit and loss sharing, control, and capital contributions." *Id.* at 627 (quoting A. Bromber & L. Ribstein, Bromberg and Ribstein on Partnership § 2.05(c), at 2:36 (1988)). Although profit and loss sharing and joint control in decision-making are factors in assessing whether partnership exists, none of these factors are dispositive. *Id.* at 627.

Respondent submitted no evidence that he and Mr. Ponder shared profits equally. Instead, the evidence establishes that Respondent alone held the purse strings of the Law Office of Squire Padgett, and Respondent payed creditors and employees as he saw fit. Additionally, there was no evidence submitted to suggest that Mr. Ponder shared in any losses of the firm or had contributed any capital to the firm. Instead, it appears that Respondent alone was liable for the judgment on unpaid rent for the firm's office space and the storage units leased after Law Office of Squire Padgett was evicted from its offices. Nor was there evidence that Respondent and Mr. Ponder shared equal control within the practice. Respondent made no showing of shared control, and all other evidence at the hearing portrayed Respondent making key decisions for the firm without Mr. Ponder's input and also acting as a direct supervisor of Mr. Ponder in his work. There is also no documentary or other convincing evidence that Respondent ever held out Mr. Ponder as a partner to the public.

Respondent and Mr. Ponder had no formal partnership agreement, they did not hold themselves out as partners, did not share in profits and losses, and did not share control over the firm. Thus, based on the evidence in this matter, Mr. Ponder was, and remained, an associate attorney at Law Office of Squire Padgett throughout his time at Respondent's firm.

While we conclude that Mr. Ponder was an associate throughout his employment at the Law Office of Squire Padgett, even if Mr. Ponder was a partner, the analysis remains the same. Under Rule 5.1(c)(2), Respondent is responsible for Mr. Ponder's rule violations because

Respondent was a partner in the firm and knew or should have known of the misconduct and could have taken action to avoid or mitigate the conduct, but failed to do so.

B. Respondent's Attorney Relationship with His Firm's Clients

Respondent repeatedly insists that most of Disciplinary Counsel's charges are premised on finding an attorney-client relationship between himself and Ms. Grigsby, Ms. Blount, or any of the other complaining firm clients. Relying in large part on *In re Lieber*, 442 A.2d 153 (D.C. 1982), Respondent argues that Disciplinary Counsel failed to establish that he personally worked on the matters for each of the complaining Law Office of Squire Padgett clients. In *Lieber*, the D.C. Court of Appeals held that the "existence of an attorney-client relationship is an issue to be resolved by the trier of fact and is predicated on the circumstances of each case." *In re Lieber*, 442 A.2d at 156. "It is well-established that neither a written agreement nor payment of fees is necessary to create an attorney-client relationship." *Id*. Notably, this Respondent is charged with failing to provide a written fee agreement to clients, which is a violation of Rule 1.5(b). Nor is it "necessary for an attorney to take substantive action and give legal advice in order to establish such a relationship." *Id*. Respondent is also charged with failing to take substantive action on behalf of his firm's clients, in violation of various provisions of the Rules. Respondent attempts to "make lemonade" from these ethical violations (failure to provide written engagement and failure to act), arguing that the absence of such conduct on his part shows that no attorney-client relationship existed between himself and the complaining clients.

Respondent submitted proposed factual findings admitting that Ms. Blount, Ms. Grigsby and the many other clients who filed complaints with Disciplinary Counsel had retained Mr. Ponder as her attorney and that Mr. Ponder was "an attorney in the Law Office of Squire Padgett." RPF 18-20; 51; 89. Both Ms. Blount and Ms. Grigsby retained Mr. Ponder with contemporaneous payments by check made out to the "Law Offices of Squire Padgett." RPF 23;

53. A retainer of one member of a firm of attorneys is deemed a retainer of the firm, in the absence of an agreement to the contrary. 7A C.J.S.2d Attorney & Client § 204 (2004) (citing cases) (relied upon by D.C. Court of Appeals in *In re Lieber*, at 156). Of course, a party may personally contract with one member of a firm for her legal services, and where such a contract is proved it will be sustained. *Id.* Otherwise, any member of a firm may attend to business entrusted to a firm of attorneys - clients do not have the right to demand that a particular firm member render services, and by the same token, lawyers associated in practice have a primary obligation not to mislead a client about who is responsible to the client. *Id*. (citing cases). Respondent therefore admits the facts necessary to establish that he was subject to an attorney-client relationship with the complaining clients.

Disciplinary Counsel established - and Respondent effectively admits - that the Law Offices of Squire Padgett firm was retained by Ms. Blount and Ms. Grigsby. If there was some narrower retention agreement that reached only Mr. Ponder and not the law firm in which he practiced, the burden to prove up a narrower agreement shifted to Respondent after Disciplinary Counsel proved retention of his firm, the Law Offices of Squire Padgett. Respondent failed entirely to prove a narrower retention that excluded him and his firm. There was no written retention agreement in evidence, and the totality of the circumstances negate any reasonable inference that by retaining and paying the Law Offices of Squire Padgett for legal services, any of the complaining clients intended to personally contract with that firm's associate, Mr. Ponder. Both Ms. Blount and Ms. Grigsby deny personally contracting with Mr. Ponder, and the record shows both of them looking to Respondent to handle their matters when Mr. Ponder was nonresponsive. The evidence firmly establishes that Respondent was personally involved with

the Blount representation for over a decade. And in both cases, Respondent received and deposited each of the complaining clients' checks into the firm's bank accounts.

As the sole partner in the Law Office of Squire Padgett, Mr. Padgett owed each and every one of his firm's clients a fiduciary duty as their attorney, even if he delegated some or most or all of his client's legal work to his associate, Mr. Ponder. Further, when Mr. Ponder was suspended in 2012, Respondent was the only remaining attorney in the Law Offices of Squire Padgett who could provide representation to his firm's clients. After Mr. Ponder's suspension, Respondent's fiduciary duty to the clients of the Law Office of Squire Padgett became all the more acute, because nobody else remained at the firm to assist its clients or appropriately terminate their relationships.

C. Rule 1.3(a) and (c)

Rules 1.3(a) and (c) obligated Respondent to represent his clients "zealously and diligently within the bounds of the law" and to "act with reasonable promptness in representing a client."[15] An attorney who fails to communicate with a client and fails to take necessary steps in the client's matter violates the requirements of zeal and diligence. *In re Lyles,* 680 A.2d 408, 415-16 (D.C. 1996). Neglect of a client matter is "a serious violation of the obligation of diligence." Rule 1.3(a) Cmt. 8. The Court of Appeals defines neglect as "indifference and a consistent failure to carry out the obligations which the lawyer has assumed to his client or a conscious disregard for the responsibility owed to the client." *In re Reback*, 487 A.2d 235, 238 (D.C. 1985), *vacated by* 492 A.2d 267 (D.C. 1985), *and aff'd in relevant part*, 513 A.2d 226

[15] A violation of Rule 1.3(c) requires proof of a failure to act with reasonable promptness in a client representation, but does not require proof of prejudice to the client. Neglect combined with the failure to return calls or respond to client inquiries supported a finding of violation of Rule 1.3(c) in *In re Dietz*, 633 A.2d 850 (D.C. 1993).

(D.C. 1986) (en banc) (quoting ABA Comm. on Ethics and Professional Responsibility, Informal Op. 1273 (1973)).[16] Rule 1.3(a) "does not require proof of intent, but only that the attorney has not taken action necessary to further the client's interests, whether or not legal prejudice arises from such inaction." *In re Bradley*, Bar Docket Nos. 2004-D240 & 2004-D302 at 17 (BPR July 31, 2012), *adopted in relevant part*, 70 A.3d 1189, 1191 (D.C. 2013) (per curiam).

Clear and convincing record evidence establishes that Respondent violated his obligations to Ms. Blount under Rules 1.3(a) and (c). When Ms. Blount contacted Respondent to serve as her lawyer in 1996, Respondent delegated most of her legal work to Mr. Ponder. Although not dispositive of Respondent's responsibilities to this client, the foregoing findings demonstrate that Respondent continued to be personally involved in the representation of Ms. Blount - personally meeting with her and her family members over the years, working on her appeal, conveying legal advice to this client as well as the "interpretations" of his associate Mr. Ponder, and discussing and negotiating (unwritten) fee arrangements with the client. Respondent's personal involvement with Ms. Blount's legal matters at the Law Office of Squire Padgett spanned approximately 16 years. Towards the end of the representation, most of Ms. Blount's interactions were with Respondent because Mr. Ponder became less and less responsive to this client's needs. Respondent also knew about and participated in the outlandish excuses and fables that he and his associate Mr. Ponder conveyed to Ms. Blount in a vain effort to buy time and cover up the fact that no legal work had been performed on her matter since the Court of Appeals' 2001 remand, that no settlement had been negotiated or finalized with the defendant in that matter, no sanctions had been imposed on the defendant for failure to perform the non-

[16] A finding of neglect "requires more than a single act or omission"; it requires a "pattern of negligent behavior." *In re Wright*, 702 A.2d 1251 (D.C. 1997).

existent settlement, and none of the additional hearings and judicial remedies that Respondent and Mr. Ponder falsely described to their client had in fact existed.

Respondent took no action to protect his client's interests from at least 2001 up to and including the present. As for all of the conduct of his associate Mr. Ponder that is in evidence, the totality of the circumstances demonstrates by clear and convincing evidence that Respondent was a knowing participant in the misrepresentations and frauds perpetrated against Ms. Blount (at the very least, Respondent should have known about the falsity of every misrepresentation that he and his associate conveyed to Ms. Blount throughout this legal engagement). Respondent not only ignored several blatant red flags about Mr. Ponder's conduct with respect to Ms. Blount, he actively facilitated and exploited such conduct, including with regard to Mr. Ponder's suspension from practice, the falsified and non-credible "settlement," and the fictional post-settlement hearings, sanctions proceedings and orders. The course of Respondent's misconduct was pervasive and prolonged for over a decade. Again, the totality of these circumstances demonstrate by clear and convincing evidence that Respondent played a knowing and critical part in an overarching scheme to defraud a client.

Respondent claimed to be simply relying on his associate's (Mr. Ponder's) lies, but Respondent could not offer a plausible explanation about his own failure to investigate Mr. Ponder's implausible excuses. Despite all of the red flags, Respondent inexplicably failed to exercise due diligence and made no independent inquiries into Mr. Ponder's activities during this entire period. By late summer of 2012, Respondent knew that the United States District Court for the District of Columbia had suspended Mr. Ponder for falsifying court records about non-existent matters, and Respondent also knew that Disciplinary Counsel was taking steps to suspend Mr. Ponder from practicing law altogether - which came to pass in mid-October 2012 in

an unopposed proceeding. Respondent was the only lawyer remaining at the Law Office of Squire Padgett by October 2012, and he continued to be in regular contact with his client Ms. Blount. Yet, Respondent did nothing to determine the status of her matter in or after August 2012, when he knew that Mr. Ponder could not be attending court hearings as he claimed. Instead, Respondent continued to mislead Ms. Blount about her matter, about Mr. Ponder's actions and status as a lawyer, and his firm's pursuit of her matter. Mr. Padgett did so even in February 2013, when Ms. Blount confronted him with the proof she received of Mr. Ponder's misconduct and suspension.

D. Rule 1.3(b)

Rule 1.3(b) provides that "[a] lawyer shall not intentionally: (1) [f]ail to seek the lawful objectives of a client through reasonably available means permitted by law and the disciplinary rules; or (2) [p]rejudice or damage a client during the course of the professional relationship." Intent can also be established if the attorney is "demonstrably aware" of the neglect. *In re Reback*, 487 A.2d at 240; *In re O'Donnell*, 517 A.2d 1069 (D.C. 1986);[17] *In re Ukwu*, 926 A.2d 1106, 1116 (D.C. 2007) (citations omitted) ("[N]eglect ripens into an intentional violation when the lawyer is aware of his neglect of the client matter . . . 'or, put differently, when a lawyer's inaction coexists with an awareness of his obligations to his client.'" *Id.* (quoting *In re Mance*, 869 A.2d 339, 341 n. 2 (D.C.2005)). To demonstrate a 1.3(b)(2) violation, Disciplinary Counsel must show that the attorney "knowingly created a grave risk" that the client would be financially harmed and was "substantially certain" financial damage would result from his conduct. *In re Robertson*, 612 A.2d 1236, 1250 (D.C. 1992). Actual damage or prejudice to the client must

[17] A lawyer's intent "must ordinarily be established by circumstantial evidence, and in assessing intent, the [fact-finder] must consider the entire context." *In re Ukwu*, 926 A.2d 1106, 1116 (D.C. 2007) (internal citations and quotations marks omitted) quoting Andrews v. City of Philadelphia, 895 F.2d 1469, 1484 (3d Cir.1990).).

result, *Id.*, but proof of actual intent to harm is not required. *In re Wright*, Bar Docket Nos. 377-99, 10-00, 294-00 & 20-01 at 24-25 (BPR Apr. 14, 2004).

For all of the reasons stated above, this charge is also established by clear and convincing evidence. By neglecting Ms. Blount's case for more than a decade, Respondent and Mr. Ponder prejudiced Ms. Blount and her ability to collect anything on her remanded claims against the Center. They further prejudiced and damaged her by falsely representing that she would receive a substantial settlement - fantastically inflated to $15 million by Respondent's and Mr. Ponder's lies about further sanction awards. At times, Respondent and Mr. Ponder assured Ms. Blount that she would be paid within days - although there always was some glitch that prevented the funds from being transferred. In reliance on Respondent's representations and those of his firm, Ms. Blount went forward with transactions that resulted in five-figure losses, a civil action and judgment, and even criminal charges against her. Based on the totality of the evidence, Disciplinary Counsel proved by clear and convincing evidence that Respondent's violations were knowing and intentional. At the very least, Respondent maintained willful blindness about Mr. Ponder's misrepresentations. Respondent's failure to act became particularly acute as time went on and Respondent learned of Mr. Ponder's suspensions from practice and the many disciplinary complaints against him. Respondent continued to personally pass on to his client the fictitious representations of Mr. Ponder about the status of Ms. Blount's matter, and Respondent did so without conducting any due diligence of his own, knowing that these misrepresentations could not withstand scrutiny.

Even when provided with notice that Mr. Ponder had been suspended and therefore could not be representing Ms. Blount in court, Respondent did nothing to protect his client. Instead, he continued to perpetuate the false story that he and Mr. Ponder had been telling her. Respondent

never took action to investigate or verify Mr. Ponder's representations regarding Ms. Blount's matter, and Respondent exacerbated the harm to his client by perpetuating these fictitious tales and enabling her to make financial commitments that Respondent knew were well beyond her means. When Ms. Blount confronted Respondent with what she had learned about the charges against Mr. Ponder and his suspension, Respondent lied to his client about hackers in the firm's system, and told Ms. Blount the charges were not true.

Respondent and Mr. Ponder knowingly created great financial risk to Ms. Blount when they convinced her she would receive a valuable settlement from the defendant in her matter. It was substantially certain financial damage would result from this misrepresentation, as there was no settlement and Respondent knew that Ms. Blount was depending on those funds for purchases she could not otherwise afford. Actual damage resulted from Ms. Blount's reliance on Respondent's misrepresentations and those of associated attorneys in his firm. Clear and convincing evidence demonstrates that Respondent and Mr. Ponder engaged in a unified scheme and overarching conspiracy that prejudiced and damaged Ms. Blount during the course of the representation, and Respondent did so intentionally in violation of Rule 1.3(b)(2). Respondent asserted no good faith defense, in law or fact, to these charges.

The undisputed evidence likewise demonstrates that Respondent's firm failed to seek the lawful objectives of Ms. Grigsby through reasonably available means permitted by law and the disciplinary rules and that she suffered prejudice or damage during the course of the professional relationship as a result. Respondent does not dispute the operative facts: that (a) Ms. Grigsby paid Law Office of Squire Padgett for representation in an employment discrimination; (b) no work was performed for her; (c) her case was summarily dismissed by EEOC when Respondent's firm failed to respond to the employer's motion for summary judgment;

(d) Respondent's firm never advised Ms. Grigsby about this disposition of her matter; (e) at a time when Mr. Ponder was being suspended from the practice of law, and continuing after his disbarment, Ms. Grigsby retained Respondent's firm to pursue another matter against her union, which was never pursued; (f) an attorney at Respondent's firm presented Ms. Grigsby with falsified court records and a fictional settlement agreement purporting to resolve the latter action for $315,000; (g) throughout this period, Respondent knew or should have known that attorneys at his firm were defrauding this client; and (h) the foregoing deceptive acts were undertaken by Respondent and Mr. Ponder as part of a unified scheme and overarching conspiracy to defraud clients of Law Offices of Squire Padgett.

E. Rules 1.4(a) and (b)

Rule 1.4(a) provides that "[a] lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information." Attorneys must respond to client requests, and must also initiate contact if necessary to provide information. *In re Hallmark*, 831 A.2d 366, 374 (D.C. 2003); *In re Bernstein*, 707 A.2d 371, 375-76 (D.C. 1998). The rule enables clients to "participate intelligently in decisions concerning the objectives of the representation and the means by which they are to be pursued."[18] Rule 1.4(a) Cmt. 1. To find a violation of Rule 1.4(a), the attorney must fail to meet the client's reasonable expectations for information. *See In re Schoeneman,* 777 A.2d 259, 264 (D.C. 2001).

[18] Comment [2] further explains that "[t]he lawyer must be particularly careful to ensure that decisions of the client are made only after the client has been informed of all relevant considerations."

Rule 1.4(b) requires a lawyer to explain matters to clients to enable the client to make informed decisions.[19] Comment [2] elaborates on the requirements of the rule, indicating that the attorney must "initiate and maintain the consultative and decision-making process if the client does not do so," and must ensure the process is "thorough and complete" throughout the representation. Rule 1.4 Cmt. 2. An attorney "must be particularly careful to ensure that decisions of the client are made only after the client has been informed of all relevant considerations." Rule 1.4 Cmt. 2.

Clear and convincing evidence demonstrates that Respondent violated his Rule 1.4 obligations to both Ms. Blount and Ms. Grigsby. Those violations became particularly acute after 2012, when Respondent learned that the District of Columbia federal court had suspended Mr. Ponder, and soon thereafter the D.C. Court of Appeals also suspended Mr. Ponder from practicing law. At that point, Respondent became the ***only*** attorney at Law Offices of Squire Padgett who could keep the firm's clients reasonably informed about the status of their matters and promptly comply with reasonable requests for information. The record demonstrates Respondent's utter failure to do so.

In Ms. Blount's case, Respondent did not merely withhold information from his client, but affirmatively misled her about the status of her matter and the tasks that Law Offices of Squire Padgett was doing in her matter. Throughout this representation, Ms. Blount regularly sought information about her matter directly from Respondent Squire Padgett. She never received monthly or regular invoices about her matter, but only received such information once, when she asked Respondent's firm to provide a computer print-out showing detailed time entries

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[19] Rule 1.4(b) provides that "[a] lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation."

on her matter. Particularly in 2012 and thereafter - when Law Office of Squire Padgett was evicted from its 14th Street N.W. location and when Mr. Ponder was ignoring firm clients and his own court suspensions, Ms. Blount made frequent (sometimes daily) trips to visit with Respondent about her case. Neither Respondent nor Mr. Ponder initiated the communication and decision-making process with Ms. Blount. Instead, Ms. Blount was consistently forced to initiate contact with both attorneys to obtain information on her case.

When Respondent and his firm were evicted in mid-August 2012, Ms. Blount continued to communicate with Respondent and, on occasion, met with him at her home to get updates. The reports Respondent gave Ms. Blount included patently fictionalized accounts of settlement agreements and sanction awards and further proceedings in her matter. Although the evidence clearly and convincingly establishes that Respondent's reports to his client were knowingly false, at the least Respondent provided these reports with reckless disregard for their truth. Respondent never corrected his false statements to Ms. Blount, and never disavowed the information that Mr. Ponder had told her in his presence, and never told Ms. Blount about Mr. Ponder's suspension. Even at the hearing, Respondent feigned skepticism about Mr. Ponder's suspensions, claiming that it was not proven to him until Disciplinary Counsel produced the relevant orders for his inspection from the witness stand. Respondent violated his obligations under Rule 1.4 to provide Ms. Blount truthful information about her case and its status and to explain matters so that she could make informed decisions regarding the representation.

Based on undisputed evidence and the Respondent's own Answers and Proposed Findings of Fact in this matter, Respondent also violated his Rule 1.4 obligations to Ms. Grigsby. Ms. Grigsby may have relied on the other attorney at the Law Office of Squire Padgett (Mr. Ponder) to provide her information about the status of her matters and respond to her inquiries,

but her later communications with Mr. Ponder and her actions in February 2013 demonstrate that she also regarded Respondent as her lawyer and the person in the firm who had authority to represent her. By October 2012, Respondent knew that Mr. Ponder - the only other lawyer in his firm - was suspended and could no longer represent clients. Respondent had an obligation under Rule 1.4 to communicate that fact to firm clients, including Ms. Grigsby. He never did.

In early February 2013, Ms. Grigsby sought out Respondent at his home to find out what had happened with her case. Respondent still did nothing to assist Ms. Grigsby. Respondent withheld information Ms. Grigsby was entitled to receive, including that Mr. Ponder had been suspended for months and could no longer represent her. Respondent also did not take any steps to return Ms. Grigsby's file or her money. Respondent had ethical obligations to Ms. Grigsby and all the other firm clients, particularly after October 16, 2012, when the Court suspended Mr. Ponder and he could no longer practice law. Respondent withheld this critical information and failed to provide Ms. Grigsby (and other clients) with information about the status of their matters so that they could make informed decisions about their matters.

Clear and convincing evidence indicates that Respondent failed to keep Ms. Blount and Ms. Grigsby reasonably informed about their matters and did not provide explanations adequate to enable them to make informed decisions. His behavior went beyond a mere failure to keep the firm's clients informed about their matters: Respondent affirmatively misrepresented the status of matters to his clients, and the status of his associated attorney Mr. Ponder, when he failed to alert Ms. Blount and Ms. Grigsby of Mr. Ponder's suspension. Accordingly, we find that Respondent violated Rule 1.4.

F. Rule 1.5(b)

Rule 1.5(b) requires a lawyer who has not regularly represented a client to provide, within a reasonable time after commencing the representation, a written statement of "the basis

or rate of the fee, the scope of the lawyer's representation, and the expenses for which the client will be responsible." Although the comments indicate that "all the factors that underlie the basis of the fee" do not need to be stated, the agreement should include factors "directly involved in its computation." Comment [1]. In addition to the requirement to provide written statements regarding payment, the lawyer is also responsible for maintaining complete records of his handling of client funds for five years. Rule 1.15(a).

Clear and convincing record evidence demonstrates that Respondent violated Rule 1.5(b) in the Blount matter. Respondent did not provide Ms. Blount a written fee agreement, and did not ensure that anyone else did before accepting approximately $50,000 in fees from her between 1996 and 1998. PFF 34-35. Respondent also failed to provide Ms. Blount with a written fee agreement to document the $10,000 fee he charged her to pursue the appeal, and the one-third contingency fee he told her that the Law Office of Squire Padgett would receive from any recovery if the appeal succeeded. *See* Rule 1.15(c) (requiring that contingent fee agreements be in writing). Respondent handled all of the firm's financial matters and he was the one who received fees that firm clients paid. Respondent thus was responsible for providing or ensuring that his firm provided Ms. Blount the writing required by Rule 1.5(b). He failed to do so.[20]

Respondent did not produce evidence of a fee agreement in the Blount matter and does not rebut testimony that he is responsible for maintaining such records. Thus, Ms. Blount's testimony that she was not given such an agreement, combined with Respondent's inability to

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[20] Respondent also failed to provide a written fee agreement to Mr. Moody, and there was nothing in the firm's files demonstrating that he or anyone else in his firm provided anything in writing to Ms. Grigsby or other clients, describing the fees that the Law Offices of Squire Padgett would charge. *See* 107 (Grigsby file); BX 101-02 (describing documents contained in other firm files).

produce the records he was required to maintain, constitutes clear and convincing evidence that the written statement required under Rule 1.5(b) was not provided. Accordingly, the Committee finds that Respondent's failure to provide a written basis for his fee or the scope of his representation in the latter matter violated Rule 1.5(b).[21]

G. Rules 1.15(a) and (d)

Rule 1.15(a) imposes a number of requirements regarding the safekeeping of entrusted funds, including that the attorney: (i) keep the funds separate from her own, *i.e.*, not commingling entrusted funds; (ii) not take entrusted funds without the express consent of the client or third party who has an interest in them, *i.e.*, not misappropriate entrusted funds; and (iii) keep complete records of the attorney's handling of entrusted funds, and preserve those records for five years after the representation concludes. Rule 1.15(e), formerly Rule 1.15(d), provides that advances of unearned fees and unincurred costs must be treated as property of the client pursuant to Rule 1.15(a) until earned or incurred, unless the client gives informed consent to a different arrangement.[22] Regardless of whether such consent is provided, Rule 1.16(d) requires the lawyer to return to the client any unearned portion of the advanced legal fees and unincurred costs at the termination of the representation. Although Rules 1.15(a) and (e) do not use the word "misappropriation," they proscribe the conduct that constitutes misappropriation – *i.e.*, the "unauthorized use of client's funds entrusted to [the lawyer], including not only stealing but also unauthorized temporary use for the lawyer's own purpose, whether or not he derives any

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[21] Rule 1.5(b) was amended in 2007, such that the required writing must address not only the basis or rate of the fee and the scope of the lawyer's representation but also the expenses for which the client will be responsible.

[22] In August 2010, the Court amended Rule 1.15 and the provisions in the former Rule 1.15(d) now appear in Rule 1.15(e). Because Respondent received and took Ms. Grigsby' fees in February 2010, Disciplinary Counsel charged him under the Rule provision in effect at that time.

personal gain or benefit therefrom." *In re Anderson*, 778 A.2d 330, 335 (D.C. 2001) (quoting *In re Harrison*, 461 A.2d 1034, 1036 (D.C.1983) (alteration in original)); *see also In re Midlen*, 885 A.2d 1280, 1286 (D.C. 2005). Misappropriation is a *per se* violation and occurs whenever the balance in the lawyer's trust account falls below the amount due the client. *In re Edwards*, 990 A.2d 501, 518 (D.C. 2010).

Clear and convincing record evidence demonstrates that Respondent did not safekeep client funds, nor comply with Rules 1.15(a) and (d). Respondent intentionally, or at minimum recklessly, misappropriated Ms. Grigsby's funds when he deposited the $3,000 that Ms. Grigsby advanced for the firm's fee in his overdrawn Operating Account and took all the rest of her funds within a month. Mr. Padgett's deposit of the $3,000 check from Ms. Grigsby "reveal[s] an unacceptable disregard for the safety and welfare of entrusted funds[,]" because he did nothing to verify the funds had been earned beyond his receipt of Mr. Ponder's confirmation. *Anderson I*, 778 A.2d at 338. The documents in the client file that Respondent's firm maintained for Ms. Grigsby, and the bank records Disciplinary Counsel subpoenaed from the Law Offices of Squire Padgett's bank, demonstrate that Ms. Grigsby paid Respondent's firm $3,000 when she hired it to represent her. Respondent had no evidence at the time - or today - that he or his firm had a right to take any, much less all, of the $3,000 in February 2010. Respondent did not have a fee agreement, time records, invoices or work product demonstrating that he or Mr. Ponder did any work in February 2010, nor at any time thereafter. The purported justification that Respondent came up with more than four years after the fact – that Mr. Ponder had read a 500-700 transcript - was demonstrably false because no hearing had occurred to generate such a transcript.

Respondent never asked, and Ms. Grigsby therefore could not have agreed, to treat this client's $3,000 advance as anything other than entrusted client funds. Rules 1.15(a) and (d)

required Respondent to deposit these entrusted client funds into a trust account and keep them there until his firm earned them - *i.e.*, when Mr. Ponder or Respondent actually performed agreed-upon services, and Ms. Grigsby received a bill or consented to the firm taking some or all of the client's $3,000. This never happened, as Respondent knew in 2010 when he immediately withdrew the funds.

Respondent's initial failure to respond to Disciplinary Counsel and ongoing failure to provide any record of how he handled Ms. Grigsby's funds, further demonstrate the intentional nature of his misappropriation. In *In re Utley*, 698 A.2d 446, 449-50 (D.C. 1997), the Court ruled that a lawyer who took entrusted funds inadvertently or based on an honest mistake at the time of the taking engaged in reckless misappropriation when she delayed for an unreasonably long time to repay the duplicate fee. Respondent here never made a reasonable or honest mistake about his entitlement to Ms. Grigsby's entrusted funds, in February 2010 or thereafter. Respondent never repaid the entrusted funds notwithstanding his knowledge that (a) the Law Offices of Squire Padgett performed no work to pursue Ms. Grigsby's cases against the GSA or her union; (b) there had not been a hearing (or a transcript) that was reviewed prior to or during this engagement; and (c) Mr. Ponder lied to Ms. Grigsby and provided her with fabricated documents about a non-existent case and settlement, all with Respondent's actual, or at least constructive, knowledge. The court disbarred the lawyer in *Utley* for conduct far less culpable than that of Respondent in this case.

Respondent violated other provisions of Rule 1.15(a). Respondent commingled funds when he deposited Ms. Grigsby's advance fee in his Operating Account, into which he later deposited other funds before appropriating all of Ms. Grigsby's funds for himself. BX 49 at 6-7. Respondent also indiscriminately transferred funds among his Operating Account, Trust

Account, and Personal Account. In his Answer to this charge, Respondent contended that he made online transfers from his Trust Account to his Operating Account only when his firm was owed fees. BX 7 at 5 (¶ 47), responding to charges, BX 4 at 9 (¶ 47). But Respondent's transfers were always in round numbers, and he never produced any financial records relating to any of his firm's 32 clients for which records were sought, or records of his Trust Account transactions, to substantiate his claims. BX 101. The bank records that Disciplinary Counsel obtained show that Respondent deposited entrusted funds in his Operating Account and moved funds among the firm's Trust Account, Operating Account, and Respondent's own Personal Account, whenever an account had a low or negative balance, and he made transfers to and from his other accounts without regard for who had an interest in the funds (including creditors when he improperly deposited non-trust funds in his Trust Account), and without creating or maintaining any records. BX 201-06, 210-15, 223-29. Based on the lack of financial records produced by Respondent in response to Disciplinary Counsel's subpoenas, clear and convincing evidence establishes that Mr. Padgett violated the recordkeeping requirements of Rule 1.15(a) in that he failed to maintain records related to his handling of client funds.

The testimony of Ms. Grigsby is not necessary, and in fact would not be useful, to the Committee in finding a Rule 1.15 violation here. Respondent contends only that Ms. Grigsby was not his client and he is not responsible for the funds. Yet, Respondent was the sole signatory on all the firm's accounts, and he had full control of them. Respondent deposited the check from Ms. Grigsby and Respondent personally used her entrusted funds, despite the fact that he had no evidence these funds had been earned. Ms. Grigsby's testimony would not shed light on what Respondent knew at the time he deposited her check into his operating account. Further, Respondent's testimony about the work that Mr. Ponder allegedly performed on behalf of Ms.

Grigsby was patently false, because she had just retained the Law Office of Squire Padgett and previously proceeded *pro se*; so there was no opportunity for any firm attorney to have worked on her case at that point. We find by clear and convincing evidence that Respondent violated Rule 1.15(a) and (d) in the Grigsby representation based on the bank records for the Law Offices of Squire Padgett, Respondent's own admissions, his implausible testimony, and his failure to provide required documentation in response to Disciplinary Counsel's subpoenas.

H. Rule 1.16(d)

Rule 1.16(d) requires a lawyer to "take timely steps to the extent reasonably practicable to protect a client's interest such as…surrendering papers and property to which the client is entitled[.]" *In re Edwards*, 990 A.2d 501, 521 (D.C. 2010) (quoting *Hallmark*, 831 A.2d at 372). Client files and unearned fees should be returned without multiple requests from the client to avoid 1.16(d) violation. *See*, *e.g.*, *In re Thai*, 987 A.2d 428, 430 (D.C. 2009) (quoting *In re Landesberg*, 518 A.2d 96, 102 (D.C. 1986)); *In re Samad*, 51 A.3d 486, 497 (D.C. 2012) (per curiam) (finding a violation where respondent claimed he worked on the case, but did not "suggest that he earned the entire flat fee or that he returned any portion of the fee").

Respondent violated Rule 1.16(d) when he failed to take any steps to protect his clients, including Ms. Blount and Ms. Grigsby, after learning that Mr. Ponder had not and could not pursue their matters. Respondent knew in August 2012 that Mr. Ponder had been suspended from practice before the District of Columbia federal court, had a number of pending disciplinary complaints against him, and was not communicating with clients or Disciplinary Counsel. By early September 2012, after Respondent and his firm were evicted from their offices, the situation with Mr. Ponder worsened - as Respondent knew based on his meeting and communications with Disciplinary Counsel and disappointed firm clients. Respondent was

reminded of Mr. Ponder's suspension and Disciplinary Counsel's efforts to have the D.C. Court of Appeals suspend him from practice altogether.

Respondent did not take any steps to protect Ms. Blount or Ms. Grigsby. Respondent regarded them as Mr. Ponder's responsibility, even though Respondent had received all their fees and, in the case of Ms. Blount, had been and continued to be personally involved in her matter. When the D.C. Court of Appeals suspended Mr. Ponder in mid-October 2012, Respondent's actions reveal that he had no intention of pursuing his firm clients' matters, although he was the only lawyer left at the Law Offices of Squire Padgett able to do so. Respondent never told Ms. Blount or Ms. Grigsby that Mr. Ponder was suspended. Nor did he tell them that they needed to seek other counsel, nor did he provide them with their files and return fees he and his firm had not earned. Instead, Respondent put their files and documents in storage and abandoned them, refusing to provide them truthful information about their cases (nor any information in the case of Ms. Grigsby) and provided false excuses about his right to keep entrusted funds that Ms. Grigsby had paid to his firm for services it never performed. Clear and convincing record evidence demonstrates that Respondent violated Rule 1.16(d) in the Blount and Grigsby matters, firm clients for whom Mr. Ponder was supposed to be doing some or all the work. Respondent knew 32 of his firm's clients had complained to Disciplinary Counsel, but he did nothing to assist them and failed to provide them with their client files and documents even after receiving subpoenas for them. Accordingly, we find Mr. Padgett violated Rule 1.16(d) with respect to his representation of both Ms. Blount and Ms. Grigsby.

I. Rule 5.1(a)

A partner or lawyer in a law firm with "comparable managerial authority . . . shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers in the firm or agency conform to the Rules of Professional Conduct." R. Prof. Cond.

5.1(a). Comment [2] to Rule 5.1 indicates that the policies and procedures "include those designed to detect and resolve conflicts of interest, identify dates by which actions must be taken in pending matters, account for client funds and property and ensure that inexperienced lawyers are properly supervised." R. Prof. Cond. 5.1 Cmt. 2. The comments further indicate that the structure of the firm and nature of the practice dictate what kind of procedures and policies are appropriate. R. Prof. Cond. 5.1 Cmt. 3.

Rule 5.1(a) establishes the principle of supervisory responsibility in the disciplinary context. The rule does not impose vicarious liability for the misconduct of others, but prevents lawyers with the most influence over the firm culture from turning a blind eye to the behavior of the firm's lawyers.

Respondent argues that Disciplinary Counsel failed to prove Respondent was "a partner with managerial authority over Mr. Ponder." Respondent Proposed Findings and Conclusions at 24. The Hearing Committee finds that Respondent qualified as a partner or lawyer with managerial authority in the Law Offices of Squire Padgett at all times relevant. Even if Respondent had agreed at some point that Mr. Ponder would be his partner - which no competent evidence demonstrated - Respondent was still obligated to comply with Rule 5.1(a). Clear and convincing record evidence demonstrates that he did not.

The policies and procedures Respondent claimed that he and his firm instituted were not substantiated by any other documentary or behavioral proof, and apparently were never complied with by any attorneys at Law Offices of Squire Padgett. One of the principal and most glaring deficiencies in Respondent's firm policies was the absence of any policy or procedure to ensure that firm lawyers who handled client funds complied with their ethical obligations. Respondent was the only lawyer in the firm handling the firm's finances, and was the sole signatory authority

on the firm's accounts. Respondent received funds from clients, but without having fee agreements or invoices reflecting when or whether his firm had any entitlement to take some or all of the fees. Respondent produced no records about the client funds he received and deposited into his firm's trust or operating accounts - accounts he used indiscriminately by depositing entrusted funds into his firm's operating account, and earned fees into his firm's trust account, and regularly transferring funds between them as well as his personal account.

The lack of firm procedures in handling client and entrusted funds was just one aspect of the failed or non-existent systems at the Law Offices of Squire Padgett. Respondent and his firm did not maintain a list of clients, did not monitor a calendar system reflecting client matters in litigation and filing deadlines for briefs and hearings or trial dates, and did not establish ethics requirement. PFF 184; BX 107; Tr. 428-32 (O'Connell). In short, Respondent either never had or never implemented policies and procedures designed to provide reasonable assurance that all firm lawyers conformed to the Rules of Professional Conduct.

Respondent admitted that while his firm represented Ms. Blount, he failed to take reasonable efforts to ensure that his firm had in effect measures giving reasonable assurance that its lawyers conformed to the Rules of Professional Conduct. Specification of Charges, Bar Docket No. 2013-D-279 at 4; Resp't Answer to Specification and Charges, Board Docket Nos. 15-BD-039 et. al. and 2013-D279 et. al. at 2. Although Respondent denies the same allegation in Count One of the Grigsby Specification of Charges,[23] clear and convincing evidence indicates that Respondent, as the sole partner in the Law Offices of Squire Padgett, did not take reasonable efforts to give reasonable assurance that the firm's lawyers complied with ethical obligations

[23] Specification of Charges, Bar Docket No. 2013-D374 and 2014-D150 at 3; Resp't Answer to Specification and Charges, Board Docket Nos. 15-BD-039 et. al. and 2013-D279 et. al. at 3.

during the representation of both Ms. Grigsby and Ms. Blount. Accordingly, we find that Respondent violated Rule 5.1(a).

J. Rules 5.1(b) and (c)(2)

As discussed throughout this Report, the Hearing Committee has determined by clear and convincing evidence that Respondent's conduct in these matters amounted to knowing facilitation of and participation in a course of misconduct with his colleague Mr. Ponder. Nonetheless, the Hearing Committee undertakes below a "failure to supervise" analysis, which would apply even if the evidence were to be viewed as establishing only reckless conduct by Respondent.

Rule 5.1(b) mandates that "[a] lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct." Whether reasonable supervision requires the presence of the supervising attorney at certain events, such as trials and hearings, depends on the circumstances. *Agapito v. District of Columbia*, 477 F. Supp. 2d 103, 110 (D.D.C. 2007) (stating factors to be considered including the experience and skill of the supervisor, the type of case, and the type of proceeding). Comment [4] to Rule 1.5 states that "[a] lawyer with direct supervisory authority is a lawyer who has an actual supervisory role with respect to directing the conduct of other lawyers in a particular representation." Whether a lawyer has direct supervisory authority is a question of fact.

Under Rule 5.1(c)(2), a lawyer may be subject to discipline relating to the misconduct of another lawyer when: (1) the lawyer is a direct supervisor *or* a partner *or* has comparable managerial authority in the firm in which the other lawyer practices, and (2) knows or reasonably should know of the misconduct at issue at a time when its consequences can be avoided or mitigated, but who fails to take reasonable remedial action. Comment [5] to Rule 5.1 explains:

> The existence of actual knowledge is also a question of fact; whether a lawyer should reasonably have known of misconduct by another lawyer in the same firm is an objective standard based on evaluation of all the facts, including the size and organizational structure of the firm, the lawyer's position and responsibilities in the firm, the type and frequency of contacts between the various lawyers involved, the nature of the misconduct at issue, and the nature of the supervision or other direct responsibility (if any) actually exercised.

In the matter at hand, the evidence establishes clearly and convincingly that there were plentiful red flags and warnings that alerted or reasonably should have alerted Respondent that Mr. Ponder was not complying with his ethical obligations, and they continued to mount over time, triggering Respondent's obligation to take action under Rules 5.1(b) and 5.1(c)(2). *See* Tr. 657-61 (Respondent admitted Blount case not the only one raising red flags; he had suspicions; there were "a number of bright lights" and red flags he should have addressed). Yet Respondent failed to take ***any*** remedial action to correct or mitigate the consequences of Mr. Ponder's misconduct, even after he learned that a federal court and then the D.C. Court of Appeals had suspended this firm attorney.

When Ms. Blount retained Respondent's firm in 1996, Mr. Ponder was an associate with the firm. Respondent had supervisory authority over Mr. Ponder in 1996 and thereafter. As we found above, there is insufficient evidence that Mr. Ponder was ever a partner in Law Office of Squire Padgett - he at all times was an employee of Respondent's and subject to Respondent's supervision. When Ms. Blount visited Respondent's firm, Mr. Ponder would confer with Respondent before meeting with her, and Respondent participated in many of their meetings. By 2012, Respondent was often the only lawyer who met with Ms. Blount. Ms. Blount understood that it was Respondent's firm and Respondent was in charge, and her understanding was reasonable given her interaction with Respondent and Mr. Ponder, and the interactions she

observed between Respondent and Mr. Ponder.[24] The financial aspects of the case also demonstrate that Respondent was in charge – he received the fees Ms. Blount paid, he modified the firm's fee arrangement after the trial court's grant of summary judgment, and he was the one who purported to receive the $15 million settlement at one point, a third of which he was claiming as his firm's fee.

Although Ms. Blount's matter was long-running and both attorneys may have had evolving roles in this engagement, Mr. Ponder was clearly a subordinate lawyer at the outset of the matter and remained so throughout. Respondent knew - or at least should have known - that something was amiss with Ms. Blount's case even before 2012. Although the D.C. Court of Appeals had reversed the trial court's ruling and remanded the case in July 2001, Respondent knew from his meetings with Ms. Blount and Mr. Ponder that there had been no resolution for a decade - and no evidence of any discovery, motions, nor any other activity that would be expected if the case were actually being litigated. The purported settlement reached in the summer of 2011 raised another red flag, not only because of its timing, but its amount. Respondent did nothing to correct or mitigate the firm's misrepresentations and incredible claims to this client, but repeated and reinforced them to Ms. Blount, causing her to believe she would receive $15 million the courts had allegedly awarded.

By August 2012, Respondent knew that Mr. Ponder had been suspended by the federal court and therefore could not have been pursuing Ms. Blount's case as he contended. Respondent also knew that a number of his firm's clients were complaining to Disciplinary Counsel, and he was aware of the nature of some of their complaints as he initially represented

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[24] Ms. Grigsby also considered Respondent to be in charge. When she became exasperated with Mr. Ponder's repeated and varied excuses, she asked for Respondent's number. PFF 133.

that he would be filing responses on behalf of Mr. Ponder. Respondent also knew that Mr. Ponder was refusing to cooperate with Disciplinary Counsel, including turning over client files, and the Disciplinary Counsel was seeking his suspension. Respondent still did nothing to assist Ms. Blount or mitigate the harm already caused. To the contrary, he continued to mislead her. When Ms. Blount confronted Respondent in 2013, after learning of the charges against Mr. Ponder and his suspension, Respondent again failed to take any remedial measures. Instead, Respondent lied to Ms. Blount and told her that "hackers" were responsible. Respondent's conduct violated not only Rule 5.1(b), but Rule 5.1(c)(2). Even if Mr. Ponder was not a subordinate lawyer at the Law Offices of Squire Padgett, Respondent's own conduct constitutes a violation of Rule 5.1(c)(2) as Respondent knew or reasonably should have known of the conduct and could have taken action to avoid or mitigate the majority of the conduct, but failed to do so.

Respondent also violated Rules 5.1(b) and 5.1(c)(2) in the Grigsby matter. Respondent was responsible for handling the $3,000 that Ms. Grigsby advanced the firm, even if he was not personally working on her employment cases. Respondent appropriated the entire $3,000 that Ms. Grigsby advanced, without having a fee agreement or invoice reflecting that the firm had a right to take her entrusted funds. PFF 110-18. Respondent took no corrective or remedial measures during the time he continued to practice with Mr. Ponder. Respondent also took no corrective action after Mr. Ponder's suspension, although he knew from his firm's file (and the documents attached to Ms. Grigsby's complaint) that Mr. Ponder had not pursued Ms. Grigsby's claims and had lied to her about a non-existent settlement. When challenged, Respondent refused to return Ms. Grigsby's entrusted funds and created a knowingly false excuse for keeping them (that Mr. Ponder read a 500-700 page transcript). BX 45.

Respondent's conclusion on this charge indicates that Disciplinary Counsel failed to prove Respondent had direct supervisory authority over Mr. Ponder or was "a partner of Mr. Ponder with comparable managerial authority." Respondent Proposed Findings and Conclusions at 26. Further, Respondent concludes that Disciplinary Counsel failed to prove he knew or should have known of misconduct by Mr. Ponder related to Ms. Blount's case or that he knew or should have known at a time when the consequences could have been avoided. *Id.* Attorneys are precluded from maintaining willful blindness that "they didn't know and didn't want to know," and ethical rules instead obligate an attorney in managerial authority of other lawyers to "take reasonable steps to become knowledgeable about the actions of those attorneys in representing clients of the firm." *In re Cohen*, 847 A.2d 1162, 1166 (D.C. 2004). Respondent's testimony that he was unaware of Mr. Ponder's conduct, or that he did not represent Mr. Ponder's clients, is of little consequence or weight under Rule 5.1(c)(2), because at the very least, Respondent reasonably should have known of Mr. Ponder's conduct and could have investigated and undertaken remedial action but failed to do so. Moreover, the bulk of evidence demonstrates that Respondent knew full well of Mr. Ponder's conduct and acquiesced in and furthered that conduct under a unified and overarching scheme to defraud the firm's clients. Accordingly, by the requisite clear and convincing standard, we find that Respondent violated Rule 5.1(b) and (c)(2).

K. Rule 8.4(b)

Rule 8.4(b) provides that "[i]t is professional misconduct for a lawyer to . . . commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects." The attorney need not be charged or convicted of a crime to prove a violation. *In re Slattery*, 767 A.2d 203, 207 (D.C. 2001). "Rather, an attorney may be disciplined for having engaged in conduct that constitutes a criminal act." *Id.*

To prove a violation of Rule 8.4(b), Disciplinary Counsel must establish by clear and convincing evidence the elements of the alleged criminal offense. *See Slattery*, 767 A.2d at 207. Disciplinary Counsel may use the law of any jurisdiction that could have prosecuted the lawyer's conduct. *See Slattery*, 767 A.2d at 212; *In re Gil*, 656 A.2d 303, 305 (D.C. 1995). Disciplinary Counsel alleges that Respondent violated the "bad check" laws in DC and Virginia. Accordingly, whether Respondent violated Rule 8.4(b) turns on whether there was clear and convincing evidence that he committed the elements of either D.C. Code § 22-1510 or Va. Crim. Code § 18.2-181, and whether his conduct reflects poorly on his honesty, trustworthiness, or fitness as a lawyer.

Respondent violated Rule 8.4(b) when he violated the criminal statutes in both D.C. and Virginia that prohibit making, drawing, or uttering of a check with knowledge at the time that there were insufficient funds in the account to pay the check, with the intent to defraud.[25] The D.C. statute, D.C. Code § 22-1510, provides that when anyone in D.C., with the intent to defraud, makes, draws, utters or delivers a check for the payment of money upon a bank, knowing at the time that the drawer has insufficient funds in the bank for the payment of the check *in full* upon presentation is guilty of a felony if the check is for $1,000 or more, and a misdemeanor if the check is for less than $1,000. Under the D.C. statute, when the maker or drawer of a check for which payment is refused because of insufficient funds does not make payment within five days upon receiving notice that the check was not paid, such conduct

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[25] In *Gil*, the Court stated that in construing the phrase "criminal act" for purposes of Rule 8.4(b), it "properly may look to the law of any jurisdiction that could have prosecuted respondent for the misconduct." 656 A.2d at 305. When he wrote and uttered the checks, Respondent was a D.C. lawyer and his account was with a bank in D.C., providing a sufficient nexus to D.C. for its laws to apply. Virginia also could have asserted jurisdiction because Respondent was a resident of Virginia and apparently working out of his home in Virginia when he wrote, uttered, and delivered the checks to American Self Storage, which also was located in Virginia.

constitutes "prima facie evidence of the intent to defraud and of knowledge of insufficient funds in" the bank. The Virginia criminal statute, VA Code § 18.2-181, prohibits the same conduct, but requires that the bad check be for only $200 or more to constitute a felony. Like the D.C. statute, the Virginia statute prohibits a person from writing, uttering or delivering a check drawn on a bank account he knows has insufficient funds to cover payment of the check and acts with the intent to defraud, where the check was present consideration for goods or services.

Respondent violated the provisions of the criminal statutes in effect in D.C. and Virginia, and did so with the requisite intent to defraud. Respondent had been delinquent in paying his rent for months when American Self Storage provided him notice that he was in default and that it intended to sell and empty the contents of the storage units. PFF 161-62. Respondent made, uttered and delivered two checks to American Self Storage, with the intent and the actual result that it would not go through with the sale as scheduled and he would continue to have use of the units without paying rent. Respondent knew in April 2013, when he wrote, uttered, and delivered the checks drawn on his Operating Account - one for $1,238.45 and another for $922.25 - that the balance in his Operating Account was less than $25. After making, uttering and delivering the checks, Respondent made no effort to replenish the account on which the checks were drawn, including after the bank notified him of the overdraft and American Self Storage told him his checks were not honored. Nor did Respondent ever seek to pay American Self Storage the amounts owed for its services, including for the amounts of the checks that were dishonored.

Respondent intended to defraud - and actually defrauded - American Self Storage by giving it checks he knew were bad, and then never taking steps to pay. Respondent's fraudulent intent is further demonstrated by his failure to make any deposits in his firm's overdrawn

Operating Account for months resulting in the bank closing the account, his refusal to respond to American Self Storage's requests for payment, and his failure to this day to pay the amounts he owed American Self Storage despite his having the funds to do so.

Here, clear and convincing record evidence demonstrates Respondent committed the elements of criminal offenses contained in both D.C. Code § 22-1510 and Va. Crim. Code § 18.2-181. Mr. Padgett's personal conduct violates both criminal statutes and reflects poorly on his honesty, trustworthiness, or fitness as a lawyer. We conclude that a Rule 8.4(b) violation has been established.

L. Rule 8.4(c)

Rule 8.4(c) states it is professional misconduct if a lawyer engages in "conduct involving dishonesty, fraud, deceit, or misrepresentation." R. Prof. Cond. 8.4(c). The Court has instructed that "Rule 8.4(c) is not to be accorded a hyper-technical or unduly restrictive construction." *In re Ukwu*, 926 A.2d 1106, 1113 (D.C. 2007). The term "dishonesty" under Rule 8.4(c) includes not only fraudulent, deceitful or misrepresentative conduct, but is a more general term that also encompasses "conduct evincing 'a lack of honesty, probity or integrity in principle; [a] lack of fairness and straightforwardness.'" *In re Hager*, 812 A.2d 904, 916 (D.C. 2002) (alteration in original) (citations omitted) (quoting *In re Shorter*, 570 A.2d 760, 767-68 (D.C. 1990)). In *Shorter*, the Court noted that the terms fraud, deceit, and misrepresentation, have more specific meanings:

> Fraud is a generic term which embraces all the multifarious means . . . resorted to by one individual to gain an advantage over another by false suggestion or by suppression of the truth. . . . [Deceit is t]he suppression of a fact by one who is bound to disclose it, or who gives information of other facts which are likely to mislead for want of communication of that fact, . . . and is thus a subcategory of fraud. [Misrepresentation is] the statement made by a party that a thing is in fact a particular way, when it is not so; untrue representation; false or incorrect statements or account.

570 A.2d 767-68 n.12 (alteration in original) (internal quotations and citations omitted). In *In re Romansky*, 825 A.2d 311, 315 (D.C. 2003), the Court cited with approval its previous discussion of the Rule 8.4(c) terms, and explained that dishonesty does not always depend on finding an intent to defraud or deceive.

Respondent made misrepresentations and engaged in numerous other dishonest and deceitful acts which were also fraudulent. Respondent told Ms. Blount the courts had awarded her $15 million in her case against the Center, which he knew could not be true. At one point, he lied to her about seeing an attempted electronic transfer of these settlement funds in his firm's bank account. Respondent made other misrepresentations to Ms. Blount that were incredible, and which Respondent clearly knew were false. These included reports of myriad non-existent court proceedings before numerous judges in different courts, imaginary hackers who were interfering with his firm's computer systems and bank transfers and funds to be paid to the court registry, and alleged problems with his firm's Trust Account over which he had exclusive control. Respondent and his firm also made false representations to others, including Karpet King and a home builder, that were shared with Ms. Blount and on which she relied and acted to her detriment, which Respondent knew she was doing.

Respondent also concealed information that he was obligated to disclose to his firm's clients, including that the federal court and subsequently the D.C. Court of Appeals had suspended Mr. Ponder. *See Reback*, 487 A.2d at 239-40 ("Concealment or suppression of a material fact is as fraudulent as a positive direct misrepresentation." (quoting *Andolsun v. Berlitz Schools of Languages of America, Inc.*, 196 A.2d 926, 927 (D.C.1964)). Respondent not only failed to disclose Mr. Ponder's suspended status, but continued to mislead Ms. Blount through 2013 about Mr. Ponder's continued ability to represent her and the alleged ongoing court

proceedings in her case. When Ms. Blount confronted Respondent with the charges pending against Mr. Ponder and his suspension, Respondent lied and blamed hackers. Respondent also failed to confirm what Ms. Blount learned on her own – that there had been no activity in her case since 2001.

Respondent's dishonesty continued in the Disciplinary Counsel investigation. Respondent falsely represented to Disciplinary Counsel that Ms. Blount would receive her funds when problems with his bank account could be resolved. Respondent could not possibly have believed that there was any settlement or award given the irrefutable proof that he and Mr. Ponder had done nothing to purse Ms. Blount's case since 2001 - a fact confirmed by the documents and file he eventually produced to Disciplinary Counsel.

Respondent also engaged in multiple violations of Rule 8.4(c) in Ms. Grigsby's matter. Respondent took Ms. Grigsby's funds without earning them and refused to return them. He then lied to Disciplinary Counsel about his alleged entitlement to keep her funds, including Mr. Ponder's review of a 500-700-page transcript that did not and could not exist. Respondent did not stop there; he falsely claimed that Ms. Grigsby owed him and his firm money. *Id.* Respondent concealed from Ms. Grigsby information he was obliged to disclose, including that Mr. Ponder had been suspended for months. Respondent was not fair to or straightforward with Ms. Grigsby, but dishonest including when she was distraught and came to his house in February 2013 to find out about her matter. Respondent's conduct in the other matters also was marked with dishonesty. Respondent knowingly gave bad checks to American Self Storage that he knew would not be honored and had no intention of making good. His conduct was criminal and fraudulent. Respondent's writing bad checks was not an isolated incident, but a common occurrence, resulting in countless overdrafts on his Operating Account and Personal Account,

which the bank eventually closed for that reason. Respondent also misused his Trust Account by depositing earned fees in the account at a time when he had numerous creditors, including judgment creditors, who he knew could not attach funds in his Trust Account. This conduct too was dishonest. Finally, Respondent's representations to Disciplinary Counsel about his dealings with American Self Storage and the circumstances surrounding the bad checks were false, which Respondent knew when he made the misrepresentations.

At the hearing, Respondent repeated a number of the false representations he made to his clients or Disciplinary Counsel, aggravating what already constituted flagrant dishonesty on his part. Applicable precedents emphasize that "honesty is basic to the practice of law, and that lawyers have a greater duty than ordinary citizens to be scrupulously honest at all times." *In re Baber*, 106 A.3d 1072, 1077 (D.C. 2015) (quoting *In re Guberman*, 978 A.2d 200, 209 n. 10 (D.C. 2009)). Mr. Padgett consistently failed to uphold his duty of honesty in the practice of law. Accordingly, we find by clear and convincing evidence that Mr. Padgett violated Rule 8.4(c).

M. Rule 8.4(d)

Rule 8.4(d) holds that it is professional misconduct for a lawyer to "[e]ngage in conduct that seriously interferes with the administration of justice." R. Prof. Cond. 8.4(d). The Court of Appeals has held that a lawyer violates Rule 8.4(d) where his conduct (i) was improper, *i.e.*, he either acted or failed to act when he should have; (ii) bore directly upon the judicial process with respect to an identifiable case or tribunal; and (iii) tainted the judicial process in more than a *de minimis* way, *i.e.*, it must have potentially had an impact upon the process to a serious and adverse degree. *In re White,* 11 A.3d 1226, 1230 (D.C. 2011) (citing cases). The Court has stated that:

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

In re Uchendu, 812 A2.d 933, 941 (D.C. 2002) (quoting *In re Hopkins,* 677 A.2d at 60-61).

Respondent engaged in pervasive violations of Rule 8.4(d). He failed to cooperate in Disciplinary Counsel's investigations, sometimes taking months to reply and doing so only after receiving numerous letters and both Board and court orders compelling him to respond. Most, if not all, of the responses that Respondent eventually submitted included false representations or concealed information he was required to disclose, or both. Respondent also refused to turn over client files, financial records and other documents responsive to Disciplinary Counsel's subpoena. It took months, in some cases, more than a year before Respondent produced documents responsive to Disciplinary Counsel's subpoenas. With respect to the requests for files and documents, Disciplinary Counsel also had to file motions and obtain Court orders before Respondent produced any documents. Even then, Respondent's productions were incomplete and Respondent never supplemented them, even when reminded of his obligation to do so.

As a member of the Bar and an officer of the Court, Respondent had a duty and responsibility to respond to Disciplinary Counsel's inquiries. Respondent's failure to cooperate and his false representations in responses to Disciplinary Counsel were improper and prevented Disciplinary Counsel from conducting thorough investigations. By "thumbing his nose" at the disciplinary system, Respondent attempted to bring the system by which the Bar regulates attorneys into disrepute. *See In re Lea*, 969 A.2d 881, 882-83 (D.C. 2009) (respondent's failure to cooperate with Disciplinary Counsel violated Rule 8.4(d), as well as Rule 8.1(b) and D.C. Bar R. XI, § 2(b)(3), justifying sanction); *see also In re Kanu*, 5 A.3d 1, 11-13 (D.C. 2010) (Kanu

violated Rule 8.4(d) by failing to respond to Disciplinary Counsel's inquiry; obtaining Board order compelling response is not a prerequisite to charge or finding of a Rule 8.4(d) violation).

Respondent's consistent failure to respond to Disciplinary Counsel subpoenas and Court orders in a timely and complete manner also caused unnecessary use of time and resources in the proceedings, which the Court in *In re Cole*, 967 A.2d 1264, 1266 (D.C. 2009) held was a violation of 8.4(d). The evidence is clear and convincing that Mr. Padgett's improper conduct in responding to the disciplinary proceedings broadly and seriously interfered with the judicial process in violation of Rule 8.4(d).

N. D.C. Bar R. XI § 2(b)(3)

Finally, Disciplinary Counsel charges that Respondent violated Rule XI, § 2(b)(3) by failing to comply with court and Board orders directing him to respond to Disciplinary Counsel's investigations. "It is well established that failure to comply with the Board's orders constitutes misconduct." *In re Steinberg*, 864 A.2d 120 (D.C. 2004) (appended Hearing Committee report, collecting cases). Here, Respondent consistently failed to comply with Board orders directing him to respond in writing to the petitions in the applicable cases. Accordingly, we find by clear and convincing evidence that Respondent violated Bar Rule XI § 2(b)(3).

Respondent admits to his receipt of various subpoenas for documents from Disciplinary Counsel, and in many instances, admits to his incomplete or total lack of response to the requests. As discussed in Section L above, Respondent failed to comply with a Board order directing him to respond to Disciplinary Counsel's inquiries within 10 days, and Court orders directing him to provide files and documents responsive to Disciplinary Counsel subpoenas. Respondent continued to flout the Court orders even after receiving reminders from Disciplinary Counsel about this obligations to comply with them. Mr. Ponder also failed to comply with

similar requests by Disciplinary Counsel. Mr. Padgett was aware of Mr. Ponder's lack of cooperation with Disciplinary Counsel's investigation; thus, Mr. Padgett is also liable for Mr. Ponder's violations under Rule 5.1(c)(2). Respondent's contention that any delayed or incomplete responses were due to lack of cooperation on the part of Mr. Ponder does not affect Respondent's personal failures. As the court and Board orders were directed to Respondent, and Respondent had access to the files in the storage unit, Mr. Ponder's lack of cooperation has no bearing on Respondent's failures to comply. Clear and convincing record evidence demonstrates that Respondent violated D.C. Bar Rule XI, § 2(b)(3).

V. Recommended Sanction

Disbarment is the presumptive sanction because Respondent intentionally misappropriated $3,000 that Ms. Grigsby had given to him as an advance of legal fees. *In re Addams*, 579 A.2d 190, 191 (D.C. 1990) (en banc) (reaffirming "that in virtually all cases of misappropriation, disbarment will be the only appropriate sanction unless it appears that the misconduct resulted from nothing more than simple negligence"). With regard to whether the instant matter presents "extraordinary circumstances" sufficient to rebut the *Addams* presumption of disbarment, the Court has held that the extraordinary circumstances exception should be construed narrowly, emphasizing that "[o]nly the most stringent of extenuating circumstances would justify a lesser disciplinary sanction[.]" *Id.* at 193. The record in this matter is devoid of evidence of any extenuating or mitigating circumstances.

Disbarment is also the appropriate sanction for Respondent's protracted, flagrant dishonesty, and his fraudulent conduct. Respondent participated in a scheme to convince the Blounts that they would receive $15 million from a fictitious settlement, he falsely told them that rogues from the Center were engaging in criminal conduct to avoid payment, that bank and law

firm computers had been hacked in an effort to delay payment, and that the Blounts were in danger from the Center's imaginary rogues, and should stay in hiding. While this story was a complete fiction, the damage it caused was not: Ms. Blount and her husband were forced to file for bankruptcy when they were unable to pay debts they had incurred in the false belief that a large settlement payment would soon be provided to Ms. Blount. Tr. 162-63, 197 (Blount). Moreover, Respondent reiterated and reinforced this fabrication even when the Blounts confronted him with contradictory evidence and when he knew that they were taking on debt in reliance on the false payout he promised. Respondent also defrauded American Storage when he paid back rent with checks he knew to be worthless.

"[H]onesty is basic to the practice of law" and dishonesty is "plainly intolerable." *Reback II*, 513 A.2d at 231. Disbarment is imposed where the dishonesty is flagrant, and "reflect[s] a continuing and pervasive indifference to the obligations of honesty in the judicial system.'" *In re Pennington*, 921 A.2d 135, 141 (D.C.2007) (quoting *In re Corizzi*, 803 A.2d 438, 443 (D.C. 2002)). For example, in *In re Baber*, 106 A.3d 1077 (D.C. 2015), the Court imposed disbarment based on "[t]he repeated and prolonged nature of [the lawyer's] dishonesty," which "weigh[ed] significantly in favor of disbarment." *Id.* at 1078. As the Court noted, Baber's dishonesty, which included lying to the court and his client (the personal representative of an estate), was "particularly disturbing because it came at the expense of his client's interests and was in large part driven by a desire for personal gain," that is, to recover an unreasonable fee and to cover up his incompetence. *Id.* at 1077. As a result of Baber's false accusations against his client, she was forced to address a charge from one of the other heirs that she had engaged in malfeasance in the administration of an estate. *See also In re Slattery*, 767 A.2d 203, 218-19 (D.C. 2001)

(disbarment where the respondent engaged in criminal conduct, theft, through "deliberate and deceitful" conduct).

The Committee also recommends that, as a condition of his reinstatement, Respondent be required to make restitution of $3,000 to Ms. Grigsby and $60,000 (the fees paid by or for Ms. Blount) to Ms. Blount, and reimburse Disciplinary Counsel $512.12, the cost it incurred in retrieving his files from American Self Storage, with interest at the legal rate. BX 94. *See In re Pye*, 57 A.3d 960, 963 (D.C. 2012) (reinstatement conditioned on repayment of misappropriated funds with interest); *In re Austin*, 858 A.2d 969, 978 (D.C. 2004) (Court ordered full reimbursement to the client and to the Clients' Security Trust Fund when lawyer engaged in a conflict of interest and borrowed money from a client); *In re Lopes*, 770 A.2d 561, 572 (D.C. 2001) (Court ordered full restitution to two clients, with interest at the legal rate, where lawyer neglected their matters); *In re Wright*, 702 A.2d 1251, 1257 (D.C. 1997) (Court ordered restitution of $2,000 retainer, with interest, where lawyer filed civil complaint on behalf of client, but then abandoned case).

A license to practice law is a privilege, not a right. Overall, Respondent's conduct reflects a continuing and pervasive indifference to his obligations to clients, the judicial system, and the public. It is clear that Respondent should no longer have the privilege of practicing law. For the foregoing reasons, we find that Respondent violated the following Rules: 1.3(a), 1.3(b)(2), 1.3(c), 1.4(a)-(b), 1.5(b), 1.15(a) and (d), 1.16(d), 5.1(a), 5.1(b), 5.1(c)(2), 8.4(b), 8.4(c), and 8.4(d), and D.C. Bar R. XI, § (2)(b), as discussed above, and recommend that

Respondent be disbarred, and that he be required to make restitution as a condition of reinstatement, with interest at the legal rate.

AD HOC HEARING COMMITTEE

/RLW/
Robert L. Walker, Chair

/NE/
Nicole Evers, Public Member

/TEG/
Thomas E. Gilbertsen, Attorney Member

Dated: May 12, 2016