DISTRICT OF COLUMBIA COURT OF APPEALS
BOARD ON PROFESSIONAL RESPONSIBILITY

Issued: April 4, 2018

In the Matter of:	:	
	:	
WENDELL C. ROBINSON,	:	
	:	Board Docket No. 15-BD-053
Respondent.	:	Bar Docket No. 2012-D293
	:	
A Member of the Bar of the	:	
District of Columbia Court of Appeals	:	
(Bar Registration No. 377091)	:	

REPORT AND RECOMMENDATION OF THE BOARD ON PROFESSIONAL RESPONSIBILITY

I. INTRODUCTION

This disciplinary matter arises out of a dispute among counsel over the division of a contingent fee. Disciplinary Counsel charged that Respondent Wendell C. Robinson violated D.C. Rule of Professional Conduct 1.15(d) because he failed to keep the disputed amount in his trust account.

Notably, Disciplinary Counsel did *not* charge Respondent with misappropriation. Nevertheless, prior to the hearing, the Hearing Committee Chair informed the parties that, in addition to assessing the charged Rule 1.15(d) violation, the Hearing Committee would determine whether Respondent committed misappropriation in violation of Rules 1.15(a) and 1.15(c). Both Disciplinary Counsel and Respondent objected to the addition of a misappropriation charge.

After the evidentiary hearing, the Hearing Committee concluded that Respondent (as he had consistently admitted) violated Rule 1.15(d) by failing to

keep the disputed portion of a contingent fee in trust pending resolution of his dispute with his co-counsel. In addition, the Hearing Committee found that Respondent intentionally misappropriated entrusted funds and, relying on *In re Addams*, 579 A.2d 190 (D.C. 1990) (en banc), recommended that he be disbarred, with reinstatement conditioned on successful completion of designated CLE courses.

Before the Board, Respondent concedes the Rule 1.15(d) violation but argues that the Hearing Committee exceeded its authority when it considered a misappropriation charge that was not included in the Specification of Charges. He argues that he should be suspended for ninety days, stayed in favor of probation. Disciplinary Counsel, on the other hand, argues that Respondent "was charged with a form of misappropriation," Disciplinary Counsel's Brief at 6, and should be disbarred because he mishandled entrusted funds, gave false testimony to the Hearing Committee, and was previously disbarred for misappropriation.

We agree with the Hearing Committee that the evidence shows a violation of Rule 1.15(d), but conclude that the Hearing Committee erred in adding the misappropriation charge. Based on the violation of Rule 1.15(d), we recommend that Respondent be suspended for one year.

II. PROCEDURAL HISTORY

The Specification of Charges in this case alleged only that Respondent violated Rule 1.15(d). During a pre-hearing conference, the Hearing Committee Chair told the parties that there appeared to be a justiciable question whether the facts alleged in the Specification of Charges, if proved, would establish that

Respondent engaged in reckless or intentional misappropriation, subjecting him to the presumptive sanction of disbarment. *See* Pre-Hearing Conference ("PH") Transcript ("Tr.") 62.

Although Disciplinary Counsel agreed that the facts might establish misappropriation, he confirmed that Respondent was *not* charged with misappropriation, and said he would not seek to amend the Specification of Charges to that effect. *Id.* at 65. In a later filing, Disciplinary Counsel acknowledged that Respondent's "taking the disputed funds for which [co-counsel] had a 'just claim' would constitute misappropriation." Disciplinary Counsel's Brief in Response to the Hearing Committee's December 14, 2015 Order, at 2. However, Disciplinary Counsel insisted that the Specification did not provide adequate notice of a misappropriation violation "[b]ecause it is possible to violate Rule 1.15(d) without committing misappropriation, [and thus] the Specification of Charges would have to specify misappropriation. It does not do so." *Id.* at 3. Disciplinary Counsel argued that the Specification would have to be amended to give Respondent proper notice of a misappropriation charge, but that he would not seek such an amendment because the Specification "represents Disciplinary Counsel's judgment as to the appropriate charges to bring. A Contact Member approved that determination," and the Chair lacked authority to add a charge to the Specification. *Id.* at 5.

At a later pre-hearing conference, Respondent observed that the Hearing Committee Chair seemed to have prejudged the case, and was "overtaking the prosecutorial function of Disciplinary Counsel and pronouncing what penalty is

going to be imposed . . . ." PH Tr. 98.[1] The Chair assured the parties that he had not prejudged the case but – clearly intending to put the parties on notice – ruled that the Hearing Committee would consider (1) whether Respondent violated Rule 1.15(d), as charged, and (2) whether Respondent also committed misappropriation in violation of Rule 1.15(a) and (c). *Id.* at 107-10.

III. FINDINGS OF FACT

The Hearing Committee's factual findings are supported by substantial evidence in the record as a whole.

A. The Fee Dispute

Tonyette Bables hired D.C. attorneys W. Thomas Stovall, II, and Leonard L. Long to represent her in a medical malpractice case in Fairfax County Circuit Court. Mr. Stovall and Mr. Long then associated Respondent into the case; later, attorney William Thompson joined the legal team as local counsel because he was admitted in Virginia.

Under the contingent fee agreement with their client, the four lawyers were collectively entitled to a one-third contingency if the case settled without litigation, and to forty percent of the recovery if suit were filed. The fee agreement, however, did not specify how the lawyers would divide the fee among themselves.

Even though Mr. Long and Mr. Stovall volunteered to assist him, Respondent essentially conducted the ensuing litigation by himself and negotiated a $600,000

[1] At oral argument before the Board, Respondent conceded that the fact findings in this matter did not result from prejudgment by the Hearing Committee, and stated that he does not seek a new hearing. Oral Arg. Tr. 4-5.

settlement. The lawyers were therefore collectively entitled to $240,000, *i.e.*, forty percent of the settlement amount.

The $600,000 settlement proceeds were credited to Respondent's trust account on June 20, 2011. Ten days later, Respondent paid the client her $360,000 share, and paid local counsel, Mr. Thompson, $15,000.

By July 1, Respondent had paid himself $170,000 and sent Mr. Long a check for $40,000, purportedly to compensate both Long and Stovall. Respondent wrote in his cover letter to Mr. Long, "If you reject the $40,000, the money will remain in my trust account." Disciplinary Counsel's Exhibit ("DX") 6 at 2. Messrs. Long and Stovall quickly rejected the offer, and on July 5, Mr. Stovall explicitly told Respondent that all the fees were in dispute and should all be escrowed.

The lawyers never resolved their fee dispute, yet by August 11, 2011, Respondent had paid himself $193,550 of the $240,000 settlement share, had sent Mr. Long and Mr. Stovall $15,700 each, and had paid Mr. Thompson $15,000. Fifty dollars of the settlement funds remained in his trust account.[2]

The appropriate division of the lawyers' fees was the primary contested issue before the Hearing Committee which, after considering the conflicting evidence, found that the three counsel had agreed equally to divide the $225,000 that remained after paying local counsel $15,000. This finding is supported by substantial evidence

[2] The Hearing Committee report concludes that Respondent received only $193,*350*; however, this appears to be a typographical error, as the Hearing Committee found that Respondent received $223,*550*, minus $30,000 in cashier's checks to Messrs. Long and Stovall, or $193,*550*. *See* HC Rpt. at 15, ¶ 29. This discrepancy is not material to any issue before the Board.

in the record, including the testimony of Messrs. Long and Stovall, and Respondent's contemporaneous conduct.[3]

Thus, the Hearing Committee concluded that Respondent should have kept $150,000 (the contested two-thirds of the $225,000) in his trust account pending resolution of the dispute. The Hearing Committee also concluded that in any event Respondent should have kept in his trust account at least the $40,000 that he had initially offered to Messrs. Long and Stovall, and had explicitly promised to keep in escrow in the event of a dispute.

B. Respondent's Credibility

The Hearing Committee found that Respondent "repeatedly testified falsely" when he stated that Mr. Long agreed that Respondent was entitled to all or almost all of the settlement fees. Finding of Fact 30; *see, e.g.*, Hearing Tr. 154-56, 163-64. In doing so, the Hearing Committee relied upon ample written evidence in the record, including correspondence to (*see* DX 2, 4, 7, 9, 11, 13, 15) and from (*see* DX 3, 6, 8, 10, 12) Respondent. "Whether respondent gave sanctionable false testimony before the Hearing Committee is a question of ultimate legal fact that the Board . . . review[s] *de novo.*" *In re Bradley*, 70 A.3d 1189, 1194 (D.C. 2013) (per curiam).

[3] During settlement negotiations, Respondent told the client that she would receive two-thirds of any settlement amount. However, because a lawsuit was filed, the client was actually entitled to only sixty percent of the settlement proceeds. Following the settlement, the client was upset because she thought she was entitled to two-thirds ($400,000) rather than sixty percent ($360,000) of the settlement amount. Respondent offered to reimburse the client one-third of the $40,000 difference, strongly suggesting that Respondent understood that the fee was to be split three ways. The client ultimately chose to accept $360,000.

We have reviewed the record and agree that Respondent testified falsely to the Hearing Committee.

IV. CONCLUSIONS OF LAW

A. Respondent Violated Rule 1.15(d) When He Failed to Hold Disputed Settlement Funds in Escrow.

Rule 1.15(d) requires that when there are competing "just claims" to funds in a lawyer's possession in the course of a representation, "the portion in dispute shall be kept separate by the lawyer until the dispute is resolved." A "just claim" is one "as to which 'applicable law' imposes a duty on the lawyer to distribute the funds to the third party or withhold distribution." *See In re Bailey*, 883 A.2d 106, 116-17 (D.C. 2005) (quoting D.C. Legal Ethics Op. 293 (adopted July 20, 1999, revised Nov. 16, 1999)). Disciplinary Counsel charged that Respondent violated Rule 1.15(d) when he failed to keep the attorneys' fees in trust pending resolution of the dispute with his co-counsel. Respondent conceded the violation. The Hearing Committee found a violation, and we agree.

A "just claim" includes a client's contractual agreement with a third party regarding the disposition of funds, which the respondent has voluntarily assumed or ratified. *Id.* at 117. Here, the client agreed in writing (the retention agreement) to pay her lawyers $240,000 collectively. Respondent ratified the client's obligation when he deducted $240,000 from the settlement amount and undertook to pay his co-counsel. Thus, when Messrs. Long and Stovall disagreed with him over the division of the remaining $225,000 fee, Respondent was required to hold the disputed funds in trust pending resolution of the dispute.

We agree with the Hearing Committee that there is clear and convincing evidence that the lawyers had agreed equally to share in the net $225,000 recovery, and thus if Respondent did not want to pay Messrs. Stovall and Long $75,000 each, he was required to hold $150,000 in trust pending resolution of the dispute. We further agree with the Hearing Committee that, at a minimum, Respondent was required to hold $40,000 in trust after he promised Mr. Long that he would do so if Mr. Long rejected Respondent's tender of that amount.

Respondent's failure to hold the monies in escrow violated Rule 1.15(d).

The parties do not meaningfully dispute that Respondent failed to keep disputed funds in trust pending resolution of the fee dispute. The central issue before the Board is whether the Hearing Committee was correct in also considering this conduct as the equivalent of an intentional misappropriation, with the presumptive sanction of disbarment. We conclude that it was not, for the reasons discussed below.

B. The Hearing Committee Erred in Considering a Misappropriation Charge.

The Specification charged that Respondent violated Rule 1.15(d). Although that Rule has previously been charged in misappropriation cases resulting in disbarment,[4] the Specification in this matter did not allege that Respondent engaged in "misappropriation."

Disciplinary proceedings are quasi-criminal adversary proceedings. A respondent is entitled to adequate notice of charges and a meaningful opportunity to

[4] *See, e.g., In re Lee*, 95 A.3d 66 (D.C. 2014) (per curiam).

defend against them. *See In re Fay*, 111 A.3d 1025, 1031 (D.C. 2015) (per curiam); *In re Williams*, 513 A.2d 793, 796 (D.C. 1986) (per curiam). Adequate notice is especially important in misappropriation cases because, under *Addams*, disbarment is the presumptive sanction for reckless or intentional misappropriation. As both the Hearing Committee chair and Disciplinary Counsel recognized before the hearing (*see* PH Tr. at 72 (Chair), 67, 72 (Disciplinary Counsel)), a failure to give appropriate notice of the charges can raise due process issues. *See In re Thai*, Board Docket No. 14-BD-026, at 11 n.4 (BPR May 13, 2016) (because "misappropriation was not charged . . . , questions of due process might arise if the Board were to find misappropriation"), *recommendation adopted after no exceptions filed*, 157 A.3d 760 (D.C. 2017) (per curiam).

We thus commend the Hearing Committee Chair's careful review of the facts contained in the Specification of Charges; his recognition that those facts could support a misappropriation charge; his decision to clarify at a pre-hearing conference the precise nature of the charges to be considered against Respondent; and his attempt to provide sufficient notice to Respondent that the additional misappropriation charge would be addressed.

However, notions of due process aside, once Disciplinary Counsel clarified that Respondent was not charged with misappropriation, the Hearing Committee Chair erred by deciding *sua sponte* to add a misappropriation charge to the case.

"Our disciplinary system is adversarial—[Disciplinary] Counsel prosecutes and Respondent's attorney defends . . . ." *See In re Cleaver-Bascombe*, 892 A.2d

396, 412 n.14 (D.C. 2006) (remanding to the Board) (noting that Disciplinary Counsel "conscientiously and vigorously enforces the Rules of Professional Conduct"); *see also In re Christenson*, 940 A.2d 84, 85 n.3 (D.C. 2007) (reiterating the above-referenced statement from *Cleaver-Bascombe*); *In re Ukwu*, 926 A.2d 1106, 1119 (D.C. 2007) (same); *In re Powell*, 898 A.2d 365, 366 n.1 (D.C. 2006) (same); *In re DeMaio*, 893 A.2d 583, 584 n.1 (D.C. 2006) (same). To that end, the Court and the Board have promulgated specific rules to ensure that the discipline process is fair, and is perceived to be fair. *See In re Winstead*, 69 A.3d 390, 396-97 (D.C. 2013) (procedural safeguards in D.C. Bar R. XI protect against the arbitrary imposition of discipline); *In re Stanton*, 470 A.2d 281, 284 (D.C. 1983) (per curiam) (appended Board Report) (hearings must be conducted "in a fair and even-handed way"). Under these rules, the Hearing Committee does not play an adversarial role; rather, the Hearing Committee is "the first-level adjudicator and trier of the facts." *In re Anderson*, 778 A.2d 330, 341 (D.C. 2001).

As an impartial adjudicator, the Hearing Committee does not, and must not, determine what charges should be brought against a respondent. Disciplinary Counsel makes that decision, subject solely to approval by a "Contact Member," (*see* D.C. Bar. R. XI, § 8(b)), who reviews the draft Specification of Charges and Disciplinary Counsel's investigative file, and who may also consult informally with Disciplinary Counsel to understand its charging decision. *See* Board Rule 2.12.[5]

[5] A "Contact Member" is an attorney designated under D.C. Bar R. XI, § 4(e)(5) to review and approve or modify recommendations by Disciplinary Counsel for dismissals, deferrals,

The Contact Member may approve, disapprove, or suggest a modification to a draft Specification of Charges. *Id.*; *see In re Lee*, Board Docket No. 09-BD-016, at 18 n.12 (BPR May 11, 2012) (noting that Disciplinary Counsel represented in its brief that it initially contemplated a dishonesty charge against the respondent, "but that this charge was eliminated, for reasons not apparent on the record, following Contact Member review"), *recommendation adopted*, 95 A.3d at 78. Because of their role in the charging process, in order to ensure impartiality in the fact-finding process, Contact Members are foreclosed from participating in the adjudication of cases they have reviewed. *See* Board Rule 2.15. Board Members are similarly restricted.

A Contact Member's decision to approve a Specification of Charges is unreviewable. *See Stanton*, 470 A.2d at 284 (appended Board Report). On the other hand, if a Contact Member declines to approve a Specification of Charges, Disciplinary Counsel may seek review by the Chair of a Standing Hearing Committee. That Chair's decision is final; there is no other review. Board Rule 2.13. There is no authority under our Rules for a Hearing Committee to disagree with Disciplinary Counsel and a Contact Member, and to add charges that the Contact Member did not approve.[6] This is as it should be.

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informal admonitions, or the institution of formal charges against a respondent. *See also In re Kitchings*, 779 A.2d 926, 932 (D.C. 2001).

[6] Pursuant to Board Rule 7.21, a Hearing Committee may, after notice to a respondent, permit *Disciplinary Counsel* to amend a Specification of Charges to add misconduct disclosed during the hearing, without submitting the matter to a Contact Member, but that is not what happened here.

Disciplinary Counsel employs a large professional staff, and is fully capable of making appropriate charging decisions, especially since they are subject to Contact Member review. Permitting a Hearing Committee to add charges, even if done (as here) conscientiously and without rancor,[7] would inevitably lead to the perception that Hearing Committee members play a partisan role. That perception could fatally undermine the confidence of the Bar and of the public in the fairness and efficacy of our disciplinary system.

Moreover, the Board has the administrative responsibility systemically to ensure that Disciplinary Counsel "conscientiously and vigorously enforces the Rules of Professional Conduct." *Cleaver-Bascombe*, 892 A.2d at 412 n.14; *see* D.C. Bar R. XI, §§ 4(e)(2), 19(b). It is not the role of a Hearing Committee to oversee Disciplinary Counsel by injecting its own charging decisions into an individual case.

For the foregoing reasons, we find that the Hearing Committee erred in considering a misappropriation charge that Disciplinary Counsel did not bring, and a Contact Member did not approve. We thus recommend that the Court not conclude that Respondent engaged in misappropriation.

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[7] In this case the Hearing Committee Chair recognized that there was no precedent for handling a case that presented this issue, and endeavored to preserve disciplinary system resources by making a "full and complete record for the Court of Appeals and the Board" – and thus avoid a remand – if the Court determined that Disciplinary Counsel should have charged misappropriation. PH Tr. 111. Although we disagree with the Hearing Committee Chair's decision, we applaud his effort to conduct this case in such a way as to efficiently resolve these difficult issues.

V. RECOMMENDED SANCTION

The Hearing Committee recommended that Respondent be disbarred because he engaged in intentional misappropriation. Disciplinary Counsel agrees that Respondent should be disbarred, citing his mishandling of entrusted funds, his prior disbarment for misappropriation and false testimony to the Hearing Committee. Respondent argues that the Hearing Committee erred in finding uncharged intentional misappropriation, and thus erred in recommending Respondent's disbarment pursuant to *Addams.* He seeks a ninety-day suspension, stayed in favor of probation. For the reasons described below, we recommend that Respondent be suspended for one year.

A. Standard of Review

The sanction imposed in an attorney disciplinary matter must be one that is necessary to protect the public and the courts, maintain the integrity of the legal profession, and deter the respondent and other attorneys from engaging in similar misconduct. *See*, *e.g.*, *In re Hutchinson*, 534 A.2d 919, 924 (D.C. 1987) (en banc); *In re Martin*, 67 A.3d 1032, 1053 (D.C. 2013); *In re Cater*, 887 A.2d 1, 17 (D.C. 2005). "In all cases, [the] purpose in imposing discipline is to serve the public and professional interests . . . rather than to visit punishment upon an attorney." *In re Reback*, 513 A.2d 226, 231 (D.C. 1986) (en banc) (citations omitted); *see also In re Goffe*, 641 A.2d 458, 464 (D.C. 1994) (per curiam).

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

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

B. Analysis

Our assessment of most of the relevant factors is straightforward.

Respondent's conduct was serious in that he failed to pay his client's creditors (his co-counsel) with funds that had been entrusted to him for that purpose, thus potentially subjecting her to a payment demand from co-counsel. However, co-counsel never sought recovery from the client, and thus there is no evidence of client prejudice.

The Hearing Committee did not find that Respondent's underlying misconduct involved dishonesty. However, it did find that Respondent testified

falsely before the Hearing Committee, which is a serious aggravating factor. *In re Cleaver-Bascombe*, 986 A.2d 1191, 1199-1200 (D.C. 2010) (per curiam).

Respondent was previously disbarred for misappropriation, but he accepts responsibility for the only Rule violation charged here: failure to hold disputed funds in trust.

Finally, there are no other aggravating factors and no mitigating factors.

The comparability analysis required by D.C. Bar R. XI, § 9(h)(1) is much more complicated, because most of the factually comparable cases involve a properly lodged misappropriation charge. *See, e.g.*, *In re Saint-Louis*, 147 A.3d 1135, 1149-50 (D.C. 2016) (misappropriation occurred when the respondent took fees that were disputed by client); *Lee*, 95 A.3d at 77-78 (intentional unauthorized use of disputed funds claimed by third-party constituted misappropriation resulting in disbarment under *Addams*); *In re Midlen*, 885 A.2d 1280, 1282 (D.C. 2005) (misappropriation occurred when the respondent took fees that were disputed by client); *In re Berryman*, 764 A.2d at 773-74 (same); *In re Harr*, 698 A.2d 412, 417-18 (D.C. 1997) (same). Because we have concluded that the Hearing Committee erred in considering an uncharged misappropriation violation, we decline to recommend a sanction that may have been appropriate had Respondent been appropriately charged with misappropriation. In particular, we do not believe that the holding of *Addams* can equitably govern this case.

Disciplinary Counsel cites no comparable cases that do not involve misappropriation. Respondent cites one case from Alabama, *Tipler v. Alabama State*

Bar, 866 So.2d 1126, 1138 (Ala. 2003), in which the respondent was suspended for ninety-one days after he spent funds following referring-counsel's demand for a referral fee from the respondent's share of the client's recovery.[8] We have identified *Martin*, 67 A.3d at 1032 as a non-misappropriation case involving the failure to hold disputed funds in trust. In *Martin*, the respondent deposited settlement funds into his trust account, and then transferred the amount designated as his fee to his operating account, even though he knew the client disputed his entitlement to that fee. This violated Rules 1.15(a) (commingling) and 1.15(c) (handling of entrusted funds). *Martin*, 67 A.3d at 1043-44. In addition, Martin violated Rule 1.5(a), 1.16(d), 8.4(c) and 8.4(d) when he charged an unreasonable fee, failed to pay an ACAB award (and instead "litigated the arbitration award to death" in an effort to pressure the client to favorably settle the ACAB dispute), falsely testified that he had received advice from the D.C. Bar Ethics Hotline regarding the handling of disputed funds, and required his client to withdraw its disciplinary complaint as part of settling the ACAB dispute. *Id.* at 1041-43, 1046-1052. The Court of Appeals, noting that there are no cases with comparable facts in this jurisdiction, and that the "choice of an appropriate sanction is not an exact science," concluded that the respondent

[8] In Alabama, a lawyer who has been suspended for more than ninety days cannot resume the practice of law until reinstated. Ala. R. Disc. Proc. 8(b), 28(b). Thus, the respondent in *Tipler* was in essence suspended for ninety days with a fitness requirement. *See* Ala. R. Disc. Proc. 28(c) (the showing required for reinstatement in Alabama is similar to that required by D.C. Bar R. XI, § 16(d)(1)).

should be suspended for eighteen months because that sanction was consistent with that imposed in other cases involving a similar level of dishonesty:

> . . . *In re Tun*, 26 A.3d 313, 314 & n.1 (D.C. 2011) (per curiam) (Eighteen-month suspension for charging unreasonable fee, false statement to tribunal, dishonest conduct, and interfering with administration of justice); *In re Midlen*, 885 A.2d 1280, 1292 (D.C. 2005) (Eighteen-month suspension for misappropriation compounded by dishonesty); *In re Kitchings*, 857 A.2d 1059, 1059 (D.C. 2004) (per curiam) (Eighteen-month suspension for negligent conduct, harm to clients, and a "number of violations over a protracted period of time."); *In re Hallock*, 702 A.2d 1258, 1259 (D.C. 1997) (per curiam) (In reciprocal disciplinary action, eighteen-month suspension for charging an unreasonable fee in violation of Rule 1.5 and dishonesty prejudicial to the administration of justice in violation of Rule 8.4.); *In re Morrissey*, 648 A.2d 185, 190 (D.C. 1994) (per curiam) (In reciprocal disciplinary action, eighteen-month suspension for "dishonesty and numerous instances of litigation misconduct."); *In re Lenoir*, 585 A.2d 771, 774 (D.C. 1991) (per curiam) (Eighteen-month suspension for repeated dishonesty in representing two clients.).

Id. at 1055.

We have also identified a number of cases where Informal Admonitions have been issued when a respondent violated Rule 1.15(d) by distributing settlement funds to the client despite a third-party demand for those funds. *See In re Fox*, Bar Docket No. 081-01 (Letter of Informal Admonition Oct. 24, 2008) (attorney distributed funds to clients rather than the medical provider that had provided services to the clients pursuant to an assignment and authorization agreement); *In re Joyner*, Bar Docket No. 2005-D197 (Letter of Informal Admonition Dec. 28, 2005) (same); *In re Pederson*, Bar Docket No. 2003-D442 (Letter of Informal Admonition Mar. 11, 2004) (same); *In re Critzos*, Bar Docket No. 358-00 (Letter of Informal Admonition

Mar. 30, 2001) (same). However, these cases involve less serious misconduct that that here because in each the disputed funds were returned to the client, who thus had them available if the third-party sought recovery directly from the client. If Messrs. Stovall and Long demanded payment from Ms. Bables, she had only her share of the settlement available to pay them.

Without minimizing the seriousness of Respondent's charged misconduct, we find that it is not as serious as the conduct in *Martin* or the cases *Martin* cited to support an eighteen-month suspension. Respondent failed to hold disputed funds in trust, testified falsely to the Hearing Committee (a serious aggravating factor), and was previously disbarred for misappropriation. However, Respondent's misconduct arose out of a fee dispute with co-counsel, while Martin's dispute was with his client. In fact, Respondent's client was not prejudiced by his misconduct, and there was no allegation that he mishandled the underlying case (or the money due to the client) in any way. Martin also engaged in meritless litigation in an effort to delay payment of the ACAB award, and went so far as to condition payment of the award on the client's withdrawal of its disciplinary complaint, an egregious attempt to interfere with the administration of justice.

While not as serious as the misconduct in *Martin*, we find that Respondent's dishonesty to the Hearing Committee requires a more serious sanction than the ninety-one-day suspension in *Tipler*.[9] Most troubling, as Disciplinary Counsel

[9] As noted above, Tipler was required to prove his fitness prior to reinstatement, and the nominal ninety-one-day suspension may effectively have been substantially longer. *See In re*

points out, is that Respondent testified falsely to the Hearing Committee. Specifically, despite the fact that Respondent carried the laboring oar in the representation of the client, he lied when he stated that he had not agreed with Messrs. Stovall and Long to share equally in any recovery. Instead, he testified that that Mr. Long agreed that Respondent was entitled to all or almost all the fees, aside from what was owed Mr. Thompson, and that Mr. Long was not contending that he was entitled to fees, but rather was asking Respondent to make him a gift from those fees.

We also agree with Disciplinary Counsel that Respondent's prior disbarment for misappropriation is also a troubling aggravating factor. Having been disbarred for mishandling entrusted funds, Respondent should have responsibly handled the funds that he and co-counsel had to share.

Considering the foregoing, and recognizing that we essentially write on a blank slate because there are no closely comparable cases, we recommend that Respondent be suspended for one year.

Artis, 883 A.2d 85, 96 (D.C. 2005) (recognizing that in D.C., a fitness requirement usually increases the length of a suspension).

VI. CONCLUSION

We agree with the Hearing Committee that Respondent violated Rule 1.15(d) when he failed to hold disputed funds in trust until his dispute with co-counsel was resolved. We further recommend that he be suspended for one year. We further recommend that Respondent's attention be directed to the requirements of D.C. Bar R. XI, § 14, and their effect on eligibility for reinstatement. *See* D.C. Bar R. XI, § 16(c).

BOARD ON PROFESSIONAL RESPONSIBILITY

By:  _____

Robert C. Bernius
Chair

All members of the Board concur in this Report and Recommendation except Ms. Smith, who did not participate, and Mr. Kaiser, who is recused.