THIS REPORT IS NOT A FINAL ORDER OF DISCIPLINE*

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

In the Matter of	:	
	:	
BRUCE A. JOHNSON, JR.,	:	
	:	Board Docket No. 20-BD-020
Respondent.	:	Disciplinary Docket Nos. 2017-D158,
	:	2018-D337 & 2018-D357
A Member of the Bar of the	:	
District of Columbia Court of Appeals	:	
(Bar Registration No. 445925)	:	

REPORT AND RECOMMENDATION OF AD HOC HEARING COMMITTEE

I. PROCEDURAL BACKGROUND/SUMMARY OF ALLEGATIONS AND RECOMMENDATIONS

In a three-count Specification of Charges (the "Specification"),[1] the Office of Disciplinary Counsel ("ODC" or "Disciplinary Counsel") alleges that Respondent violated the District of Columbia Rules of Professional Conduct (the "Rules," or, in the singular, "Rule") in connection with his work on two different client matters (Counts One and Two), and in the management of his IOLTA trust account (Count Three).

Count One alleges that in Respondent's representation of Ms. Linda Carlos ("Ms. Carlos" or "Carlos") and her company, Essential Security Services, LLC ("ESS"), he violated the following Rules:

> -- Rule 1.5(b) (failure to provide a written retainer agreement at the outset or within a reasonable time after commencement of the representation);
>
> -- Rules 1.15(a) and (e) (failure to keep and preserve complete records of advance fees and entrusted funds);

[1] A Specification of Charges was originally filed in this matter on February 6, 2020. A Corrected Specification of Charges was filed on August 18, 2020, to remedy several typographical errors in the original Specification of Charges. As used in this Report, the term "Specification" refers to the Corrected Specification of Charges filed on August 18, 2020.

* Consult the 'Disciplinary Decisions' tab on the Board on Professional Responsibility's website (www.dcattorneydiscipline.org) to view any subsequent decisions in this case.

-- Rule 1.16(d) (on termination of the representation, failure to timely surrender papers and property and to refund unearned advance fee payments);

-- Rule 8.1(b) (knowing failure to respond reasonably to a lawful demand for information from a disciplinary authority); and

-- Rule 8.4(d) (conduct seriously interfering with the administration of justice).

Count Two alleges that in Respondent's representation of Ms. Barnedia Drayton ("Ms. Drayton" or "Drayton"), he violated the following Rules:

-- Rule 1.5(b) (failure to provide a written retainer agreement at the outset or within a reasonable time after commencement of the representation);

-- Rules 1.15(a) and (e) (failure to keep and preserve complete records of advance fees and entrusted funds);

-- Rule 1.16(d) (on termination of the representation, failure to timely surrender papers and property and to refund unearned advance fee payments); and

-- Rule 8.4(d) (conduct seriously interfering with the administration of justice).

Count Three alleges that as a result of Respondent's mismanaging his IOLTA account at Capital One Bank ("Capital One"), Respondent violated the following Rules (and/or similar provisions of the Maryland Rules of Professional Conduct governing trust accounts and record keeping):[2]

-- Rules 1.15(a) and (e) (failure to keep and preserve complete records of entrusted funds, and recklessly misappropriating entrusted funds);

-- Rule 8.1(b) (knowing failure to respond reasonably to a lawful demand for information from a disciplinary authority); and

-- Rule 8.4(d) (conduct seriously interfering with the administration of justice).

[2] On page 64 of its post-hearing brief in this matter, ODC narrows the scope of its allegations by arguing that Respondent's handling of entrusted funds should be evaluated only under the District of Columbia Rules of Professional Conduct. *See* ODC Br. at 64.

The evidentiary hearing of this case was spread over a period of eight non-consecutive days.[3] ODC was represented by Julia L. Porter, Esq., Deputy Disciplinary Counsel. Respondent filed an Answer[4] and appeared *pro se* throughout the evidentiary hearing. During the hearing, ODC called five witnesses[5] and submitted 58 documentary exhibits,[6] all of which were admitted into evidence. Tr. 920:8-922:11, 1753:5-8, 1758:9-13. Respondent objected to the admission of DCX 4, 5, and 6, as discussed in Section III(B) of this Report. Respondent testified on his own behalf, called three additional witnesses,[7] and submitted 418 documentary exhibits (some of which were admitted over formal objection from ODC (*e.g.*, RX 408, 410-11, and 413; *see* Tr. 1191:1-1195:10), with the remainder being admitted *en bloc* in the interest of expediting the close of the evidentiary hearing (*see* Tr. 1564:5-1566:11).

After the conclusion of all testimony and closing arguments by ODC and Respondent, the Hearing Committee recessed in executive session pursuant to Board Rule 11.11 to determine on a

[3] November 4-6, 2020; January 15, 2021; February 2-3; 2021; and February 10-11, 2021.

[4] Respondent filed an initial Answer to the original Specification on July 6, 2020, and filed an Amended Answer on August 4, 2020, correcting various typographical errors in his initial Answer.

[5] Respondent; Ms. Carlos (the complainant in Disciplinary Docket No. 2017-D158); Ms. Drayton (the complainant in Disciplinary Docket No. 2018-D337); Mr. Piazza (a process server for Capital Process Service); and Ms. Azadeh Matinpour (an investigative attorney and forensic financial analyst for ODC; *see* Tr. 607:15-609:17 (Matinpour)).

[6] DCX 1-54 were designated and filed by ODC prior to the evidentiary hearing. DCX 55 and 56 were exhibits that Respondent identified in his initial designation of exhibits (RX 202 and 40), but which inexplicably disappeared when Respondent belatedly filed the revised electronic copy of his exhibits before the hearing; *see* Tr. 920:8-19. Rebuttal exhibits submitted by ODC were DCX 57 (copies of checks written against Respondent's IOLTA account during February 2016, August 2016, September 2017, and May 2018; *see* Tr. 1750:10-18 (Matinpour)) and DCX 58 (copies of six checks written by Respondent against his general law firm operating account and deposited into his IOLTA trust account).

[7] Hugh Williams, Esq. (a former associate attorney in Respondent's law firm); David Turner (an office assistant in Respondent's law firm); and Joyce Ross (a former office manager in Respondent's law firm).

preliminary, non-binding, basis if ODC had proved a violation of at least one disciplinary rule. Upon resuming proceedings, the Chair announced that the Hearing Committee had made such an affirmative, preliminary determination. Tr. 1792:3-1794:14. Upon inquiry by the Chair, ODC stated that there was no prior disciplinary record of Respondent in the District of Columbia to be introduced into evidence in aggravation of sanction, and that evidence of prior discipline in another jurisdiction (Maryland) was already in the record (*see* RX 359-60). Tr. 1794:15-1795:3. Respondent testified briefly on his own behalf in mitigation of sanction. Tr. 1796:17-1809:11.

ODC contends that Respondent violated all of the Rules as alleged in the Specification, and particularly that Respondent must be disbarred because of his alleged reckless misappropriations of funds from his IOLTA account (ODC Br. at 68-71, 82)[8]. Respondent concedes that his misappropriations of client funds from his IOLTA account were negligent, but asserts he was not reckless (Resp. Br. at 36-39); argues there is no clear and convincing evidence of any other Rule violation alleged in the Specification; and contends that a six-month suspension from practicing law is the appropriate sanction for his negligent misappropriations (*id*. at 39).

The Hearing Committee believes it is a very close case as to whether Respondent's misappropriations were reckless or merely negligent, but concludes there are insufficient indicia of recklessness to meet the requirements of recent applicable caselaw (*see In re Dailey*, 230 A.3d 902 (D.C. 2020) (per curiam), discussed *infra*). Respondent's misappropriations, rather, were negligent – although there is clear and convincing evidence that he ignored many precepts and many warnings of problems in his IOLTA account, all of which should have caused him to take proper corrective action. The Hearing Committee also concludes there is clear and convincing evidence that Respondent violated each of the Rules cited in the Specification, although not in all of the ways alleged by ODC. Because Respondent's negligent misappropriations are so troubling,

[8] All references herein to the initial post-hearing brief filed by ODC are designated with the prefix "ODC Br. at _"; references to the post-hearing brief filed by Respondent are designated with the prefix "Resp. Br. at __."

and because of the many other Rule violations found by the Hearing Committee, we conclude that Respondent's misconduct is very serious and we recommend a sanction suspending Respondent from the practice of law for a period of sixteen months, so as to remind members of the Bar of their duties in managing trust account funds and in complying with the Rules.

Part II of this Report contains the Hearing Committee's findings of fact relating to each of the three Counts in the Specification. Part III of the Report contains the Hearing Committee's recommended conclusions of law, and Part IV contains the Hearing Committee's discussion of its sanction recommendation.

II. FINDINGS OF FACT

1. [PFF 1][9] Respondent became a member of the Bar of the District of Columbia Court of Appeals in 1995. He also is a member of the Maryland and Virginia Bars. DCX 1.

2. On May 27, 2020, ODC effected service on Respondent of the initial Specification and related documents by e-mail, as well as by certified and regular United States mail. DCX 7 at 52-53.

3. In addition to his law degree, Respondent holds a master's degree in business administration ("MBA") from Johns Hopkins University. RX 370 at 2097; Resp. Br. at 37 (Respondent states that he holds an advanced degree in accounting and financial management).

4. [PFF 2] Respondent opened his own practice in Maryland in 2000. Tr. 38:18-39:3, 1797:15-18 (Respondent). Over the years, Respondent has employed a number of associates and

[9] Various Proposed Findings of Fact ("PFFs") in ODC's brief have been agreed to by Respondent. *See* Resp. Br. at 2 ¶ 6. For ease of reference and as information for the Board on Professional Responsibility ("Board") and the District of Columbia Court of Appeals ("Court") which will be reviewing this Report, where the Hearing Committee has deemed it appropriate to adopt any of the agreed PFFs, the PFF number is shown in square brackets with double underlining at the beginning of various Findings of Fact ("FF") in this Part II. The Hearing Committee, however, may have made slight alterations in a PFF's citations to the hearing transcript and/or the exhibits in this case, in order to delineate more clearly the specific reference(s) on which the Hearing Committee is relying.

non-lawyer employees. *See, e.g.*, DCX 9 at 104; DCX 12 at 158; DCX 39 at 455; DCX 43 at 489; DCX 45 at 501 (Respondent's letterhead). Respondent is the only principal of the firm and the only signatory on the firm's accounts, including the trust account at Capital One. DCX 49 at 712; Tr. 39:4-7, 44:4-12, 44:18-45:12 (Respondent).

5. Although Respondent has maintained his principal office for the private practice of law in Maryland, historically two-thirds of his work has been in Virginia. Tr. 1800:14-15.[10]

A. General Business Practices in Respondent's Law Firm

6. In addition to being the only signatory on his law firm's bank accounts, Respondent made all (or almost all) of the deposits into those accounts. DCX 48 at 596 (last paragraph; letter from Respondent to ODC stating, "I make all deposits myself") and 598 (last paragraph; Respondent kept cash receipts in his office safe "until such time that I am able to deposit the funds"); Tr. 1603:9-19 (under cross-examination, Respondent states that law firm employees sometimes made bank deposits).

7. From January 2015 through February 2019 Respondent used a credit card payment processing company called Total System Services ("TSYS") to facilitate the deposit into Respondent's trust account of client payments that were made by credit cards other than American Express. Tr. 613:4-14 (Matinpour); DCX 51 at 888.

8. The monthly bank statements issued for Respondent's trust account during the period from January 2015 to February 2019 prominently showed that TSYS credit card transactions were

[10] When the evidentiary hearing in this matter began, Respondent's principal legal employment was as a Deputy Commonwealth Attorney in Loudoun County, Virginia. Tr. 275:1-17. Subsequently, after leaving that position and resuming his private law practice, Respondent sought an additional extension of time to file his post-hearing brief in this matter on the ground, *inter alia*, that he had an employment grievance hearing in Petersburg, Virginia. *See* "Respondent's Motion for an Extension to File Proposed Findings of Fact and Respond to Disciplinary Counsel's Proposed Findings of Fact" (filed March 22, 2021) at 2 ¶ 3.

being processed. *See, e.g.*, DCX 50 at 714 (ACH deposit by TSYS on January 2, 2015); *id*. at 885 (ACH withdrawal by TSYS on February 5, 2019).

9. TSYS charged Respondent's trust account a percentage of each credit card transaction that was processed into his trust account, as well as an annual fee. Tr. 614:17-615:18 (Matinpour).

10. From January 2015 through July 2016 Respondent also accepted payment of client fees with American Express credit cards. DCX 51 at 890. American Express charged Respondent's trust account a monthly fee of $7.95 as well as a percentage of each transaction that was processed into Respondent's trust account. Tr. 620:17-621:5 (Matinpour); Tr. 95:12-16 (Respondent).

11. Every month from January 2015 through February 2019, Respondent's law firm trust account was charged for credit card processing fees ranging from hundreds of dollars to, in some months, over a thousand dollars. DCX 51 at 888, 890;[11] Tr. 613:4-615:18 (Matinpour).

12. Respondent knew that some clients of his law firm paid their legal fees with credit cards (Tr. 1606:22-1607:9 (Respondent)), and that credit card companies charged fees against his trust account for processing credit card payments (Tr. 1603:5-8 (Respondent)).

13. Respondent, however, was completely out of touch with the extent to which credit card payments were being accepted into his client trust account. Tr. 87:20-88:8, 91:6-12, 93:11-19, 1319:16-20 (Respondent); *see also* Resp. Br. at 5-6 ("[i]t was not unusual for the firm not to get any payments from credit cards so at times no checks would be cut from the operating account to replenish the trust account").

[11] DCX 51 at 888 (a schedule of monthly TSYS charges deducted from Respondent's trust account) omits a monthly charge for February 2018. However, Respondent's trust account bank statement for that month shows multiple credit card payments processed by TSYS. DCX 50 at 846-48 (ACH deposits by TSYS on February 2, 6, 9, 13, 16, 21, 22, 26, and 27). It therefore appears that the failure to list February 2018 in DCX 51 at 888 was probably an oversight in the preparation of that exhibit page.

14. Respondent deposited both earned legal fees as well as unearned legal fees into his law firm trust account. Tr. 47:1-8 (Respondent).

15. Respondent did not look at his monthly trust account bank statements as they were received, and gave them unopened to clerical staff in his office. Tr. 88:9-16; 93:16-22, 100:16-101:4, 1316:13-20, 1583:11-17 (Respondent).

16. There was no checkbook for Respondent's law firm trust account. Tr. 1202:21-1203:21 (Ross). To the extent that there may have been a general ledger for the trust account, Respondent did not consult it in deciding upon amounts to be withdrawn from the trust account; instead, he relied upon individual client or matter ledgers. Tr. 69:19-72:18, 74:14-75:2, 1581:2-20 (Respondent).

17. From January 2015 until at least May 2019 Respondent used a computer software system called PC Law to record billable time, as well as to record client payments on a particular matter and payments from his trust account to his law firm's general operating account that were debited against client payments on a particular matter. Tr. 62:2-11, 75:9-15, 88:4-7, 128:16-129:5, 172:14-17, 277:6-11, 1323:12-18, 1492:9-22 (Respondent); *see, e.g.*, DCX 17 at 286 (sample page of a PC Law printout showing client fees received, disbursements of fees, and time entries).

18. From July 2013 through February 2015 Respondent employed Joyce Ross as his office manager. Tr. 1072:6-7, 1086:17-19 (Ross). Ms. Ross had substantial background experience in accounting and bookkeeping, and assisted Respondent in carrying out the accounting functions in Respondent's law firm. Tr. 1069:19-1070:1, 1072:13-1074:2, 1079:7-1080:2, 1082:14-1083:1 (Ross).

19. When Ms. Ross left her employment with Respondent, he hired Everett Broussard as a full-time employee to assist in carrying out the accounting functions for the law firm. Like Ms.

Ross, Mr. Broussard had significant training in accounting. Tr. 1309:16-1310:12 (Respondent). Ms. Ross assisted in training Mr. Broussard as her replacement, including, *inter alia*, with procedures for reconciling Respondent's client trust account. Tr. 1087:1-5 (Ross).

20. After about six weeks of full-time work for Respondent, Mr. Broussard left to take another job, but continued on a part-time basis several evenings each month to assist Respondent in carrying out the accounting functions for the law firm. Tr. 1310:13-1311:2, 1577:15-1578:6 (Respondent). Mr. Broussard continued his part-time accounting work for Respondent until Respondent discharged him at the end of 2018. Tr. 1578:4 (Respondent).

21. In connection with his accounting work for Respondent's law firm, once or twice a month Mr. Broussard would prepare a stack of checks for Respondent to sign. 1316:16-1317:6, 1579:6-1580:3 (Respondent).

22. When given a stack of checks to sign, Respondent did not pay attention to what checks he was signing. Tr. 98:1-11, 1608:1-6, 1610:1-7 (Respondent).

23. Respondent had a lax attitude toward whether retainer agreements sent out to clients were actually signed and returned. Respondent was reluctant to devote staff time to "chase it down" (Tr. 64:10-65:3 (Respondent)); once a retainer proposal was sent out, he was ready to "rock and roll" (Tr. 1546:2-6 (Respondent)). *See also* Tr. 220:14-221:16 (Respondent was uninvolved and "distracted" in the process of sending out proposed retainer agreements to clients) (Respondent).

24. Although Respondent's law firm was a sole proprietorship, he was not a "solo practitioner," and he had a frequently-changing support staff of associate attorneys, paralegals, and clerical personnel. *See supra* FF 4. Because Respondent was the sole economic engine of the law firm (Tr. 1322:21-1323:6 1332:9-13 (Respondent)), he felt the recurring pressures of having to

meet payroll expenses as they arose (Tr. 48:6-49:9 (Respondent)).[12]

B. Respondent's Representation of Ms. Carlos and ESS

25. Linda Carlos is an experienced businesswoman with a bachelor's degree in business administration, and experience working for, *inter alia*, the national accounting/consulting firms Arthur Anderson and Deloitte & Touche. Tr. 325:9-20 (Carlos).

26. [PFF 5] In March 2012, Linda Carlos and her cousin Jeffrey Jackson formed Essential Security Services, LLC (ESS), a business that provided security guards to apartment buildings and small business. Tr. 325:21-327:6, 409:19-20, 539:7-540:12 (Carlos).

27. ESS maintained its operating business bank account at BB&T Bank ("BB&T"). Tr. 329:6-330:14 (Carlos).

28. [PFF 6] Carlos owned ESS and was the co-signatory with Jackson on ESS's account at BB&T. Carlos relied on Jackson to manage ESS's day-to-day operations. In 2014, Carlos learned that Jackson had been diverting ESS funds by writing large checks to himself and forging her name on the checks. Tr. 327:1-331:5, 409:11-20 (Carlos).

29. [PFF 7] Carlos retained Jonathan Love, a Virginia lawyer who was a long-time friend, to help her sever the relationship between ESS and Jackson and resolve ESS's financial problems, including employees who were not being paid. Tr. 331:5-332:9 (Carlos).

30. [PFF 8] Over a three-month period, Love's firm billed ESS almost $50,000 in fees. RX 184. By January 2015, Carlos concluded that she needed to find new counsel because ESS could not afford to pay said hourly fees. Tr. 332:13-333:8 (Carlos).

31. [PFF 9] After meeting Respondent who said he would charge her flat fees for ESS's

[12] Some of this pressure rubbed off on Ms. Carlos and Ms. Drayton, both of whom complained about untoward pressures by Respondent for payments. DCX 9 at 63 (lines 1-4) (Carlos complaint to ODC); Tr. 892:17-22, 914:13-14 (Drayton).

matters, Carlos decided to retain him. Tr. 334:2-336:17, 402:10-403:9 (Carlos); Tr. 117:5-15, 1350:20-21, 1600:4-17, 1634:2-8 (Respondent).

32. Respondent was "super excited" about representing Ms. Carlos and ESS on multiple new business matters, "really wanted her business," and was concerned that if he was too demanding in his fee charges he would lose them as clients. Tr. 201:11-17, 1348:10-1349:13, 1385:9-17, 1654:12 ("I wanted her business so bad") (Respondent).

33. [PFF 10] During their initial meeting in early February 2015, Carlos described two legal matters she needed Respondent to handle – the wage claims of a few employees, and recovering the funds that Jackson had withdrawn without her authority. Carlos told Respondent that ESS needed to have a cap on its fees because it could not afford open-ended fees. Carlos advised Respondent about Love's outstanding bill, although there was no agreement at the time that Respondent would represent her in resolving the fee dispute. Tr. 334:10-340:12 (Carlos).

34. Respondent told Ms. Carlos he would charge her a flat fee of $4,000 for each of the two matters they initially discussed: the employee wage claims, and the BB&T/Jackson problem (on which ESS had previously been represented by Jonathan Love (FF 29)). Tr. 335:11-17, 336:11-340:12 (Carlos).

35. On February 8, 2015, Ms. Carlos sent Respondent an e-mail confirming that Respondent had agreed to charge her flat fees of $4,000 each – totaling $8,000 – "to resolve" the employee wage claim matters and the BB&T/Jackson problem. DCX 9 at 65 ¶ 2; RX 56 at 530. By e-mail the same day, Respondent replied that her understanding was "correct." RX 56 at 530. Ms. Carlos proceeded to pay Respondent $4,000 for each of those two matters, with the understanding that the flat fee would cover each matter from the beginning to the end. Tr. 345:17-19, 412:7-16, 542:5-9 (Carlos).

36. Respondent's staff sent Ms. Carlos proposed fee agreements by e-mail, which were based on an hourly rate rather than a flat fee, which she therefore refused to sign and return. Tr. 341:4-11 (Carlos). *See also* Tr. 375:16-376:5 (no fee agreement received for the BB&T/Jackson matter), 383:5-17, 390:13-18 (Ms. Carlos denied ever receiving the three fee agreements that Respondent proffered to ODC in response to her Bar complaint),[13] 364:10-22 (no fee agreement provided for the $900 Ms. Carlos paid for the Francis Maduwuba lawsuit), 398:19-399:3, 499:4-8, 540:16-21 (Ms. Carlos denies ever receiving a $5,000 retainer agreement in a different employee lawsuit)[14] (Carlos); DCX 9 at 62 ¶ D (Ms. Carlos' complaint to ODC); DCX 13 at 257 (Ms. Carlos denies receiving the three fee agreements Respondent proffered to ODC). Likewise, Respondent did not provide Ms. Carlos with a fee agreement for a separate matter referred to in FF 73-87, below, for $1,600 in legal fees for representation relating to claims made by Jonathan Love and a woman named Daphne Nelson. Tr. 369:7-370:2 (Carlos). For the reasons set forth in subsection III(C)(1)(c) of this Report, the Hearing Committee finds Ms. Carlos' testimony that she did not receive fee agreements from Respondent as described in this paragraph to be entirely credible.

37. Ms. Carlos later agreed with Respondent on legal representation for several additional matters: (a) two lawsuits by ESS employees (*see* FF 48-61 (Preston Joyner) and FF 62-72 (Francis Maduwuba), *infra*) relating to the wage claims they also asserted through the D.C. Department of Employment Services; (b) Jonathan Love's claim for unpaid legal fees, as well as contracting issues presented to ESS by a woman named Daphne Nelson; and (c) a lawsuit filed by Jamaar

[13] DCX 17 at 284-85, an unsigned, undated, non-letterhead agreement relating to employee wages; DCX 17 at 288-89, an unsigned, undated, non-letterhead agreement relating to the BB&T/Jackson matter; and DCX 17 at 293-94, an unsigned, undated, non-letterhead agreement relating to a lawsuit that came to be filed in one of the employee wage matters (Preston Joyner).

[14] RX 51, an unsigned, undated, non-letterhead agreement relating to District of Columbia Superior Court Civil Action No. 2015-1063B (the Jamaar Brooks lawsuit, discussed in FF 88-100, *infra*).

Brooks alleging wrongful employment termination. Respondent agreed to provide legal representation in each of the matters on a flat-fee basis. Tr. 336:8-337:5, 344:17-345:10, 360:8-17, 365:3-16, 368:11-369:19 (Carlos).

38. In addition to not providing Ms. Carlos with proper retainer agreements as described in FF 36, Respondent did not discuss with Ms. Carlos how he would handle the flat fees she advanced, did not tell her he would withdraw fees he received on the basis of time spent, and did not receive permission from Ms. Carlos to make such withdrawals. Tr. 336:13-14, 346:13-348:3, 364:3-15, 377:3-7, 383:18-384:4, 523:18-22 (Carlos); 164:7-10, 1600:9-20, 1625:18-1626:3 (Respondent).

1. The Employee Wage Claims

39. Three ESS employees presented claims to the District of Columbia Department of Employment Services ("DOES") seeking unpaid wages: Rhonda Neal, Preston Joyner, and Francis Maduwuba. Tr. 337:10-17; 338:10-16, 341:16-342:3, 464:10-13, 534:20-535:6 (Carlos); 137:13-138:1 (Respondent).

40. From the outset of her work with Respondent on the employee wage claims, Ms. Carlos told Respondent she wanted to pay the employees what they were owed and settle the claims promptly because ESS could not afford to pay substantial legal fees to resolve the small amounts at issue. Tr. 337:10-338:6, 385:1-387:2, 437:21-438:20, 503:4-12 (Carlos); DCX 9 at 119 (bottom of page; e-mail from a DOES representative to Respondent stating DOES already knew from Ms. Carlos that she wanted to settle Preston Joyner's claim without litigation); RX 137 at 910-11 (e-mails among a DOES attorney, Respondent, and Ms. Carlos evidencing her willingness to settle).

41. [PFF 21] At Respondent's request, Carlos delivered four boxes containing ESS payroll records and other documents to Respondent's office. Carlos reviewed the documents with some

of Respondent's staff. Because Carlos did not want to part with the original documents, Respondent made arrangements to copy them – which cost Carlos/ESS $1,200. Tr. 350:1-16, 421:16-425:19, 439:1-4, 538:20-539:6 (Carlos).

42. [PFF 23] Respondent sent the District letters disputing the amounts owed to each of the three employees. The letter that he sent to the District regarding Neal in March 2015, was the same letter his staff had prepared and that he had sent to Carlos in February 2015. *Compare* RX 67 at 554 [letter to Ms. Carlos dated February 16, 2015] *with* RX 75 at 585 [letter to DOES dated March 11, 2015].

a. Rhonda Neal

43. By letter dated February 3, 2015, Ms. Neal submitted a claim to Ms. Carlos for $930 in unpaid wages. DCX 9 at 107.

44. By letter dated February 13, 2015, DOES wrote to Ms. Carlos on behalf of Ms. Neal, seeking to enforce her $930 claim. DCX 9 at 106.

45. By letter dated March 11, 2015 (RX 75), Respondent wrote to DOES about Ms. Neal's claim, and asked to set up a meeting to discuss a resolution of the case (*id*. at 586).

46. In an e-mail to Respondent on May 27, 2015, DOES informed him that as a result of its investigation of Ms. Neal's case, her claim had increased to $3,948.25 (including penalties). DCX 9 at 115.

47. Ms. Carlos became dissatisfied with Respondent's unwillingness to settle Ms. Neal's claim for the $930 she initially requested, and with the manner in which Respondent's office had provided wage records requested by DOES. Tr. 348:4-351:10 (Carlos); DCX 13 at 258. She therefore took the Neal matter away from Respondent, and her staff resolved the claim directly

through DOES for a payment of $3,600 plus a penalty of $1,200. Tr. 351:7-352:7, 352:20-356:1 (Carlos).

b. Preston Joyner

48. By letter dated March 5, 2015, Respondent on behalf of ESS advised DOES that after a review of company records, Mr. Joyner appeared to be owed approximately $3,000 in unpaid overtime wages. RX 90 at 642.

49. [PFF 26] On March 26, 2015, the District filed a lawsuit for Joyner's unpaid wages. DCX 21 at 359. In late April 2015, the District filed an amended complaint against ESS and emailed it to Respondent on May 4, 2015. DCX 9 at 140 and 144-50.

50. The lawsuit filed on behalf of Mr. Joyner was designated as District of Columbia Superior Court Civil Action No. 2015-002111B. DCX 21.

51. On May 4, 2015, the attorney representing the District of Columbia government in the Joyner lawsuit sent Respondent an e-mail stating that although the D.C. government had filed suit, it was still interested in resolving the matter. DCX 9 at 140.

52. By e-mail dated May 8, 2015, Respondent's office informed Ms. Carlos that it would undertake representation of ESS and Ms. Carlos in the Joyner litigation for a fee of $7,000, with $2,500 due as an initial payment. RX 416.

53. Ms. Carlos neither received nor signed a retainer agreement in connection with the Joyner litigation. DCX 13 at 257 (referring to "Tab 1" attached to Respondent's answer to the complaint Ms. Carlos filed with ODC (DCX 12 at 161-62)).

54. Ms. Carlos made the initial payment to Respondent of $2,500 referred to in Respondent's May 8, 2015 e-mail to her (FF 52). Tr. 345:5-8, 360:8-11 (Carlos).

55. On May 19, 2015, Respondent filed an Answer to the Joyner lawsuit. DCX 21 at 361 (court docket sheet).

56. On May 29, 2015, Respondent attended a court scheduling conference in the Joyner lawsuit. DCX 21 at 361-62 (court docket sheet). On June 12, 2015, Respondent appeared for another scheduling conference. *Id*. at 362. The docket sheet discloses no further activity in the case by Respondent. *Id*. at 362-64.

57. By e-mail dated July 5, 2015, Ms. Carlos discharged Respondent as her attorney, and asked him to transfer all files and any unearned fees to successor legal counsel, James E. McCollum. DCX 19 at 349.

58. On July 9, 2015, Mr. McCollum entered his appearance as new counsel for Ms. Carlos and ESS. DCX 21 at 362 (court docket sheet).

59. On July 27, 2015, Mr. McCollum filed an Amended Answer in the Joyner lawsuit. DCX 21 at 362.

60. The parties submitted witness lists on August 11, 2015, and in mid-October the court designated the case for alternative dispute resolution through mediation. DCX 21 at 363.

61. On December 30, 2015, the Joyner litigation was dismissed by consent (DCX 21 at 363), after the case was resolved with Mr. McCollum's assistance through a payment schedule to Mr. Joyner totaling approximately $6,000 (Tr. 361:10-362:2 (Carlos)).

c. Francis Maduwuba

62. [PFF 30] In March 2015, ESS fired Maduwuba for inflating his time. Tr. 341:16-21, 345:8-10 (Carlos). Maduwuba complained to the District, seeking $1,120 in wages. RX 148 at 938.

63. By letter dated May 7, 2015 (RX 148), Ms. Carlos was notified by DOES that it was handling a claim by Mr. Maduwuba for unpaid wages in the amount of $1,120 (*id.*, 2nd paragraph), which reflected a partial settlement payment of $258.58 that Ms. Carlos, through Respondent's office, had already agreed to pay and paid (RX 136).

64. Mr. Maduwuba had also filed his claim for unpaid wages in the District Court of Maryland for Prince George's County. DCX 22.

65. Respondent quoted Ms. Carlos an additional flat fee of $900 for representation in Mr. Maduwuba's lawsuit, which she paid. Tr. 342:17-22 (Carlos).

66. Respondent did not, however, provide Ms. Carlos with a fee agreement for representation in Mr. Maduwuba's lawsuit. Tr. 364:10-22 (Carlos).

67. On May 22, 2015, Respondent filed a handwritten notice of intention to defend in the Maduwuba lawsuit. DCX 12 at 181.

68. Ms. Carlos and her staff worked directly with DOES to resolve and pay Mr. Maduwuba's wage claim. Tr. 343:3-19; 362:3-14; 536:7-16 (Carlos).

69. On June 10, 2015, Mr. Maduwuba voluntarily dismissed his lawsuit as settled. DCX 22 at 366.

70. On June 17, 2015, Respondent sent an employee of Ms. Carlos (Derrick Matthews) an e-mail asking to meet with him as a trial witness for Mr. Maduwuba's already-dismissed case. RX 167 at 1003 (bottom e-mail).

71. Other than filing the handwritten notice of intention to defend in Mr. Maduwuba's lawsuit (FF 67), Respondent never took any action in the case, and there were no further proceedings in it because Ms. Carlos promptly took direct action to settle the matter (FF 68). Tr. 343:3-19, 363:2-18 (Carlos).

72. Respondent never explained to Ms. Carlos the basis on which he was keeping the full $900 he received for the Maduwuba lawsuit (Tr. 364:6-15 (Carlos)), nor in response to Ms. Carlos' ODC complaint did Respondent provide ODC with a ledger relating to that matter. Tr. 628:20-629:2, 646:19-647:2 (Matinpour); DCX 17 at 283, 302 (Respondent proffered an unsigned and undated fee agreement relating to the Maduwuba lawsuit); *cf.* DCX 17 at 286/300 (ledger relating to the general employee wage issue); *id*. at 290 (ledger relating to the Jonathan Love/Daphne Nelson issues); *id*. at 295 (ledger relating to the Jamaar Brooks lawsuit).

2. Jonathan Love's Claim for Legal Fees and the Daphne Nelson Issue

73. Ms. Carlos raised the general issue of possibly handling Mr. Love's bill in her first meeting with Respondent in February 2015. Tr. 335:16-17 (Carlos).

74. On March 2, 2015, Daphne Nelson sent Ms. Carlos an e-mail concerning contract problems with ESS. RX 95 at 690-91.

75. On March 16, 2015, Ms. Carlos sent Respondent an e-mail to confirm his combined representation in matters regarding Mr. Love and contract issues raised by Daphne Nelson for a flat fee of $1,600, and authorized Respondent to process a credit card payment in that amount. RX 95 at 688; Tr. 525:9-526:18 (Carlos).

76. Respondent replied to Ms. Carlos' e-mail later that day, stating that the $1,600 would not cover litigation if Mr. Love filed suit. RX 95 at 687.

77. Later on March 16, 2015, Respondent's office processed the $1,600 credit card charge. RX 95 at 685.

78. Respondent did not provide Ms. Carlos with a retainer agreement in connection with the $1,600 payment. Tr. 369:7-370:2 (Carlos); Tr. 1658:5-8 (Respondent).

79. Respondent provided no services in connection with the Daphne Nelson contract issues (Tr. 371:19-372:3 (Carlos)), and had no records on the basis of which the portion of the $1,600 allocable to work on the Daphne Nelson problem could be tracked into and out of his trust account (Tr. 188:19-22; *see also* Tr. 192:22-193:3 (Respondent)).

80. Respondent talked to Mr. Love about resolving his claim, did other background work, and on March 18, 2015, wrote him a one-paragraph letter rejecting Mr. Love's settlement demand of $29,000 and counteroffering a settlement payment of $10,000. Tr. 191:3-192:2 (Respondent); DCX 19 at 337.

81. Billing records for Ms. Carlos' $1,600 payment that Respondent submitted to the Hearing Committee show that on March 18, 2015 (two days after receiving Ms. Carlos' $1,600 payment (FF 77)) Respondent took $500 in fees, and on March 27, 2015 he took the remaining $1,100. RX 252.

82. On April 16, 2015, Respondent sent Ms. Carlos an e-mail concerning continuing settlement discussions with Mr. Love. RX 196 at 1175.

83. Billing records for Ms. Carlos' $1,600 payment that Respondent submitted to the Hearing Committee show that even including time spent after he took all of the $1,600, there was total billable time on the matter of only 2.80 hours. RX 252; RX 256.

84. [PFF 40] Respondent never sought or received Carlos's permission to pay himself any portion of the $1,600, much less take the entire $1,600. *See* Tr. 381:2-7, 393:8-21 (Carlos).

85. [PFF 41] On April 30, 2015, Love sued ESS and Carlos in D.C. Superior Court and then amended the complaint on May 15, 2015. DCX 9 at 134; RX 198. Love told Respondent he had filed the lawsuit. Tr. 182:11-20, 1702:4-11 (Respondent).

86. On June 18, 2015, Respondent sent Ms. Carlos an e-mail letter in which he offered to represent her in the Jonathan Love lawsuit for a flat fee of $7,500 (DCX 9 at 131), an offer which Ms. Carlos declined because of her strong dissatisfaction with Respondent's overall work (Tr. 373:9-374:4 (Carlos)).

87. After Ms. Carlos discharged Respondent as her attorney on July 5, 2015 (FF 57), Mr. McCollum filed an answer to Jonathan Love's lawsuit and later negotiated a favorable settlement. Tr. 374:21-375:15 (Carlos); DCX 23 at 368-69 (court docket sheet).

3. The Jamaar Brooks Lawsuit

88. [PFF 46] In January 2015, ESS fired Jamaar Brooks for cause. Tr. 344:21-345:2 (Carlos); DCX 12 at 222 ¶¶ 7-8. In February 2015, Brooks sued ESS for wrongful termination and, in March, served Peggy Spears – someone whom Carlos and ESS staff did not know. DCX 12 at 209, 218. In April 2015, the court entered an order of default against ESS. DCX 20 at 354.

89. The lawsuit filed by Mr. Brooks was designated as District of Columbia Superior Court Civil Action No. 2015-001063B. DCX 20.

90. Ms. Carlos discussed the suit with Respondent, and was initially quoted and paid a flat fee of $2,500 for representation in the suit (Tr. 344:21-345:5, 365:3-16, 498:14-21, 503:2-12 (Carlos)), but on June 11, 2015 she paid an additional $2,500 (DCX 9 at 73; Tr. 469:10-21 and 537:5-17 (Ms. Carlos denies paying Respondent $5,000 just to get the default in the Brooks lawsuit vacated)); RX 253 (a timesheet for the Brooks matter that Respondent submitted with his hearing exhibits) at 1377.

91. On June 12, 2015 Respondent took an additional $1,000 in fees in the Brooks lawsuit, and another $1,500 on June 13, 2015, for a total billing of $5,000 as of that date. RX 253. The timesheet shows no total of hours spent on the lawsuit. *Id.*

92. Respondent prepared a consent motion to vacate the default in the Brooks lawsuit, and filed it on June 17, 2015, the same day and immediately after the court issued an order dismissing the suit for failure to obtain a default judgment. DCX 20 at 354.

93. The court entered an order granting the consent motion on June 23, 2015. DCX 20 at 355.

94. On June 29, 2015, Respondent sent Ms. Carlos an e-mail letter stating that continued representation in the Brooks lawsuit would cost another $16,000. DCX 12 at 167.

95. By e-mail dated July 5, 2015, Ms. Carlos discharged Respondent as her attorney, and asked him to transfer all files and any unearned fees to successor legal counsel, James E. McCollum. DCX 19 at 349.

96. On July 9, 2015, Mr. McCollum entered his appearance on behalf of ESS. DCX 20 at 355.

97. On August 13, 2015, Mr. Brooks' legal counsel filed a motion for leave to withdraw (DCX 20 at 356) and on September 29, 2015 filed a renewed motion for leave to withdraw (*id*. at 357).

98. On October 16, 2015, the court dismissed Mr. Brooks' lawsuit for want of prosecution. DCX 20 at 357.

99. On May 24, 2019, Respondent submitted to ODC in partial response to Ms. Carlos' complaint an incomplete, one-page ledger[15] for work on the Brooks lawsuit (which was mistakenly attached to the purported retainer agreement for the Joyner litigation), showing that by June 6, 2015 Respondent had taken all of Ms. Carlos' initial $2,500 payment. DCX 17 at 282, 295.

[15] As one of his hearing exhibits, Respondent provided a two-page ledger (RX 253) for the Brooks lawsuit, discussed *infra* in FF 200(e).

100. After the commencement of the hearing in this matter Respondent proffered a purported re-creation of time spent on the Brooks lawsuit that was prepared specifically for the hearing (Tr. 1115:14-1118:3 and 1127:4-10 (Ross)), showing total billable time of $4,960. RX 411.

4. The BB&T/Jackson Matter

101. On February 8, 2015 Ms. Carlos sent Respondent an e-mail to confirm their discussion that, *inter alia*, he would charge $4,000 "to resolve" the BB&T/Jackson issue (DCX 9 at 65 ¶ (2)); Tr. 340:5-12 (Carlos). In a reply e-mail later that day, Respondent confirmed Ms. Carlos' understanding as "correct." RX 56 at 530.

102. As part of a submission ODC received from Respondent on May 24, 2019 to Ms. Carlos' Bar complaint, he submitted a proposed fee agreement (unsigned) for the BB&T/Jackson matter which included the following language:

> The total fees shall be $4,000.00 which will be used for services rendered and expenses incurred on the Client's behalf. To date we acknowledge receipt of $4,000.00.

DCX 17 at 288 ¶ 2. Ms. Carlos likewise acknowledged paying Respondent $4,000 for the BB&T/Jackson matter. Tr. 345:17-19, 375:16-376:4, 542:14-543:1 (Carlos). *See also* DCX 9 at 64 (Ms. Carlos' complaint to ODC).

103. Ms. Carlos, however, did not receive the fee agreement referred to in the preceding paragraph. Tr. 375:21-376:2 (Carlos).

104. [PFF 54] Carlos reported Jackson's conduct to the police. She also prepared a list of Jackson's unauthorized withdrawals. She sent both the police report and list of checks to Respondent. Tr. 339:17-340:5, 392:8-393:5, 517:6-520:7 (Carlos); DCX 12 at 237 and 239-40.

105. Respondent provided no information to Ms. Carlos concerning what he did to pursue the BB&T/Jackson matter, did not contact Mr. Jackson or his attorney, and if he ever contacted BB&T, he didn't think "much had occurred." Tr. 376:16-378:5, 393:2-21, 521:12-523:22, 542:14-543:9 (Carlos); 204:16-207:6 (Respondent).

106. On August 30, 2017, ODC received Respondent's initial letter and document submission responding to Ms. Carlos' Bar complaint. DCX 12 at 158. The "re" line at the beginning of Respondent's cover letter identified four internal law firm file numbers that he associated with Ms. Carlos: 15-039, 15-039(b), 15-039(c), and 15-039(d). *Id*. However, no client matter ledgers were provided with Respondent's letter. *Id.* at 161-256.

107. On May 24, 2019,[16] ODC received a follow-up response from Respondent concerning his representation of Ms. Carlos. DCX 17 at 282. Attached to Respondent's letter were three client matter ledgers related to Ms. Carlos, corresponding to three of the four internal law firm file numbers previously identified by Respondent: *id.* at 286 and 300 (matter number 15-039 (top left-hand corner)), relating to employee wage issues; *id.* at 290 (matter number 15-039(b) (top left-hand corner)), relating to the Jonathan Love matter; and *id.* at 295 (matter number 15-039(c) (top left-hand corner)), relating to the Jamaar Brooks lawsuit. No client ledger was provided for matter 15-039(d), nor was any client ledger provided that was designated for the BB&T/Jackson matter.

108. Included among the exhibits that Respondent proffered prior to the hearing in this matter were revised client ledgers as well as time listings for Respondent's matter numbers 15-039 (RX 251 and 254), 15-039(b) (RX 252 and 256), and 15-039(c) (RX 253 and 258), but no client ledger for matter number 15-039(d), nor any client ledger or time listing designated for the

[16] As set forth in FF 121-124, this follow-up response was preceded by several intervening requests by ODC for information from Respondent.

BB&T/Jackson matter. *See also* Tr. 199:16-19 (Respondent) (no timesheets for the BB&T/Jackson matter) and 648:19-649:2 (Matinpour) (no financial records provided for the BB&T/Jackson matter).

109. After the commencement of the hearing in this matter, Respondent proffered two re-created time sheets for work on Carlos matters, RX 411 (relating to the Jamaar Brooks lawsuit) and RX 413 (designated in Respondent's List of Exhibits as an amended time spreadsheet related to the employee wages matters), but no time sheet for work on the BB&T/Jackson matter.

110. Respondent, however, took the entire $4,000 he received for the BB&T/Jackson matter, asserting that "the money that she provided got morphed into other services." Tr. 207:7-12 (Respondent). *See also* Tr. 1654:12-16 (Respondent testifies he thought he had told Ms. Carlos he would move funds as appropriate and spread the money he received over multiple matters).

111. Respondent never sought or obtained Ms. Carlos' consent to reallocate fees from the BB&T/Jackson matter to any other matter Respondent was handling for her. Tr. 376:19-377:7, 384:5-12, 411:13-20, 524:2-7 (Carlos).

5. Ms. Carlos' Termination of Respondent and Her Complaint to ODC

112. By e-mail dated July 5, 2015, Ms. Carlos terminated Respondent's services and directed him to transfer all files as well as "monies that are left over" to successor legal counsel, James E. McCollum. DCX 19 at 349.

113. Respondent did not account to Ms. Carlos during the six months he represented her and ESS for the advance fees he received, and he did not do so in response to the request in her July 5, 2015 e-mail to him for a turnover of unearned fees (FF 112) or in response to the request in her ODC complaint for a refund. Tr. 377:3-7, 380:7-381:7, 382:16-383:4, 393:8-21, 538:9-13 (Carlos).

114. On May 11, 2017, ODC received a complaint against Respondent from Ms. Carlos. DCX 9 at 62. *Inter alia*, Ms. Carlos complained about the quality of Respondent's work, and his failure to complete tasks he had agreed to undertake. *Id*. at 63.

115. On July 17, 2017, ODC forwarded to Respondent a copy of Ms. Carlos' complaint, and asked him to provide a response by July 27, 2017. DCX 10. The letter reminded Respondent that failure to comply with a request for information from ODC might constitute a violation of Rule 8.4(d) as conduct seriously interfering with the administration of justice. *Id*. at 152.

116. No response was received from Respondent by July 27, 2017, and on August 7, 2017 ODC sent him a follow-up letter by certified United States mail, asking him to provide a response to Ms. Carlos' complaint by August 17, 2017. DCX 11. The letter reminded Respondent that failure to cooperate with an ODC inquiry may be a basis for discipline under Rules 8.1(b) and 8.4(d). *Id*. at 153.

117. No response was received from Respondent by August 17, 2017, but a response was received by ODC on August 30, 2017, which included about 100 pages of attachments relating to Respondent's representation of Ms. Carlos. DCX 12.

118. No time, billing, or other financial records relating to Respondent's representation of Ms. Carlos and ESS were included with the documents ODC received from him on August 30, 2017. DCX 12.

119. Included among the attachments to Respondent's August 30, 2017 response were:

a. an unsigned, undated, non-letterhead $7,000 retainer agreement for the Preston Joyner lawsuit (FF 52) (DCX 12 at 161; Respondent's "Tab 1");

b. an unsigned, undated, non-letterhead $4,000 retainer agreement for general work on the employee wage issues (*id*. at 164; Respondent's "Tab 2"); and

c. an unsigned, undated, non-letterhead $900 retainer agreement for Mr. Maduwuba's lawsuit (FF 64-66) (DCX 12 at 170; Respondent's "Tab 4").

120. By letter dated June 10, 2018, Ms. Carlos provided a reply to Respondent's August 30, 2017 submission to ODC. DCX 13. *Inter alia*, she denied ever having received the three unsigned, undated, non-letterhead retainer agreements referred to in the preceding paragraph. *Id*. at 257.

121. On November 30, 2018, ODC e-mailed a subpoena to Respondent in connection with its investigation of Ms. Carlos' complaint (Disciplinary Docket No. 2017-D158), requesting both Respondent's IOLTA account records and his office checking account records beginning as of January 1, 2015. DCX 14 at 261-62. The response date on the subpoena was December 10, 2018. *Id*. at 261.

122. Respondent did not respond to the subpoena. DCX 15 at 267.

123. On April 9, 2019, ODC sent Respondent a letter (DCX 15) noting his failure to respond to the subpoena; enclosing another copy of the subpoena (*id*. at 269-70); and directing Respondent's attention particularly to providing financial records for all payments from Ms. Carlos, the matter for which the payment was made, the applicable retainer or fee agreement, and the client ledgers showing the account to which the payments had been deposited as well as how and when Respondent had withdrawn funds. *Id*. at 267.

124. Not having received a reply from Respondent, on May 13, 2019 ODC sent him a follow-up letter for the documents ODC previously requested. In addition, because Ms. Carlos disputed having received retainer agreements from Respondent, ODC asked him for copies of any e-mails or other evidence that he had sent fee agreements to her. DCX 16.

125. On May 24, 2019, ODC received a response (dated May 23, 2019) from Respondent.

DCX 17.

126. Respondent's May 24, 2019 submission to ODC did not include any e-mails or other documentation to support his contention that he had sent fee agreements to Ms. Carlos. DCX 17.

127. [PFF 70] In late October 2020, as part of his exhibits, Respondent produced three emails to Carlos that purported to attach fee agreements. RX 60 at 539; RX 143 at 928; RX 157 at 967. They were responsive to Disciplinary Counsel's subpoena and follow-up letters, but Respondent had not previously produced them. Tr. 150:14-151:20, 1736:11-1737:22 (Respondent).

128. Respondent testified repeatedly that he located e-mails which were responsive to ODC's requests for information because he checked an additional data base on a "whim" when he was preparing for the hearing in this matter. Tr. 1524:3-8, 1733:12-1734:10, 1737:1-12 (Respondent).[17]

129. Included among the documents which Respondent did provide to ODC with his May 24, 2019 submission (DCX 17) were:

a. another copy of the $4,000 unsigned, undated, non-letterhead fee agreement for the employee wage matters which Respondent had previously provided to ODC (*id*. at 284; *see* FF 119(b), *supra*);

b. two pages of a ledger for the employee wage matters, the last entry for which was May 29, 2015 (DCX 17 at 286 and 300);[18]

[17] Respondent's post-hearing brief characterizes his expanded e-mail search as a "desperate attempt to find and compile records for the hearing." Resp. Br. at 11 ¶ 32.

[18] The pages for this ledger were out of order, and DCX 17 at 300 was attached to a proffered copy of a fee agreement for the Brooks lawsuit.

c. an unsigned, undated, non-letterhead $4,000 fee agreement for the BB&T/Jackson matter (*id*. at 288);

d. a ledger for the $1,600 payment Respondent had received from Ms. Carlos (*id*. at 290);

e. another copy of the $7,000 unsigned, undated, non-letterhead fee agreement for the Preston Joyner lawsuit which Respondent had previously provided to ODC (*id*. at 293; *see* FF 119(a), *supra*);

f. a one-page ledger for the Brooks lawsuit, the last entry for which was June 12, 2015 (DCX 17 at 295);

g. an unsigned, undated, non-letterhead fee agreement for the Brooks lawsuit, not previously provided to ODC (*id*. at 297);

h. a version of the $900 fee agreement for the Maduwuba lawsuit differing from the one Respondent had previously provided to ODC (*see* FF 119(c), *supra*), the second version being on letterhead, signed by Respondent, and bearing a date next to his signature of May 20, 2015 (DCX 17 at 302-04);[19] and

i. a collection of checks from Respondent's IOLTA account (and related internal computations) payable to Respondent's general law firm operating account (DCX 17 at 305-15).

130. Respondent's May 24, 2019 submission to ODC did not include a ledger relating to the $900 he received (FF 65) for the Maduwuba lawsuit (DCX 17; Tr. 646:14-22 (Matinpour) and 170:14-172:22 (Respondent)), nor, as noted in FF 107-09, *supra*, did Respondent ever provide a ledger relating to the BB&T/Jackson matter (*see also* Tr. 648:19-649:2 (Matinpour)).

[19] As with the first version of the $900 Maduwuba lawsuit fee agreement, the second version was not signed by Ms. Carlos.

131. Respondent did not review the May 24, 2019 submission to ODC in order to determine that it was complete and responsive to ODC's subpoena. Tr. 127:6-128:7, 180:16-181:13 (Respondent).

132. Respondent subsequently produced along with his proposed hearing exhibits another version of the ledger for the employee wage matters, this one containing three pages and with the last date of any activity shown as June 24, 2015. RX 251.

133. [PFF 72] The ledgers and other records that Respondent produced for the wage matters showed that he had taken the entire $4,000 flat fee by April 27, 2015, and an additional $2,500 that Carlos paid him for the Joyner litigation by June 24, 2015. RX 251.

134. On August 22, 2019, ODC sent Respondent a draft of the Specification in this matter, with a cover letter asking him to review the draft and provide ODC with any additional information and documents that he believed were relevant. DCX 18 at 317. The draft Specification included allegations that in his representation of Ms. Carlos and ESS, Respondent had violated Rule 1.15(a) and (d) by failing to keep and preserve complete records of advance fees and entrusted funds, and had failed to respond reasonably to a lawful demand for information from a disciplinary authority. *Id*. at 322 ¶¶ 23 (b), (e).

135. Notwithstanding ODC's request as noted in the preceding paragraph, Respondent failed to produce additional documents prior to filing his pre-hearing exhibits. Tr. 131:10-133:6 (Respondent); 631:5-14 (Matinpour).

136. In addition to producing the complete ledger for the employee wage matters with his pre-hearing exhibits (RX 251), Respondent also newly produced a complete two-page ledger for the Jamaar Brooks lawsuit (RX 253; *see* FF 129(f), *supra*, regarding the incomplete ledger for this matter that Respondent originally provided to ODC), and "Time Listings" for the employee wage matters and for work on the Jonathan Love matter (RX 254 and RX 256).

C. Respondent's Representation of Barnedia Drayton

137. [PFF 75] Barnedia Drayton worked as an Emergency Medical Technician (EMT) for the D.C. Fire and Emergency Management Services Department (FEMS) from 2001 until February 2016, when she was discharged for having outside employment and other alleged misconduct. Tr. 830:8-831:19 (Drayton).

138. [PFF 76] Drayton hired Alan Lescht's firm to represent her in appealing her termination to the Office of Employee Appeals (OEA). RX 264; Tr. 834:21-836:5, 838:6-839:2 (Drayton). Christina Quashie, an associate in the Lescht firm, did most of the work in representing Drayton. Tr. 834:21-836:5, 838:6-839:2, 845:19-21, 861:16-862:12 (Drayton); RX 264; RX 267.

139. [PFF 77] By early 2017, Drayton had concerns about Quashie's experience and decided she wanted other counsel. Tr. 834:21-835:2, 838:14-839:22 (Drayton).

140. [PFF 78] A friend referred Drayton to Respondent. Tr. 835:2, 839:22-840:2 (Drayton). In early 2017, Drayton called Respondent about representing her in her on-going appeal. Respondent told Drayton he would consult with her for $200, and they arranged a meeting at a law office in D.C., where Ms. Drayton paid Respondent $200 in cash. Tr. 841:3-12, 851:15-852:4 (Drayton).

141. Respondent told Ms. Drayton he would undertake representation of her OEA appeal for a flat fee of $10,000. Tr. 843:13-844:2 (Drayton); DCX 31 at 398.

142. [PFF 81] Because Drayton was not employed full-time, she could not pay Respondent the entire $10,000 he demanded for the representation. She paid him $2,000 in cash at the end of March 2017, and made four more payments of $2,000 each in April, May, July, and November 2017 – each time delivering checks to Respondent's office and requesting a receipt for the payment. Tr. 844:1-6, 846:10-15, 849:6-850:9, 853:11-854:17 (Drayton); DCX 25.

143. [PFF 89] Respondent did not ask for or receive Drayton's consent to take the advance fees as earned. Respondent never provided Drayton any invoices or accountings, or told her when he was withdrawing her funds and his justification for doing so. Tr. 858:21-860:7, 898:3-6, 917:20-918:8, 951:17-952:5 (Drayton); Tr. 254:5-9, 1624:15-17 (Respondent admitted he did not tell Drayton when he was taking her funds; he "didn't believe it was important to her").

144. Although, as set forth in the preceding paragraph, Respondent did not have consent from Ms. Drayton to take fees as earned, he nevertheless took periodic fee payments before Ms. Drayton's case was finished. RX 334 at 1952-56.

145. On March 29, 2017, Ms. Drayton received an e-mail from Respondent's office stating that a retainer agreement was attached, but none was attached. DCX 40 at 473. She then got in touch with Respondent's office staff to request the missing retainer agreement, but it was never provided. Tr. 848:9-849:1, 850:16-851:1 (Drayton); *see also* Tr. 220:10-12 ("I don't have anything to confirm that a fee agreement was sent as it relates to the $10,000 appeal") (Respondent).

146. [PFF 83] On May 1, 2017, Respondent entered his appearance with OEA as counsel for Drayton and requested an extension to file her prehearing statement and a postponement of the prehearing conference. The Administrative Judge granted the extension and the postponement. DCX 26 at 378 n. 1; DCX 39 at 451-52.

147. [PFF 95] By mid-2017, Drayton had told Respondent and his staff about four other FEMS employees engaged in outside employment who had not completed the required paperwork and some of whom were receiving workers' compensation. Tr. 871:9-874:7, 928:21-929:2, 953:8-956:7 (Drayton); 1713:20-1714:12 (Respondent); DCX 39 at 442.

148. On June 1, 2017, Respondent filed a 20-page Pre-Hearing Statement in Ms. Drayton's

OEA appeal. RX 276. The Pre-Hearing Statement listed nine anticipated witnesses (*id*. at 1582-84), the first of whom was Ms. Drayton (*id*. at 1582 ¶ 41), and listed 33 proposed documentary exhibits (*id*. at 1584-86).

149. Respondent did not, however, provide Ms. Drayton with a copy of the Pre-Hearing Statement. Tr. 934:13-935:8 (Drayton).

150. On June 6, 2017, the OEA administrative law judge issued a "Post Prehearing Conference Order," which directed that "further legal arguments shall be made in legal briefs" without any provision for taking live witness testimony, and set a briefing schedule of August 21, 2017 for the agency's (*i.e.*, FEMS's) brief, and September 21, 2017 for the employee's (*i.e.*, Ms. Drayton's) brief. RX 277 at 1589.

151. Respondent never effectively communicated to Ms. Drayton that the OEA administrative law judge had decided to rule on the case based on the parties' briefs, because one of Ms. Drayton's chief complaints before the Hearing Committee and to ODC was that she never got to "tell her story" to the administrative law judge. Tr. 860:8-861:15, 877:15-878:11, 897:2-3, 904:16-905:8, 911:19-20 (Drayton); DCX 31 at 400 (lines 3-4) ("I found out that he never went to court for my case and stated that my case was not 'sufficient' enough for court").[20]

152. The OEA administrative law judge's "Post Prehearing Conference Order" also stated, "Discovery in this matter shall be completed by July 21, 2017." RX 277 at 1589.

153. In July 2017 Respondent served on FEMS a 6-page set of interrogatories (RX 282)

[20] Ms. Drayton asserted numerous other reasons for being dissatisfied with Respondent's work (*e.g.*, Tr. 909:3-915:2 (Drayton); DCX 31), many of which are re-asserted in ODC's proposed findings of fact. However, because ODC does not charge Respondent with violating Rule 1.1 (competent representation), Rule 1.3 (diligence and zeal), or Rule 1.4 (communicating with a client), this Report purposely leaves most of those assertions unexplored.

and 5-page request for production of documents (RX 283).

154. On July 21, 2017, FEMS filed a "Response to [Employee's] Untimely Discovery Requests," arguing that the discovery Respondent had sought on behalf of Ms. Drayton was untimely because it did not comply with the deadline set by the "Post Prehearing Conference Order." RX 288.[21]

155. On July 31, 2017, Respondent filed an opposition to FEMS's discovery objection. RX 289; *see also* RX 281 at 1610. On the same day Respondent filed a motion to compel discovery from FEMS, to which FEMS filed an opposition. RX 281 at 1610 (administrative law judge's summary of proceedings).

156. On August 21, 2017, FEMS filed a 23-page brief in accordance with the OEA administrative law judge's June 6, 2017 Post Prehearing Conference Order. RX 293.

157. On September 1, 2017, the OEA administrative law judge held a telephonic status conference to discuss discovery issues. RX 281 at 1610.

158. On September 11, 2017, the OEA administrative law judge issued a Discovery Order directing FEMS to respond by October 6, 2017 to the discovery requests Respondent had filed on behalf of Ms. Drayton, and directing Respondent to respond by October 27, 2017 to the FEMS brief filed on August 21, 2017. RX 281 at 1610.

159. On October 20, 2017, FEMS served on Respondent a 17-page response and objections (RX 284) to the interrogatories previously propounded by Respondent, and a 10-page response and objections (RX 285) to Respondent's request for production of documents.

[21] FEMS's pleading asserted that although the certificates of service for Respondent's discovery requests were dated July 3, 2017, the envelope for the discovery requests was date-stamped July 5, 2017, and the discovery requests were not received by counsel for FEMS until July 10, 2017. RX 288 at 1671.

160. On November 2, 2017, Respondent sent counsel for FEMS a letter asserting deficiencies in FEMS's interrogatory responses. RX 287.[22]

161. On November 13, 2017, Respondent served on FEMS a motion to compel discovery (RX 286), to which FEMS filed a 5-page opposition (RX 291).

162. On December 12, 2017, Respondent sent counsel for FEMS a 4-page letter requesting responses to eight interrogatories to which FEMS had objected, and therefore not answered. RX 290.

163. On January 19, 2018, a telephonic discovery conference with the OEA administrative law judge was convened, leading to the issuance on January 23, 2018 of a "Post Discovery Conference Order" which directed the parties to work toward resolving their discovery problems, and directed Respondent to file Ms. Drayton's brief in reply to FEMS by March 16, 2018. DCX 26 at 379.

164. On or about February 14, 2018,[23] FEMS served a 7-page set of supplemental answers to the interrogatories Respondent filed on behalf of Ms. Drayton. RX 295.

165. On March 15, 2018,[24] Respondent served an 18-page reply brief (RX 292) to the FEMS brief previously filed on August 21, 2017. Although Respondent's reply brief referred to various attached exhibits, there were no exhibits attached. DCX 26 at 379 n. 4 (administrative law judge's decision); RX 313 at 1820 (e-mail from administrative law judge to Respondent). On being informed of this oversight, Respondent submitted a second version of the reply brief, with

[22] The copy of the letter provided as RX 287 cuts off in mid-sentence at the end of page three; apparently, the actual letter was longer than what Respondent filed as RX 287.

[23] Date of verification of FEMS's supplemental interrogatory answers. RX 295 at 1764.

[24] The certificate of service for Respondent's reply brief is erroneously dated "March 15, 2017." RX 292 at 1712.

exhibits attached. *Id*.[25]

166. [PFF 103] On August 20, 2018, the Administrative Judge issued a decision in favor of FEMS upholding its removal of Drayton. DCX 26. The Judge found no support for some of Drayton's claims, including that most civilian FEMS employees had outside employment and that she was treated differently from other employees. *Id.* at 385-89.

167. After the issuance of the OEA administrative law judge's adverse decision, Respondent told Ms. Drayton that he would represent her in a further appeal for an additional fee of $10,000. Tr. 883:11-17 (Drayton).

168. Ms. Drayton decided not to proceed any further with Respondent because she was highly dissatisfied with the quality of his representation (Tr. 883:18-885:6 (Drayton)), and shortly thereafter asked Respondent for her legal file (Tr. 885:7-17 (Drayton); DCX 40 at 471).

169. Ms. Drayton made e-mail requests for her file on October 3 and October 4, 2018. RX 324 at 1849. In reply, Respondent e-mailed her and told her to deal with another person in his office, who said the file would be available only upon payment of $200. Tr. 885:18-886:3 (Drayton). Ms. Drayton then got in touch directly with Respondent, who confirmed that her file would be provided to her only on payment of $200. Tr. 886:4-7 (Drayton).

170. In his testimony before the Hearing Committee concerning the failure to provide Ms. Drayton with her file promptly, and his demand for payment of $200, Respondent conceded, "I

[25] Respondent testified to the Hearing Committee that RX 293 was an agency reply to the brief he filed on behalf of Ms. Drayton. However, RX 293 clearly bears a certificate of service dated August 21, 2017 (RX 293 at 1737), and was therefore FEMS's principal brief, as set forth in FF 156. Respondent also testified that he filed a further reply to FEMS's supposed reply to his brief, but the document about which Respondent testified (RX 294, an unpaginated document which is captioned "Employee's Reply to Agency's Brief") appears to be a copy of the initial brief he filed on behalf of Ms. Drayton (RX 292, captioned "Barnedia Drayton's Brief"). Tr. 1501:15-1502:11 (Respondent). Respondent's testimony therefore appears to be confused.

acknowledge that I could and should have handled that better." Tr. 1721:16-18 (Respondent).[26]

171. On November 13, 2018, ODC received a complaint from Ms. Drayton about Respondent's representation of her. DCX 31. *Inter alia*, the complaint noted that Respondent had not provided Ms. Drayton with a fee agreement (*id*. at 398 ¶ D), described Respondent's demand for $200 before releasing her file (*id*. at 400 (last paragraph)), and claimed she was entitled to a refund of the $10,000 she had paid for the OEA appeal (*id*. at 401).

172. [PFF 109] On November 29, 2018, Disciplinary Counsel sent Respondent a letter enclosing a copy of Drayton's complaint with attachments and asked him to respond to the allegations. DCX 32.

173. ODC's November 29, 2018 letter specifically directed Respondent to provide a substantive response to each allegation of misconduct, and to submit his response in duplicate by December 10, 2018.

174. On December 10, 2018 – about three weeks after Ms. Drayton filed her complaint with ODC – Respondent's office sent Ms. Drayton an e-mail stating that a copy of her file would be available to be picked up the next day. RX 324.

175. [PFF 111] On December 18, 2018, Respondent delivered a response to Disciplinary Counsel. He said that he worked "extremely hard" on Drayton's case and the OEA's decision could have gone the other way. He did not, however, respond to the allegations in Drayton's complaint. Respondent enclosed with his letter a copy of the Administrative Judge's decision and copies of the pleadings and other documents from the OEA proceeding. DCX 34.

176. Respondent did not respond to Ms. Drayton's claim in her ODC complaint for a refund

[26] In his post-hearing brief, Respondent strikes a different tone, arguing, "At the time the demand was made, I had every intention to give her file back to her . . . ." Resp. Br. at 56.

of the $10,000 she had paid him, nor did he provide any accounting or explanation about when he took her funds and on what basis he claimed they were earned. Tr. 897:21-898:6, 917:20-918:8 (Drayton).

177. On April 9, 2019, ODC sent Respondent a follow-up letter in connection with its investigation of Ms. Drayton's complaint, pointing out that Respondent's prior submission to ODC did not respond to Ms. Drayton's specific allegations, and that he had not provided a copy of his fee agreement with Ms. Drayton, or documents embodying his interchanges with her, or any financial records reflecting his handling of the fees he had received from Ms. Drayton. DCX 35 at 407.

178. Enclosed with ODC's April 9, 2019 letter was a subpoena for any and all records relating to Respondent's representation of Ms. Drayton. DCX 35 at 408-09. The response date on the subpoena was April 22, 2019. *Id*. at 408.

179. Respondent did not respond to ODC's April 9, 2019 letter or provide any documents by the April 22, 2019 date specified in the subpoena. DCX 36 (first paragraph); DCX 37 at 417 ¶ 5.

180. [PFF 114] On May 8, 2019, Disciplinary Counsel sent Respondent a follow-up letter requesting a response to Drayton's allegations, as well as compliance with the subpoena. DCX 36.

181. Respondent did not respond to ODC's May 8, 2019 letter or produce any documents in response to the subpoena previously issued by ODC. DCX 37 at 418 ¶¶ 6, 7.

182. [PFF 116] On May 22, 2019, Disciplinary Counsel filed with the Court a motion to enforce the subpoena. DCX 37. Respondent did not respond to the motion. Tr. 227:5-9 (Respondent).

183. On May 22, 2019, ODC e-mailed Respondent a copy of its motion to enforce the subpoena. DCX 37 at 431. Respondent sent ODC a reply e-mail that day stating he had asked Capital One for bank records responsive to the subpoena. DCX 38 at 432. Later that day ODC responded by pointing out Respondent needed to review the actual terms of the subpoena and ODC's prior letters; that ODC's request was for all of Respondent's records relating to his representation of Ms. Drayton (*i.e.*, not just external bank records); and that substantive responses were still needed to Ms. Drayton's allegations. *Id*.

184. On May 24, 2019, ODC received a two-page letter from Respondent replying to Ms. Drayton's complaint. DCX 39 at 433-34. *Inter alia*, Respondent's letter stated that on December 10, "2019" (a typographical error; the year should have been 2018), Ms. Drayton had been informed that she could pick up her file. *Id*. at 434. Along with his letter, Respondent provided:

a. An unsigned, undated "Fee Agreement" for $2,000 regarding the preparation of a demand letter for reinstatement (*id*. at 435-36), but no fee agreement relating to Ms. Drayton's payment of $10,000 for her OEA appeal, which was the actual subject of Respondent's retention by Ms. Drayton (FF 141);

b. A five-page "Time Listing" for his representation of Ms. Drayton (DCX 39 at 437-41), indicating that he had taken a total of $13,000 in fees from Ms. Drayton's account (*id*. at 441);

c. A collection of e-mails relating to the representation (*id*. at 442-54, 456-68); and

d. A copy of a letter dated January 16, 2018 which Respondent sent to the OEA administrative law judge relating to discovery. *Id.* at 455.

185. [PFF 120] On June 25, 2019, the Court granted Disciplinary Counsel's motion and directed Respondent to comply with the subpoena by providing responsive documents within 15

days. DCX 41.

186. [PFF 121] Disciplinary Counsel emailed a copy of the Court order to Respondent on June 25, 2019, requesting that he provide his financial records, the emails he and his office exchanged with Drayton, and all other documents responsive to the subpoena. DCX 42.

187. [PFF 122] On July 9, 2019, Respondent delivered a cover letter dated July 5, 2019, and additional documents responsive to Disciplinary Counsel's subpoena. The additional documents included: (1) a client ledger reflecting that Drayton had made payments to Respondent totaling $13,000, and that he had withdrawn $13,000 from his trust account as fees in Drayton's matter; (2) the fee agreement for $2,000 on different letterhead than the version included in DCX 39, and with a second page with a signature for Respondent; and (3) copies of four of the checks that Drayton provided to Respondent totaling $8,000, with two receipts from his office. DCX 43.

188. [PFF 124] In late October 2020, as part of his exhibits, Respondent produced additional emails relating to Drayton's matter that were responsive to Disciplinary Counsel's subpoena. *See* RX 298 - RX 323. Then in late January 2021, more than a week after Drayton testified, Respondent produced more than 20 additional emails or email chains relating to Drayton's matter which he offered as exhibits, RX 412 and RX 417. They too were responsive to Disciplinary Counsel's subpoena. Tr. 1732:10-1736:1 (Respondent thought subpoena "closed").

189. [PFF 125] Respondent also offered as exhibits a number of financial records that were responsive to Disciplinary Counsel's subpoena that he had not been produced [sic] earlier. They included not only the ledger, but time records for Drayton's matter. RX 335. His exhibits filed in late January 2021 included receipts for all five $2,000 payments (RX 271) and deposit slips showing when the checks were deposited in the trust account (RX 404 - RX 407).

190. The Drayton client ledger that Respondent provided with his submission to ODC on

July 9, 2019 (DCX 43 at 479-83; RX 334 is another copy) showed he had received $13,000 in fees from Ms. Drayton – not $10,000 – and had withdrawn $13,000 from his trust account as earned fees for work on her case. On the first day of his testimony before the Hearing Committee in November of 2020, Respondent stated the $13,000 figure was a "typo," and he had taken only $12,000 in fees for the Drayton matter. Tr. 231:9-17 (Respondent).

191. In late January 2021,[27] Respondent produced additional financial records (RX 409, a client ledger for Antoinette Lipford; RX 404 at 2537-38, Lipford bank deposit slip dated May 12, 2017[28]), and changed his testimony. In February 2021, Respondent stated he had received only $10,000 from Ms. Drayton (Tr. 1488:8-9 (Respondent)), and that the additional $3,000 he credited to Ms. Drayton's account had actually been paid by Ms. Lipford, although the $3,000 was credited to the accounts of both Ms. Lipford and Ms. Drayton (Tr. 1496:7-14 (Respondent); *see* DCX 43 at 480 and RX 409 at 2545).

192. [PFF 128] The bank records also confirmed that Respondent withdrew Drayton's funds from his trust account within weeks, sometimes[] days[,] after depositing them: (1) Respondent deposited the first $2,000 payment on April 3, 2017, and paid himself $1,000 on April 10 and another $1,000 on April 11; (2) Respondent deposited the second $2,000 payment on May 1, and paid himself $1,000 by May 3; (3) Respondent deposited the third $2,000 payment on May 31, and paid himself $1,500 on June 1, $1,000 on June 5, $750 on June 7, $500 on June 15, $1,250 on July 1, and $1,000 on July 6 – $3,000 more in fees tha[n] Drayton had paid him; (4) he deposited

[27] RX 409, one of the exhibits referred to in this paragraph, bears a printing date in the upper left-hand corner of January 23, 2021.

[28] The exhibit page bearing the $3,000 Lipford bank deposit slip in the "corrected" electronic version of Respondent's exhibits filed after the end of the hearing does not appear to have a page number, and is positioned between pages 2537 and 2538. *See* Tr. 1107:7-1108:1 (Ross; discussing deposits for May 2017), 1109:8-1109:11 (discussion of missing exhibit page number).

the fourth $2,000 payment on July 10, and paid himself $500 four times between July 18 and September 20; and (5) he deposited the final $2,000 payment on November 2, and paid himself $1,000 the next day, and another $1,000 on November 9. DCX 53 at 902; Tr. 649:11-652:3 (Matinpour).

193. Although the reply brief Respondent submitted in Ms. Drayton's OEA appeal was not filed until March 2018 (FF 165), the ledger for Ms. Drayton which Respondent provided to ODC shows he took all of the $10,000 she had paid by November 9, 2017. DCX 43 at 482 (bottom of page).

194. [PFF 131] In addition to producing financial records for the first time at the hearing, Respondent created new records that he offered as exhibits, including purported time records in Drayton's matter. RX 336 at 1964; RX 408. Respondent had Joyce Ross create the purported time records based on documents in the file. Tr. 1180:18-1182:1, 1183:11-21 (Ross).

D. Respondent's Trust Account Records and Handling of Trust Account Funds

195. Between January 2015 and February 2019 Respondent had a high-volume practice. Tr. 221:14 (Respondent). During each of those years, he took on hundreds of new clients. RX 400 (e) - (f).

196. [PFF 134] Respondent charged most of his clients flat fees and received some or all of the fees in advance. RX 400. Respondent occasionally charged hourly fees and, for the clients discussed below, he received the clients' fees in advance of earning them.

197. [PFF 136] The deposits of client funds in the trust account ranged from tens of thousands to more than a hundred thousand dollars each month. *See* DCX 50. The deposits were made on almost a daily basis and each deposit included the funds of multiple clients. For example, in May 2017, Respondent deposited the funds of at least 32 clients who paid him by check, money

order, or cash on 10 different days. RX 404. In addition to these deposits, there were 18 credit card transfers into the trust account on 17 different days. DCX 50 at 812-14; Tr. 1590:21-1591:15 (Respondent).

198. Respondent decided when to withdraw client funds from the trust account and in what amount. Tr. 49:16-51:1 (Respondent); 1142:7-10 (Ross). Respondent wrote trust account checks on most business days each month. For example, in February 2016, he wrote 32 checks on 19 different days (DCX 57 at 942-73); in August 2016, he wrote 38 checks on 20 different days (*id*. at 975-1012); in September 2017, he wrote 39 checks on 18 different days (*id*. at 1014-52); and in May 2018, he wrote 36 checks on 18 different days (*id*. at 1054-89); *see* Tr. 1750:14-1753:8 (Matinpour).

199. [PFF 138] The trust account checks that Respondent wrote to transfer funds to his operating account were often for multiple client matters. For example, when he paid himself funds in the Carlos matters, Respondent combined the Carlos payment with the payments for three to a dozen additional clients and each check was for thousands of dollars. DCX 17 at 305-15; *see* Tr. 629:3-630:8 (Matinpour).

200. For his representation of Ms. Carlos and ESS, Respondent failed to keep complete and accurate trust account records.

a. There was no ledger showing receipt into and disbursement from his trust account of the $900 he received for the Maduwuba lawsuit. FF 65, 117-19, 129-30.

b. For the BB&T/Jackson matter, Respondent also failed to keep a time listing showing work done or a ledger showing receipt into his trust account and disbursement from that account of the $4,000 he received. FF 106-09, 130.

c. For the $1,600 Respondent received on the Jonathan Love/Daphne Nelson matter

(FF 77), Respondent had no trust account or other records showing work done regarding the Daphne Nelson problem (FF 79).

d. On May 24, 2019, Respondent submitted to ODC an incomplete ledger of work done on the employee wage matters (FF 129(b)); only the hearing in this matter brought to light the full ledger which might be used to track the disbursement of all funds out of Respondent's trust account for the employee wage matters (RX 251; FF 132).

e. On May 24, 2019, Respondent submitted to ODC an incomplete ledger of work done on the Jamaar Brooks lawsuit (FF 129(f)); only the hearing in this matter brought to light the full ledger which might be used to track the disbursement of all funds out of Respondent's trust account for the Jamaar Brooks lawsuit (RX 253; FF 136).

201. [PFF 140] In the Drayton matter, Respondent's only fee agreement was for $2,000, the client paid him $10,000, and Respondent withdrew $13,000 from the trust account for his fees. PFF 122, 126.[29] The $3,000 payment actually was paid by another client whose account reflected the receipt and disbursement of the $3,000 (as well as another $7,000 she paid Respondent). Thus, Respondent paid himself $6,000 from the trust account based on a deposit of only one $3,000 payment. PFF 129-30;[30] RX 409; Tr. 1588:1-1590:20 (Respondent).

[29] PFF 122 was explicitly agreed to by Respondent in his post-hearing brief (*see* n. 9 *supra*) and is included in this Report as FF 187. PFF 126 may be deemed conceded by Respondent through his agreement to PFF 140, but in any event, a principal point made in PFF 126 – that Respondent withdrew $13,000 in fees from Ms. Drayton's account although she paid in only $10,000 – is conceded by Respondent through his agreement to PFF 128, which is included in this Report as FF 192.

[30] PFF 129 and 130 were not explicitly agreed to by Respondent in his post-hearing brief, although they may be deemed conceded by Respondent through his agreement to PFF 140. In any event, the circumstances surrounding the misallocation of a $3,000 fee payment from a different client of Respondent (Antoinette Lipford) to Ms. Drayton's account – including the consequences of that

202. Even before 2015, Respondent was aware that the acceptance of credit card payments into his law firm's trust account and the processing fees deducted from that account created a deficit that required reimbursement. RX 43 at 451-54 (trust account bank statement for November 2012 showing multiple "PYMT PROC" and American Express transactions); *id*. at 458 (monthly "Credit Card Log" for November totaling $16,725); *id*. at 450 (showing $3,415.84 "Credit Card Expense Reimb." deposit on 11/26/2012).[31]

203. During the time when Ms. Ross was the office manager for Respondent's law firm (July 2013 to February 2015; FF 18), Respondent delegated to her the task of performing trust account reconciliations to calculate amounts which needed to be reimbursed to Respondent's trust account due to credit card and bank fees that were deducted from Respondent's trust account. Tr. 1081:5-18 (Ross).

204. As set forth in the following table, from January 2015 to February 2019, however, only six checks from his law firm's general operating account were deposited into Respondent's trust account, and only the last of those checks (check no. 9874) was related to credit card and bank fees deducted from Respondent's trust account during that four-year time period, *see* DCX 58 at 1095 (notation on check: "Bank Charges jan 2015"). As noted by Ms. Matinpour, the checks were not deposited into Respondent's trust account or "cleared" until months after their respective dates. *See* Tr. 1756 (the processing date is the "day that it cleared the trust account . . . it may have

misallocation – are outlined in RX 409 and Respondent's testimony cited in this FF 201, as well as in FF 190-92, *supra*.

[31] The size of the credit card reimbursement for November of 2012 compared to the total of credit card payments received may indicate that even before the trust account deficits focused on by DCX 51 (January 2015 to February 2019), Respondent was making a retroactive payment for trust account deficits caused by several months of credit card transactions, and therefore was not keeping his trust account in balance on a current basis.

been deposited a few days before, but that's around the same time.")

Date of Check	Check No.	Amount of Check	Date Processed
August 31, 2014	9654	$ 883.72	February 4, 2015
September 30, 2014	9656	$ 939.95	February 5, 2015
October 31, 2014	9681	$ 596.01	February 5, 2015
November 30, 2014	9756	$1,029.74	March 24, 2015
December 31, 2014	9847	$ 870.75	May 5, 2015
January 31, 2015	9874	$1,221.72	May 5, 2015
		$5,541.89	

DCX 58; Tr. 1753:10-1754:20 (Matinpour). Each of the checks described in the foregoing table is dated at the end of a month, and bears a notation at bottom of the check stating that the check represents bank charges for the month in which the check is dated. DCX 58.[32]

205. The only month for which Respondent has provided any trust account reconciliation documentation either in his responses to ODC's investigations or in his hearing exhibits is November 2012. RX 43; Tr. 1584:12-1585:8 (Respondent).[33]

206. The only document which the Hearing Committee could find in the record that might be considered a trust account general ledger[34] – actually, a partial general ledger because it only

[32] The dating of the six checks described in this paragraph is cause for some reflection. Although each of the checks is dated as of the last day of the month for which it is written, it would be logical to assume that the bank statements for those months would not even have become available for doing a reconciliation until after the last day of the month. It is also noteworthy that the first two checks are numbered 9654 (August 31, 2014) and 9656 (September 30, 2014). It is counterintuitive to think that between those two dates Respondent wrote only one intervening check on his general law firm operating account. One inference that might be drawn from the foregoing concerns is that the checks dated as of the last day of the indicated months were actually prepared retrospectively at some unknown point or points in time.

[33] Because of the lack of reconciliation documentation from Respondent, it is difficult to verify the correctness of any of the checks described in FF 204 which Respondent eventually deposited to reimburse his trust account for credit card and bank fees. Thus, while the check for January of 2015 is for $1,221.72, DCX 51 shows that the total of TSYS charges for the month ($951.52) and American Express charges for the month ($7.95 + $42.25 + $7.95) is $1,009.67.

[34] Respondent's List of Exhibits identifies RX 33 (of which RX 33 at 406 is a part) as "Representative BAJJ deposit."

covers a period of four days, from August 1 through August 4, 2015 – was not produced by Respondent in connection with any of ODC's investigations, but was provided as part of his hearing exhibits. RX 33 at 406. This document, however, evidences a lack of accuracy and completeness in Respondent's handling of entrusted funds, because of the wide and unexplained divergence between the daily trust account balances in RX 33 compared to the balances for the same days in the Capital One statement for Respondent's trust account (DCX 50 at 741-42), as shown by the following table:

Date	RX 33 Closing Balance	Capital One Balance
August 1, 2015	$82,339.20	$39,982.29[35]
August 2, 2015	no activity	no activity
August 3, 2015	$84,531.25	$38,037.63
August 4, 2015	$87,170.60[36]	$43,549.72

207. The same lack of accuracy and completeness in Respondent's internal trust account records is evidenced by RX 36, which contains a listing of Respondent's internal trust account balances on various random dates. In his direct testimony Respondent stated he relied implicitly on this type of internal record (Tr. 1304:4-1305:21), but on cross-examination he admitted that from 2015 through at least early 2019 his internal trust account balances were widely different from those shown in his trust account bank statements for the same days (Tr. 1614:21-1618:4) because "there was something going wrong with our accounting system" (Tr. 1616:11-12).

208. Even though beginning in 2000 Respondent maintained his principal office for the practice of law in Maryland (FF 4, 5), Respondent stated that until he came under the supervision

[35] Because the bank statement does not show any activity or a balance for August 1, 2015, this figure is the closing trust account balance for July 31, 2015.

[36] The last entry on RX 33 at 406 raises another unexplained question, because it appears to show that on August 4, 2015 Respondent drew a $487.91 check *against* the trust account for TSYS credit card expense fees, rather than reimbursing the trust account for such fees.

of Maryland Bar Counsel pursuant to a diversion agreement in 2018 (FF 218, *infra*) he was unaware of the requirement in the Maryland Rules of Professional Conduct to do monthly trust account reconciliations. Tr. 55:21-56:11, 1568:15-20 (Respondent).

209. After Ms. Ross departed as Respondent's office manager, Respondent delegated to Everett Broussard the job of performing trust account reconciliations in order to reimburse Respondent's trust account for credit card fees and bank charges. Tr. 76:7-17, 87:7-9, 1313:10-12, 1314:22-1315:19, 1317:12-22, 1580:11-13 (Respondent).

210. In the midpoint of 2016, Respondent became aware that the amount in his trust account did not match the funds that were being shown by his in-house accounting system (PC Law). DCX 45 at 502 (fourth paragraph).

211. In 2016, Respondent also became aware that Mr. Broussard was not doing reconciliations of Respondent's law firm trust account. DCX 48 at 598 (top of page).

212. On October 12, 2016, Respondent sent Mr. Broussard an e-mail stating, "I need to cut a check to replenish the trust account for bounced check fees and credit card costs. Please let me know the amount. Thanks." DCX 48 at 694. Therefore, at least as of that date (if not earlier) Respondent knew that credit card fees and other deductions from his trust account were not being reimbursed on a regular basis, because Respondent was the only person authorized to sign checks to make the reimbursement (FF 6).

213. Mr. Broussard did not respond to Respondent's e-mail described in the preceding paragraph, and "kind of blew it off." Tr. 90:21-22 (Respondent).

214. Respondent stated that he believed his concern about reimbursing his law firm trust account for credit card fees and other bank charges was being properly and fully addressed when

Mr. Broussard told him, "I got it, it's taken care of, don't worry about it." Tr. 92:8-15 (Respondent).

215. During the time that Mr. Broussard was doing the accounting work for Respondent's law firm (approximately March 2015 to December 2018; FF 18-20), no checks were deposited to reimburse Respondent's trust account for the monthly credit card fees and bank charges that were being deducted. Tr. 1754:2-20 (Matinpour); DCX 58; DCX 51.

216. In his testimony before the Hearing Committee, Respondent admitted in retrospect that his supervision of Mr. Broussard was deficient. Tr. 1610:22-1611:18 ("I made a mistake") (Respondent).[37]

217. The total of TSYS credit card fees deducted from Respondent's trust account from January 2015 through February 2019 was $31,725.66. DCX 51 at 888. The total of American Express credit card fees deducted from Respondent's trust account while he still accepted those cards during the period January 2015 - July 2016 was $3,267.83. *Id*. at 890.

218. On February 21, 2018, Respondent entered into a one-year conditional diversion agreement with the Maryland Office of Bar Counsel as a result of a client's complaint in 2016, caused by Respondent's improper supervision of an associate's work. RX 359; Tr. 64:8-13 ("they thought . . . I'm a little spread too thin, delegating too much") (Respondent).

219. One express purpose of the diversion agreement was to have a practice monitor assist Respondent in "adopting and adhering to effective practices and procedures relating to . . . trust account record-keeping." RX 359 at 2059 ¶ B. The diversion agreement also expressly required

[37] In his post-hearing brief, Respondent espouses a somewhat different attitude: "[I]t was entirely reasonable for me to rely on Mr. Broussard to handle the trust reconciliation." Resp. Br. at 37 (bottom of page).

Respondent to undertake "a CLE program on attorney trust account ethical requirements and best practices." *Id*. at ¶ D (2).

220. As part of his diversion agreement, Respondent warranted that "he has not concealed from or misrepresented to Bar Counsel any material facts pertaining to his conduct or [the] agreement" (RX 359 at 2060 ¶ 10), and the diversion procedure itself was "expressly conditioned on Respondent not engaging in any further conduct that would constitute professional misconduct" (*id*. at 2058 ¶ 7).

221. The diversion agreement authorized Respondent's practice monitor "to request and receive all information and to inspect any records necessary to verify the Respondent's compliance with this agreement and to report any violation or noncompliance promptly to Bar Counsel." RX 359 at 2059 ¶ C. A related agreement signed by Respondent concerning his diversion required his practice monitor to file periodic reports with Maryland Bar Counsel to disclose "whether or not Respondent is in compliance with the Rules of Professional Conduct[,]" and "[i]f Respondent fails to so comply with these standards, the Monitor will disclose the details of any such failure to Bar Counsel . . . ." RX 360 at 2063 ¶ 6.

222. [PFF 156] In mid- to late-November 2018, Respondent wrote six trust account checks, including one for $10, that were returned for insufficient funds. DCX 44 at 495-500. On November 21, 2018, the balance in Respondent's trust account was less than $5. DCX 50 at 877; Tr. 659:11-660:5 (Matinpour).

223. As hereinafter set forth in this Report (FF 236), on December 19, 2018 – well within the one-year term of Respondent's Maryland diversion agreement (FF 218) – ODC notified Respondent of the initiation of its investigation of the overdrafts on his law firm trust account. DCX 44.

224. Respondent did not report to his Maryland practice monitor that he had written the insufficient-funds checks on his trust account which were being investigated by ODC. Tr. 69:3-8 (Respondent).

225. As Respondent wrote to ODC, the principal cause of Respondent's trust account falling below the amounts he was supposed to be holding in trust for clients in November 2018, as well as the reason why six checks Respondent wrote on his trust account in that month were not paid due to insufficient funds, was the cumulative effect of years of credit card fees and bank charges that were deducted from Respondent's trust account and never reimbursed. DCX 45 at 502 (fourth paragraph). A contributing cause was Respondent's having paid himself $6,000 ($3,000 from Respondent's Drayton account and $3,000 from Ms. Lipford's account) based on only one $3,000 receipt (FF 201, *supra*), an error of which Respondent was ignorant until after the hearing in this matter began (Tr. 1588:1-1589:4 (Respondent)).

226. In November 2018, Respondent was supposed to be holding tens of thousands of dollars in his trust account for various clients, including the following four clients as discussed in the succeeding paragraphs of this Report: (1) Mr. Alpha Gibbs;[38] (2) Lily's Mexican Market;[39] (3) Alyssa Perez;[40] and (4) Shawn Edwards.[41] Respondent did not have the permission of any of them to take and use their funds. Tr. 257:10-270:16, 1611:19-1612:5 (Respondent).

227. Respondent represented Mr. Gibbs or entities owned by him in at least three matters

[38] Mr. Gibbs' actual first name appears to be "Alexander." *See* DCX 45 at 516.

[39] The hearing transcript also refers to this client as "Lily's Mexican Restaurant" (*e.g.*, Tr. 262:1-2) and "Lilly's Mexican Kitchen" (*e.g.*, Tr. 1775:1-2). Respondent's internal records refer to this client as "Lily's Mexican Market" (DCX 45 at 522-24).

[40] The hearing transcript spells Ms. Perez's first name as "Allisa." *E.g.*, Tr. 258:18.

[41] The hearing transcript spells Mr. Edwards' first name as "Sean." *E.g.*, Tr. 263:17. Respondent's internal records spell Mr. Edwards' first name as "Shawn." DCX 45 at 540.

(Tr. 264:9-14 (Respondent)), and Mr. Gibbs customarily advanced fees to Respondent to pay for the representation, which Respondent retained in his trust account until the fees were earned (Tr. 83:15-22 Respondent)).

228. [PFF 161] Respondent admitted that he never had Gibbs's permission to take or use any of [the] unearned fees or entrusted funds he held for the client. As of November 1, 2018, Respondent owed and was supposed to be holding in trust for Gibbs the following amounts: $178.93 in matter 17-007, $327.01 in matter no. 17-096, and $443.00 in matter 16-225. RX 348-350; Tr. 266:6-10, 267:21-270:16 (Respondent); Tr. 661:14-664:18 (Matinpour).

229. [PFF 162] Respondent did not send Gibbs refund checks until January 10, 2019, after he was under investigation for the bounced checks. DCX 48 at 609-12. Between November 1, 2018 and January 2019, the balance in the trust account fell below the amounts Respondent owed Gibbs. DCX 50 at 877 (trust account balance was $4.82 on 11/21/18).

230. Although the three refund checks that Respondent sent to Mr. Gibbs were dated January 7, 2019, they appear not to have been negotiated until May 23, 2019. RX 397 at 2242-44.

231. Javier Diaz on behalf of Lily's Mexican Market retained Respondent in early May of 2017 on an hourly basis, and advanced two payments of $2,000 each, which Respondent deposited into his trust account on May 9 and May 31, 2017. DCX 54 at 928-31 and 934-35. On May 17 and May 24, 2017, Respondent took the first $2,000 as fees by transfers in the amounts of $1,014.50 and $985.50. *Id*. at 929, 932-33.

232. The second payment of $2,000 from Mr. Diaz was received by Respondent on May 30, 2017 (DCX 54 at 929), but Respondent's last day of work on the Lily's Mexican Market matter was May 31, 2017 (*id*. at 928). Over a year later, on November 21, 2018 Respondent issued a $640.50 invoice to Lily's Mexican Market representing work done in May of 2017 (*id.*) and drew

a trust account check in that amount (*id*. at 936), which was one of the checks Respondent's bank did not pay due to insufficient funds (DCX 44 at 496). The resulting trust account balance of $1,359.50 (DCX 54 at 929) was not remitted by Respondent to Mr. Diaz until October 15, 2019 (RX 47),[42] well after ODC's investigation of Respondent's trust account had begun on December 19, 2018 (FF 236, *infra*), and about thirty months after the May 31, 2017 last date of work on the matter.

233. Respondent admitted that he never had authority to take the approximately $1,360 in funds he was holding in his trust account for Mr. Diaz on the Lily's Mexican Market matter. Tr. 257:10-17, 258:3-12 (Respondent).

234. Respondent began representing Ms. Alyssa Perez in 2016. RX 44 at 473 (letter from Respondent referring to "Our File No.: 16-174"). As of August 10, 2017, Respondent was holding $247.85 in trust for Ms. Perez. DCX 45 at 541 (second line from top). Respondent admitted he did not have authority to take and use Ms. Perez's $247.85, which he had not earned. Tr. 260:5-14 (Respondent). As with Mr. Diaz (FF 232, *supra*), Respondent did not refund Ms. Perez's trust account balance until October 2019. RX 44 at 473. In the interim, on November 21, 2018, Respondent's law firm trust account balance fell to less than $5. DCX 50 at 877.

235. Respondent began representing Shawn Edwards in 2017. DCX 45 at 540 ("Client Trust Listing" from Respondent's office referring to matter no. 17-336; line 13 from top). Respondent admitted that as of October 25, 2018 and through January 29, 2019, he was supposed to be holding $3,000 in trust for Mr. Edwards. *Id*.; *see also* Tr. 263:15-264:9 (Respondent). In the interim, on November 21, 2018, Respondent's law firm trust account balance fell to less than $5 (DCX 50 at 877), and fell to less than $3,000 on multiple occasions during November and

[42] The actual amount remitted reflected a small deduction for unreimbursed expenses. RX 47.

December of 2018 (*id*. at 877-879).

E. ODC's Post-Overdraft Investigation of Respondent

236. On December 19, 2018, ODC wrote to Respondent asking him to explain the circumstances regarding the overdraft on his law firm trust account that led to six checks not being paid by Respondent's bank due to insufficient funds, and to describe his usual and customary procedures for handling entrusted funds. DCX 44 at 492-93. *Inter alia*, ODC's letter specifically required Respondent to produce his internal records showing all trust account deposits and disbursements for the period beginning with October 2018 through the present (*id*.), and required Respondent's reply to be provided by January 2, 2019 (*id*. at 492).

237. Respondent did not reply to ODC's inquiry by January 2, 2019, and it was not until February 19, 2019 that he did so. DCX 45 at 501. In his reply, Respondent identified one of the insufficient-funds checks as having been drawn to reimburse his law firm for copying costs incurred on behalf of Mr. Alpha Gibbs (*id*.), and attached to his reply some documentation relating to his representation of Mr. Gibbs (*id*. at 513-16). Respondent did not, however, produce his internal trust account records for all deposits and disbursements beginning with October 2018, as required by ODC's December 19, 2018 letter (FF 236).

238. [PFF 172] Respondent said that the six checks "bounced off the trust account because credit card fees have not been reimbursed to the trust account." DCX 45 at 502 (fourth paragraph). According to Respondent's calculations (actually Mr. Broussard's calculations), the "[o]verall total to reimburse [his] trust acc[oun]t"[43] for credit card and check printing fees in 2017 and 2018 was $17,389.11. *Id*. at 537. On December 28, 2018, Respondent made a wire transfer of $15,000

[43] All square brackets shown on this line are in PFF 172 as presented in ODC's post-hearing brief.

from his own account to the trust account to replenish some of the client funds used to pay the credit card fees. *Id*. at 538. On January 11, 2019, Respondent transferred another $5,000 from his account to the trust account. *Id*. at 539; DCX 50 at 883; Tr. 1757:7-1758:7 (Matinpour).

239. Although Mr. Broussard informed Respondent that $17,389.11 was needed to reimburse Respondent's law firm trust account for 2017 and 2018 credit card fees and bank charges (DCX 45 at 537), there is no indication that Mr. Broussard calculated – or that Respondent ever reimbursed – any credit card fees or bank charges for 2015 and 2016 other than the $1,221.72 check dated January 31, 2015 (FF 204) which was prepared for the period while Ms. Ross was still employed by Respondent. It is clear from the record, however, that credit card fees alone for 2015 and 2016 far exceeded $1,221.72, and also exceeded the total of $1,221.72 plus the $2,610.89 difference between the $20,000 Respondent added by wire transfers and the $17,389.11 Mr. Broussard calculated was due for 2017 and 2018. DCX 51 at 888-89.[44]

240. The funds Respondent used to make the two wire transfer reimbursements to his law firm trust account did not come from his general law firm funds; he used his personal retirement savings to do so. Tr. 278:20-22, 1325:4-5 (Respondent).

241. Other than the two transfers of personal funds described in the preceding paragraph, ODC did not adduce evidence during the hearing which would establish that Respondent had a practice of depositing personal funds (as opposed to earned legal fees, FF 14) into his law firm trust account, or of writing trust account checks directly to pay for law firm or personal expenses, and ODC failed to refute Respondent's testimony that he did not do so. Tr. 1328:19-21 (Respondent).

[44] In rough terms, the total of TSYS charges alone for 2015 and 2016 is over $14,000, without regard to American Express credit card fees or any miscellaneous bank charges. DCX 51 at 888.

242. On May 23, 2019, ODC sent Respondent a follow-up letter in its investigation of the overdrafts on his trust account and related matters (DCX 46), and asked for Respondent's reply to be provided by June 17, 2019 (*id*. at 555).

a. One of areas for which ODC's letter requested explanations related to Respondent's representation of Alpha Gibbs, and the amounts Respondent was supposed to be holding in trust for him. DCX 46 at 553-54 ¶ 2. ODC requested copies of Respondent's complete financial records for his representation of Mr. Gibbs, including all fee agreements, billing records, invoices, and client or matter ledgers (*id*.), and enclosed a subpoena for those records. *Id*. at 556-57.

b. ODC also asked Respondent to explain what steps, if any, he had taken to calculate and cover deductions or withdrawals from his trust account for credit card fees in 2015 and 2016 (Mr. Broussard's $17,389.11 calculation (FF 238) was only for 2017 and 2018). DCX 46 at 554 ¶ 5.

243. Respondent did not respond to ODC's letter as requested by June 17, 2019. ODC therefore wrote Respondent a second follow-up letter on July 12, 2019, enclosing copies of ODC's May 23, 2019 letter and subpoena. DCX 47.

244. On August 28, 2019,[45] ODC received Respondent's reply to its requests for information and records relating to Alpha Gibbs. DCX 48.

a. Respondent's reply provided retainer agreements for three different matters on which he had represented Mr. Gibbs and/or an entity owned by Mr. Gibbs: (1) a lawsuit captioned "Loring *et al.* v. Southern Air Charter Co. *et al.*," Case No. 8:16-cv-03844-PX (DCX 48 at 613);

[45] Respondent's reply was not received by ODC until six days after ODC had sent him a draft Specification of Charges (DCX 18). *See* FF 249, *infra*.

(2) a $1,500 flat fee for advice on an arbitration matter (*id*. at 616); and (3) a matter relating to Mr. Gibbs' financial involvement with Dr. Richard E. Blake, M.D. (*id*. at 618).

b. Respondent's reply provided client ledgers for: (1) a lawsuit identified as "Gibbs v. Blake" (DCX 48 at 621-25); (2) a lawsuit identified as "Loring v. Gibbs" bearing the case number 8:16-cv-03844 (*id*. at 626-37); and (3) a lawsuit identified as "Southern Air v. Airforce Turbine" (*id*. at 638-45).

245. Although Respondent's August 28, 2019 cover letter to ODC stated, "I have enclosed the fee agreements, as well as all time sheets and ledgers for each of Mr. Gibbs' matters" (DCX 48 at 597), Respondent failed to produce a retainer agreement for the lawsuit captioned "Southern Air v. Airforce Turbine" (FF 244(b)(3)); failed to produce a ledger for the $1,500 flat fee arbitration advice matter (FF 244(a)(2)); and failed to produce copies of any invoices as requested in ODC's May 23, 2019 letter and subpoena (FF 242(a)).[46] DCX 48.[47]

246. Respondent also failed to produce with his August 28, 2019 reply (DCX 48) his internal records showing all deposits and disbursements for his trust account for the period beginning with October 2018 through the present, as required by ODC's December 19, 2018 letter

[46] Respondent did produce an invoice to a different client, Ms. Jazmyn Miles, DCX 48 at 676-78.

[47] As part of his hearing exhibits Respondent produced copies (RX 337 and 338) of the retainer agreements for the Southern Air lawsuit and the Blake matter previously furnished to ODC; copies of letters to Mr. Gibbs (RX 340, 341, and 342), without any attachments; copies of the ledgers for the Loring v. Gibbs lawsuit (RX 343), the Southern Air v. Airforce Turbine lawsuit (RX 344), and the Gibbs v. Blake lawsuit (RX 345); miscellaneous checks and backup documentation for expenses and small payments to Mr. Gibbs (RX 346-50); and a cover letter to Mr. Gibbs sending him three refund checks (RX 351). None of these documents cured the failures of Respondent to produce records as noted in this FF 245.

(DCX 44; FF 236).[48]

247. In addition, Respondent's August 28, 2019 reply (DCX 48 at 596-98) failed to respond to ODC's request (FF 242(b)) to explain what steps he had taken to restore to his trust account deductions or withdrawals for credit card fees in 2015 and 2016.

248. When Respondent was asked during the hearing about his failure to produce any trust account general ledgers, he said he had them and thought he had produced them (Tr. 53:12-55:2 (Respondent)), but then expressed confusion about the difference between general ledgers and client ledgers (Tr. 55:13-18 (Respondent)), and apologized for not providing general ledgers (Tr. 55:18-20 (Respondent)). Respondent later testified that he rarely saw a general ledger and had only a vague idea of what one looked like. Tr. 69:10-70:22.

F. The Specification and ODC's Efforts to Serve Respondent

249. On August 22, 2019, ODC sent Respondent by e-mail and regular mail a draft of the Specification of Charges in this matter. DCX 18. ODC's cover letter to Respondent contained the following request:

> Before taking any action, I wanted to give you the opportunity to review the allegations in the draft charges, and provide our office with any additional information and documents that you believe are relevant.

Id. at 317.

250. [PFF 185] Disciplinary Counsel hired Capitol Process to serve Respondent with [the] package. Vincent Piazza took over the assignment on February 11, 2020. Piazza, who has known Respondent for 10 years, called Respondent on his cell phone advising Respondent that he had

[48] Respondent did include with his August 28, 2019 reply a copy of his *external* trust account bank statement from Capital One for the month of January 2019 (DCX 48 at 698-701), but no *internal* trust account records.

papers from Disciplinary Counsel. Tr. 694:6-695:20, 697:7-699:12, 701:3-18, 715:6-10 (Piazza). Respondent said he would be in court in Annapolis the next day, and Piazza said he would call him back a day after that. That was the last time Piazza spoke to Respondent. Tr. 699:14-700:1, 712:3-7 (Piazza).

251. After Respondent initially suggested to Mr. Piazza one or two ways of being available to accept service of the Specification that proved unfeasible (Tr. 715:8-719:6 (Piazza)), Mr. Piazza called Respondent once or twice a day on Respondent's cell phone in connection with arranging service of the Specification. Tr. 700:4-5 (Piazza). Because of their past association and given the information displayed when a cell phone call is received, Respondent would have known it was Mr. Piazza who was calling. Tr. 725:14-726:7 (Piazza). Mr. Piazza also sent Respondent numerous text messages, which Respondent received, in connection with arranging service of the Specification. Tr. 700:3-11, 724:7-19 (Piazza). Respondent refused to accept Mr. Piazza's calls, did not respond to his text messages, and had a full voice-mail mailbox so Mr. Piazza was unable to leave Respondent a voice-mail message. Tr. 700:6-12, 702:22-703:2, 724:3-4 (Piazza). Mr. Piazza also initially had the ability to leave messages for Respondent on Facebook, but Respondent took action to block that connection. Tr. 709:15-710:15 (Piazza); DCX 4 at 30 (last paragraph). In addition, Mr. Piazza attempted service at Respondent's office (Northview Drive) and home (Granger Terrace) addresses multiple times, which also proved unavailing. Tr. 703:7-19, 704:4-707:14 (Piazza); DCX 4 at 29-30.

252. On February 28, 2020, ODC sent a package to Respondent at his office address in Maryland by certified United States mail containing the Specification and the Petition Instituting Formal Disciplinary Proceedings, but no one ever accepted the certified mailing. DCX 5 at 33 ¶ 3; *id*. at 43-45.

253. At 10:52 A.M. on March 9, 2020, ODC sent Respondent an e-mail summarizing Mr. Piazza's failed attempts at service and the non-accepted certified mailing; asked Respondent to provide a fixed time and place by the end of that day for service of the Specification, failing which ODC would file a motion for leave to serve Respondent by alternative means; and thanked Respondent in advance for his cooperation. DCX 3 at 28.

254. Respondent did not reply to ODC's e-mail described in the preceding paragraph. DCX 5 at 33 ¶ 5; Tr. 1744:1-5 (Respondent).

255. On March 13, 2020, ODC sent Respondent an e-mail attaching a copy of a motion ODC was filing that day with the Court, which sought leave to serve Respondent by alternative means, and stating that if Respondent would cooperate and agree to be served, ODC would withdraw the motion. DCX 5 at 31.

256. Respondent did not reply to ODC's March 13, 2020 e-mail or file any response to ODC's motion. Tr. 1744:9-18 (Respondent).

257. On May 26, 2020, the Court granted ODC's motion. DCX 6.

258. On May 27, 2020, ODC effected service of the initial Specification and Petition Instituting Formal Disciplinary Proceedings in accordance with the Court's order. FF 2.

III. CONCLUSIONS OF LAW

This Part III presents the Hearing Committee's conclusions on the Rule violations alleged against Respondent. Section III(A) first provides a recommendation concerning choice of law issues under Rule 8.5, and Section III(B) provides the Hearing Committee's recommendation pursuant to Board Rule 7.16(a) on an evidentiary objection made by Respondent. Section III(C) then deals with the substantive allegations of the Specification. Within each numbered subsubsection of Section III(C), after stating the Hearing Committee's conclusion(s) with respect

to each Rule allegedly violated, the subsection first quotes the text of the Rule involved; then reviews applicable principles for finding a violation of that Rule, as articulated in relevant case law, Comments to the Rule, and/or other authorities; and then discusses the Hearing Committee's conclusions and the findings of fact supporting the conclusions.

A. Choice of Law Under Rule 8.5

Because Respondent's principal office for the practice of law during the period involved in this matter was located in Maryland (FF 4-5), under Rule 8.5(b)(2)(ii)[49] the Hearing Committee would ordinarily think of applying the rules of professional conduct of that jurisdiction to Respondent's alleged misconduct. However, under Rule 8.5(b)(1), for conduct in connection with matters pending before a tribunal, the rules to be applied are the rules of the jurisdiction in which the tribunal sits. As to Count One of the Specification, the matters principally involved in Respondent's actual representation of Ms. Carlos and ESS involved or evolved into cases pending before tribunals in the District of Columbia.[50] As to Count Two of the Specification, Ms. Drayton's case also involved proceedings before a District of Columbia tribunal (OEA (FF 137-41)). As to Count Three of the Specification, ODC was the disciplinary body which Respondent

[49] Rule 8.5(b)(2)(ii) states that for most types of alleged misconduct, "[i]f the lawyer is licensed to practice in this and another jurisdiction, the rules to be applied shall be the rules of the admitting jurisdiction in which the lawyer principally practices[.]"

[50] The three employee wage matters (Rhonda Neal, Preston Joyner, and Francis Maduwuba) were pending before DOES (FF 39), an administrative agency which is deemed to be a "tribunal" under Rule 1.0(n), and the Preston Joyner matter evolved into a lawsuit in the District of Columbia Superior Court (FF 50). (Although Mr. Maduwuba filed a tandem claim for unpaid wages in the District Court of Maryland for Prince George's County (FF 65), the locus of action remained in DOES, where Ms. Carlos and the staff of ESS worked to resolve his claim (FF 68).) Mr. Love filed suit to enforce his claim for unpaid legal fees in the District of Columbia Superior Court (FF 85), and the Jamaar Brooks lawsuit for alleged wrongful termination of employment likewise was filed there (FF 88-89). Respondent did little work on the Jackson/BB&T matter (FF 104-05), and none at all on the contract issues raised by Daphne Nelson (FF 79).

designated to receive notice of checks dishonored by the bank where he maintained his IOLTA account, and it was ODC which opened an investigation of Respondent's handling of his trust account on that basis (FF 236).

In ¶ 1(d) of the Post-Hearing Briefing Order issued in this matter on February 17, 2021, ODC was asked as part of its proposed conclusions of law to state its position on choice of law issues under Rule 8.5. Respondent was also asked in ¶ 2(d) of that Order to provide proposed conclusions of law. ODC's post-hearing brief takes the position that the District of Columbia Rules of Professional Conduct should be applied to Respondent's alleged misconduct (ODC Br. at 64-65), and Respondent's post-hearing brief takes no exception to that proposed conclusion of law, arguing his case solely on the basis of the D.C. Rules. Resp. Br. at 31-58. As supported by *In re Mance*, 980 A.2d 1196, 1200 n. 2 (D.C. 2009), where no party challenges the application of the D.C. rules, they should be applied.

For the foregoing reasons, the Hearing Committee likewise recommends that the District of Columbia Rules of Professional Conduct should be applied to Respondent's alleged misconduct, and this Report discusses the allegations of the Specification based on those Rules.

B. Recommendation Concerning Respondent's Objection to the Admission of Evidence

Just prior to the beginning of the hearing in this matter, on October 30, 2020, Respondent filed a "Motion to Exclude the Testimony of Vinnie Piazza and Any Records Related Thereto." As set forth in FF 250-51,[51] Vincent Piazza was the process server principally involved in the initial attempt to effect personal service of the Specification on Respondent. DCX 4 is Mr. Piazza's

[51] FF 250 is a restatement of ODC's PFF 185, to which Respondent has agreed, *see* n. 9, *supra*. It is therefore questionable whether Respondent's objection to Mr. Piazza's testimony and the records related thereto remains viable.

Affidavit of Due Diligence that was filed with the Court in support of ODC's motion to effect service on Respondent by alternative means; DCX 5 is ODC's motion and its e-mail sending Respondent a copy of the motion; and DCX 6 is the Court's order granting the motion.

Respondent's Motion argued that Mr. Piazza's testimony and any documents related to it should be excluded because "Mr. Piazza's difficulty serving [Respondent] is not germane to whether any of the alleged ethical violations occurred" (Motion at 1 ¶ 2), and during the hearing Respondent added the argument that any probative value of this evidence would be outweighed by its prejudicial effect (Tr. 9:6-7).[52] Respondent's Motion was considered as a preliminary matter at the hearing. At the conclusion of the parties' argument on the Motion, the Chair ruled that the testimony of Mr. Piazza as well as the exhibits objected to by Respondent would be allowed into evidence. Tr. 8:8-13:11.

The Specification does not allege that the actions of Respondent relating to the difficulties in serving him violated either Rule 8.1(b) (knowing failure to respond reasonably to an ODC demand for information) or 8.4(d) (serious interference with the administration of justice). The Hearing Committee nevertheless recommends that Mr. Piazza's testimony and DCX 4, 5, and 6 should remain in the record because, as the Chair stated during the hearing (Tr. 12:14-20), this evidence may have some relevance as to whether Respondent acted advertently or inadvertently in connection with the violations of Rules 8.1(b) and 8.4(d) which this Report finds did occur.

[52] The original transcript shows Respondent as having said "And I'll refer out any probative values I'll waive by prejudice." By Order dated March 25, 2021, the Chair partially granted a motion by Respondent to correct various transcript errors, and directed the lines on page 9 of the transcript quoted in the preceding sentence to be corrected so as to read, "any probative value is outweighed by prejudice."

C. Rule Violations Alleged in the Specification

1. Rule 1.5(b)

ODC alleges that Respondent violated Rule 1.5(b) in both the Carlos matter (Count One) and the Drayton matter (Count Two) by failing to provide his client with a written retainer agreement at the outset or within a reasonable time after commencement of the representation. The Hearing Committee concludes there is clear and convincing evidence that Respondent violated Rule 1.5(b) in both matters.

(a) Text of the Rule

Rule 1.5(b) states:

> When the lawyer has not regularly represented the client, the basis or rate of the fee, the scope of the lawyer's representation, and the expenses for which the client will be responsible shall be communicated to the client, in writing, before or within a reasonable time after commencing the representation.

(b) Applicable Authorities

Comment [1] to Rule 1.5 explains that "[i]n a new client-lawyer relationship . . . an understanding as to the fee should be promptly established, together with the scope of the lawyer's representation and the expenses for which the client will be responsible." While "[i]t is not necessary to recite all the factors that underlie the basis of the fee," the agreement should include the factors "that are directly involved in its computation." *Id*. Thus, "[i]t is sufficient . . . to state that the basic rate is an hourly charge or a fixed amount or an estimated amount, or to identify the factors that may be taken into account in finally fixing the fee." *Id*. As noted in Comment [2] to Rule 1.5, "A written statement concerning the fee . . . reduces the possibility of misunderstanding."

(c) Discussion

There is clear and convincing evidence from the testimony of Ms. Carlos both on direct examination and cross-examination that Respondent failed to provide proper written fee

agreements for the various representations he undertook on behalf of Ms. Carlos and ESS. FF 36, 53, 66, 78, 103. There is also clear and convincing evidence from the testimony of Ms. Drayton that Respondent failed to provide her with a written fee agreement for representation in her OEA appeal. FF 145. The Hearing Committee views these witnesses' testimony as particularly credible because, in the case of Ms. Carlos, she was an experienced businesswomen (FF 25), and in the case of Ms. Drayton because she was the type of person who was careful to keep records on her legal matters (*e.g.*, FF 142 (Ms. Drayton's requests for receipts each time she made a payment to Respondent)). The reliability of their testimony is further enhanced by the mutually-reinforcing similarity of their experience in not receiving retainer agreements from Respondent's office, and because those failures dovetail so neatly with Respondent's own admitted lack of interest in ensuring that retainer agreements were in place for new client representations (FF 23; *see also* FF 145 (Respondent admitted he had nothing to confirm that a retainer agreement was sent in connection with Ms. Drayton's OEA appeal)).

2. Rules 1.15(a) and (e) (Misappropriation of Entrusted Funds)

(a) Text of the Rules

Rule 1.15(a) states:

> A lawyer shall hold property of clients or third persons that is in the lawyer's possession in connection with a representation separate from the lawyer's own property. Funds of clients or third persons that are in the lawyer's possession (trust funds) shall be kept in one or more trust accounts maintained in accordance with paragraph (b). Other property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of five years after termination of the representation.

Rule 1.15(e) states:

> Advances of unearned fees and unincurred costs shall be treated as property of the client pursuant to paragraph (a) until earned or incurred unless the client gives informed consent to a different arrangement. Regardless of whether such consent

> is provided, Rule 1.16(d) applies to require the return to the client of any unearned portion of advanced legal fees and unincurred costs at the termination of the lawyer's services in accordance with Rule 1.16(d).

(b) Applicable Authorities

Misappropriation is defined as "any unauthorized use of client's funds entrusted to [a lawyer] including not only stealing but also unauthorized temporary use for the lawyer's own purpose, whether or not [the lawyer] derives any personal gain or benefit therefrom." *In re Edwards*, 808 A.2d 476, 482 (D.C. 2002) (first alteration in the original, citation and quotation marks omitted). All advances of unearned fees are client funds that must be held as entrusted funds "until they are earned by the lawyer's performance of legal services." *Mance*, 980 A.2d at 1203. Misappropriation is essentially a *per se* offense and does not require proof of improper intent. *In re Anderson*, 778 A.2d 330, 335 (D.C. 2001).

ODC bears the burden of establishing by clear and convincing evidence that a particular instance of misappropriation is intentional or reckless, rather than merely negligent. *Id.* at 335-37.

> Reckless misappropriation reveal[s] an unacceptable disregard for the safety and welfare of entrusted funds, and its hallmarks include: the indiscriminate commingling of entrusted and personal funds; a complete failure to track settlement proceeds; the total disregard of the status of accounts into which entrusted funds were placed, resulting in a repeated overdraft condition; the indiscriminate movement of monies between accounts; and finally the disregard of inquiries concerning the status of funds.

In re Ahaghotu, 75 A.3d 251, 256 (D.C. 2013) (alteration in original, internal citations and quotation marks omitted); *see also Anderson*, 778 A.2d at 339 ("[R]ecklessness is a state of mind in which a person does not care about the consequences of his or her action" (citation and internal quotation marks omitted)). Further, "[r]eckless misconduct requires a conscious choice of a course of action, either with knowledge of the serious danger to others involved in it or with knowledge of facts that would disclose this danger to any reasonable person." *Id*. (quoting 57 Am. Jur. 2d

Negligence § 302 (1989)). Proof of commingling and inadequate record-keeping alone, however, will not suffice to establish reckless misappropriation. *Anderson*, 778 A.2d at 340.

In the context of accepting payments of advance fees into a lawyer's trust account by credit card, members of the District of Columbia Bar have been on notice since 2009 that they cannot permit "the use of a credit card [to] jeopardize the security of entrusted funds," and that as a matter of good business practice, instead of passing along to their clients the costs of credit card transactions, they should consider absorbing those costs. D.C. Bar Legal Ethics Opinion ("LEO") 348 (March 2009). Likewise, in D.C. Bar Rule XI, § 20, governing the maintenance of IOLTA accounts by members of the Bar, lawyers are warned in subsection (f)(3) that "[a]ny fees and service charges other than allowable reasonable fees shall be the sole responsibility of, and may only be charged to, the lawyer or law firm maintaining the DC IOLTA account."

(c) Discussion

Respondent's misappropriations were of two principal types. The first type of misappropriation was of long duration in the period January 2015-December 2018, when Respondent failed to reimburse his law firm trust account for credit card fees and bank charges that were regularly being deducted from the account. FF 11, 204, 217, 238. Due to this continuing cash drain the trust account remained out of balance, and every time during that period when Respondent wrote a check transferring funds for "earned" advance legal fees from his trust account to his general operating account, he was to some indeterminate extent misappropriating clients' funds. The second type of misappropriation was of relatively short duration in November 2018-January 2019, through Respondent's writing six trust account checks that were dishonored due to insufficient funds and when the balance of the trust account fell to less than $5 at a time when Respondent was supposed to be holding thousands of dollars in trust for various clients. FF 222,

226-29, 232-35.

The first type of misappropriation described in the preceding paragraph might be said to share one feature in common with an ordinary pyramid scheme: because of the constant financial drain from the trust account, the account required continuing infusions of fresh cash from outside sources to stay afloat. These infusions were supplied through the sheer volume of Respondent's caseload (FF 195), and through Respondent's commingling earned fees with unearned fees in the trust account (FF 14). But as often happens for pyramid schemes (which Respondent's trust account was not), the available balance in Respondent's trust account did not meet its cash requirements (FF 222), leading to the second type of misappropriation described above.

Relying on four principal cases, ODC contends Respondent's misappropriations were reckless. First, in *Ahaghotu*, 75 A.3d at 254, 256, the Court adopted a Board finding of recklessness where the respondent attorney was proved to have committed just one instance of misappropriation lasting only one day, because the attorney "ignored problems with his trust account that started a year before" and because the attorney "was the sole signatory on the account and at the time did not closely reconcile his records and bank statements." *Id.* at 254. Mr. Ahaghotu had received two prior informal admonitions, each following separate investigation of why he failed to pay medical providers after receiving entrusted funds. *Id*. at 254-55. As quoted by the Court, the Board found in *Ahaghotu* that the attorney displayed '"casual indifference in maintaining the security of his fiduciary funds"' because he was clearly on notice of problems with his accounting practices due to: (1) the two prior disciplinary actions against him; (2) his knowledge that checks he had previously written to health care providers were returned for insufficient funds, but he failed to determine the cause of the shortfall; and (3) a personal deposit of nearly $20,000 which the attorney had made to stabilize his trust account had dwindled over

time to about $4,500, indicating a continued escrow accounting problem. *Id*. at 255. The Court concluded that Mr. Ahaghotu's conduct was reckless – and not just an example of "inadequate record-keeping" under *Anderson* – because he "did not handle his clients' funds in a way that protected them from obvious danger"; because he had been on notice for more than a year of internal accounting problems; and because his commingling of funds "only papered over the problem." *Id*. at 257.

Second, in *In re Gray*, 224 A.3d 1222 (D.C. 2020) (per curiam), the respondent attorney (a solo practitioner) stopped tracking funds in his trust account beginning in 2007, his record-keeping became haphazard and incomplete, he allowed his accounting to lapse because his practice became too busy, he would not have been able to know at any given time how much of the trust account actually belonged to him, he made no attempt to reconcile his account balance, and he rarely even looked at his monthly bank statements. *Id*. at 1226. Then, in 2013, trust account problems emerged. *Id*. The Court stated:

> . . . what sets this case apart from those involving simple negligence is respondent's knowledge of his obligation . . . [to] meticulously protect client funds and his knowledge that from 2007 until the bottom finally fell out in 2015 he was consciously ignoring that fiduciary obligation. Even though he did not receive actual notice that he had bounced a check that was supposed to be paid out of entrusted client funds until October 2015, he had been inadvertently spending his client's money for an entire year before that check was dishonored.

Id. at 1231. The Court acknowledged that although a good faith and objectively reasonable belief leading to the attorney's misappropriating funds not yet earned from his trust account would be nothing more than negligent, "what makes respondent's belief objectively unreasonable is his knowledge of his duty to keep his clients' funds separate from his own and his unacceptable disregard, from 2007 forward, for the safety and welfare of entrusted funds . . . ." *Id*. at 1233. The Court concluded, "He simply took his eye off the ball, but he did so over many years, involving

thousands of dollars of entrusted funds, knowing that he was ignoring his fiduciary duty to keep track of those funds and to keep them secure." *Id*. at 1234.

Third, in *In re Smith*, 817 A.2d 196 (D.C. 2003), the Court held that an attorney who was aware from his own inquiries to his bank that his trust account did not hold the funds it was supposed to had engaged in reckless misappropriation. Interpreting *Anderson*, the Court stated that "not . . . all misappropriation based on poor record-keeping must be held negligent, never reckless or intentional. Each case turns on its facts." *Id*. at 202-03 (citing *Anderson*, 778 A.2d at 339). The Court concluded in *Smith* that the fact of "compelling significance" was "from respondent's frequent account inquiries . . . respondent knew that the balance [in his trust account] was insufficient to cover the outstanding checks disbursed for his client." 817 A.2d at 203.

Last, regarding the issue of an attorney's delegating responsibility for properly maintaining a trust account to a third person (*see* FF 18-19, 203, 209), ODC's Reply Brief cites *In re Gregory*, 790 A.2d 573 (D.C. 2002) (per curiam) (appended Board Report) for the proposition that a lawyer must provide adequate supervision over the person to whom trust account responsibility is delegated. (ODC factually distinguishes a later case regarding delegation of such responsibility cited by Respondent, *In re Robinson*, 74 A.3d 688 (D.C. 2013) (*see* Resp. Br. at 37-38) – which found the respondent attorney had engaged only in negligent misappropriation – on the grounds, *inter alia*, that Mr. Robinson personally reviewed his monthly trust account statements and was otherwise closely involved in the supervision of his law firm trust account). Reply Brief at 20-21.

There are certainly strong similarities between the foregoing cases and Respondent's conduct. Like the lawyer in *Ahaghotu*, Respondent was the sole signatory on his trust account (FF 4); he failed to ensure that his trust account was closely reconciled (FF 211-14); he ignored years of problems in the account (FF 217); and in many ways he had ample prior warning of the need to

protect his trust account from the known danger of erosion by deductions for credit card and bank fees. These warnings came from the precepts of D.C. Bar LEO 348 and D.C. Bar Rule XI, § 20(f)(3), discussed above; from Respondent's own knowledge and experience (FF 3, 6, 12, 198, 202-03, 210-13); and from Respondent's encounter with the Maryland Bar's disciplinary system (FF 218-19). Respondent also displayed "casual indifference" to his trust account just as Mr. Ahaghotu did, as shown by, *e.g.*, the months of delay in Respondent's depositing the few checks that were written to reimburse his trust account for credit card and bank fees. FF 204. Like the lawyer in *Gray*, Respondent failed in his duty to keep close control over his trust account because he was too busy to do so (FF 15, 20-21); he clearly was unable to know at given points in time how much of the trust account belonged to him and how much belonged to his clients (FF 206-07, 210); he failed even to look at his monthly trust account bank statements (FF 15); he had been inadvertently spending his clients' money for years (FF 8-9, 217); and, like the hapless lawyer in *Gray*, Respondent's inattention (FF 13, 15, 21-22) caused him to "[take] his eye off the ball" for many years. *Gray*, 224 A.3d at 1234. Like the lawyer in *Smith*, Respondent's misappropriations could be deemed reckless from the fact of "compelling significance" that he "knew that the balance [in his trust account] was insufficient." FF 210; *Smith*, 817 A.2d at 203. And, like the lawyer in *Gregory*, Respondent's supervision of Mr. Broussard was next to nonexistent. FF 210-14.

All of that said, there are some facts in Respondent's favor. He used a computer system to attempt to keep track of trust account balances (FF 17); he employed personnel with accounting experience to assist him with the accounting tasks required for the operation of his law firm, including reconciling his law firm trust account (FF 18-20, 203, 209); and ODC has not established that Respondent had a practice of depositing personal funds in his trust account, or of using the account directly to pay law firm or personal expenses (FF 241). Also in Respondent's favor is the

Court's holding in *In re Dailey*, 230 A.3d 902 (D.C. 2020) (per curiam). If there were ever a case in which the facts could have established reckless misappropriation, it was *Dailey*. The respondent attorney in that case commingled personal funds in his law firm trust account for years. In most instances it was not possible to determine the amount of client funds in his trust account or compare that amount to bank records. The attorney admitted that he did not keep a ledger, accounting records, or similar documentation, acknowledged that it would be difficult to trace client funds from his trust account, and repeatedly made transfers from his trust account for personal and operating expenses; additionally, the check that caused Mr. Dailey's IOLTA account to go into overdraft status was one he wrote for office rent. *Id.* at 907. On these facts, the Board recommended disbarment of Mr. Dailey for reckless misappropriation, stating:

> We agree with the Hearing Committee that Respondent "neither knew, nor cared, how much money was in his trust account or whether the monies were being properly held in a fiduciary manner."

In re Dailey, Board Docket No. 16-BD-071, at 13 (BPR July 30, 2018). On review, however, the Court demurred, pointing out that Mr. Dailey had a system to track client funds as described in *Anderson*; that commingling and inadequate record-keeping leading to misappropriation do not ordinarily amount to recklessness; and that no client or third-party was harmed by Mr. Dailey's actions. *Dailey*, 230 A.3d at 912.

The Court's holding in *Dailey* counsels that a recommendation of disbarment for reckless misappropriation should be made only in the most egregious cases. Respondent's actions in this case do indeed seem egregious – Respondent was sloppy in the extreme, and ignored many warning signs that should have caused him to remedy the problems with his trust account – but his actions do not appear more egregious that those of Mr. Dailey. Respondent did bounce more than one check due to insufficient funds in his trust account, but all over a short time period. Thus,

although as stated at the beginning of this Report the case is a very close one, the Hearing Committee concludes that Respondent's misappropriations were negligent, not reckless.

3. Rules 1.15(a) and (e) (Record Keeping of Entrusted Funds)

ODC alleges in all three Counts of the Specification that Respondent violated Rules 1.15(a) and (e) by failing to keep complete records of entrusted funds. The Hearing Committee concludes there is clear and convincing evidence that Respondent failed to keep complete records of entrusted funds in the Carlos matter (Count One); in the Drayton matter (Count Two); and in two ways brought to light by ODC's post-overdraft investigation of Respondent's trust account management (Count Three).

(a) Text of the Rule

Rule 1.15(a) states:

> A lawyer shall hold property of clients or third persons that is in the lawyer's possession in connection with a representation separate from the lawyer's own property. Funds of clients or third persons that are in the lawyer's possession (trust funds) shall be kept in one or more trust accounts maintained in accordance with paragraph (b). Other property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of five years after termination of the representation.

Rule 1.15(e) states:

> Advances of unearned fees and unincurred costs shall be treated as property of the client pursuant to paragraph (a) until earned or incurred unless the client gives informed consent to a different arrangement. Regardless of whether such consent is provided, Rule 1.16(d) applies to require the return to the client of any unearned portion of advanced legal fees and unincurred costs at the termination of the lawyer's services in accordance with Rule 1.16(d).

(b) Applicable Authorities

Rule 1.15(a) requires lawyers to keep '"complete records of . . . account funds and other property' and preserve them 'for a period of five years after termination of the representation.'"

In re Edwards, 990 A.2d 501, 522 (D.C. 2010) (appended Board Report). The *Edwards* decision explains that "[f]inancial records are complete only when an attorney's documents are 'sufficient to demonstrate [the attorney's] compliance with his ethical duties.'" *Id.* (second alteration in original) (quoting *In re Clower*, 831 A.2d 1030, 1034 (D.C. 2003)). The purpose of the requirement of "complete records is so that 'the documentary record itself tells the full story of how the attorney handled client or third-party funds' and whether, for example, the attorney misappropriated or commingled a client's funds." *Edwards*, 990 A.2d at 522; *see also In re Pels*, 653 A.2d 388, 396 (D.C. 1995). Thus, "[t]he records themselves should allow for a complete audit even if the attorney or client is not available." *Edwards*, 990 A.2d at 522.

(c) Discussion

In the Carlos matters, there is clear and convincing evidence that Respondent's trust account records did not tell the complete story of how he handled funds which were entrusted to him; and for some of the matters in which Respondent represented Ms. Carlos and ESS, his records told no story at all. Respondent had no trust account records for his treatment of the $4,000 he received for representation in the BB&T/Jackson matter (FF 106-09), and none for the $900 he received for representation in the Maduwuba lawsuit (FF 72). Similarly, he had no trust account records for the Daphne Nelson portion of the $1,600 he received for the Jonathan Love/Daphne Nelson issues (FF 79). The two-page ledger that Respondent initially tendered to ODC in connection with its investigation to attempt to explain his handling of trust funds in the employee wage matters did not tell the whole story (FF 129(b)), and it was not until Respondent filed his hearing exhibits that a fuller account was made available (FF 132). The one-page ledger that Respondent initially tendered in ODC's investigation in order to explain his handling of trust funds for the Jamaar Brooks lawsuit also did not tell the whole story (FF 129(f)), and again, it was not

until Respondent filed his hearing exhibits that a fuller account was made available (FF 136). Worse yet, *none* of the records Respondent provided purported to explain how he "morphed" fees from one part of the Carlos representation to another (FF 110); that morphology was first described only in Respondent's oral testimony during the hearing (*id*.), and was completely undocumented.

In the Drayton matter, Respondent failed to keep complete records of the funds actually paid by and received from Ms. Drayton, credited her trust account balance with an additional $3,000 that she never paid, and withdrew the $3,000 from his trust account for her based on that "payment." FF 187, 190, 192. Respondent also credited the trust account balance of a different client (Ms. Antoinette Lipford, who actually made the $3,000 payment) with the same $3,000, and withdrew an additional $3,000 from his trust account for Ms. Lipford based on that payment (FF 191, 201), thereby transferring a total of $6,000 from his trust account to himself based on only one $3,000 payment (FF 201). In addition to Respondent's trust account records not telling the complete story about the handling of the foregoing trust account payment and withdrawals, Respondent's testimony at the hearing was needed to explain the handling of Ms. Drayton's trust account, and even then, his explanation changed as the hearing progressed. At first Respondent testified he received $12,000 from Ms. Drayton and the $13,000 figure on her trust account ledger was a "typo." Several months later he changed his explanation by testifying he received only $10,000 from Ms. Drayton. FF 190-91. Thus, in no sense could it be said that Respondent's trust account records themselves met the requirement in *Edwards*, quoted above, of "allow[ing] for a complete audit even if the attorney or client is not available." 990 A.2d at 522.

With respect to Count Three of the Specification involving ODC's post-overdraft investigation of Respondent's financial records, Respondent once again failed to provide records that told the complete story. First, a specific focus of ODC's investigation was Respondent's

representation of Mr. Alpha Gibbs; two of the six insufficient-funds trust account checks (FF 222) that Respondent wrote (nos. 6873 and 6876; DCX 45 at 501-02) related to Respondent's representation of Mr. Gibbs. In that connection, ODC served Respondent with a subpoena for all of his financial records relating to Mr. Gibbs, including *inter alia* all of Respondent's client or matter ledgers. FF 242(a). In partial response to that subpoena, Respondent provided three retainer agreements, one relating to a $1,500 flat fee for legal advice on an arbitration matter. FF 244(a). Respondent, however, failed to produce a ledger for the $1,500 flat fee matter (FF 245), thereby frustrating this aspect of ODC's audit of his trust account records for Mr. Gibbs. Second, although at the outset of the post-overdraft investigation ODC wrote to Respondent requiring the production of all his internal records showing trust account deposits and disbursements beginning with October 2018 (FF 236), Respondent never provided that documentation (FF 237, 246), once again frustrating ODC's audit.

4. Rule 1.16(d)

ODC alleges that Respondent violated Rule 1.16(d) in both the Carlos matter (Count One) and the Drayton matter (Count Two) by failing, on termination of his representation, to timely surrender papers and/or property of the client. The Hearing Committee concludes there is clear and convincing evidence that Respondent violated Rule 1.16(d) in the Carlos matter by failing to account for and deliver unearned fees he received, and that he violated Rule 1.16(d) in the Drayton matter by first demanding $200 from Ms. Drayton before providing her with her file, and then delaying for more than two months in delivering the file to her, doing so only after Ms. Drayton filed a complaint with ODC in order (*inter alia*) to obtain her file.

(a) Text of the Rule

Rule 1.16(d) states:

> In connection with any termination of representation, a lawyer shall take timely steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled, and refunding any advance payment of fee or expense that has not been earned or incurred. The lawyer may retain papers relating to the client to the extent permitted by Rule 1.8(i).

(b) Applicable Authorities

With regard to an attorney's entitlement to retain any portion of a flat fee paid in advance, *Mance* holds that the fee is earned only to the extent that the attorney actually performs the agreed-upon services. *Mance*, 980 A.2d at 1202. D.C. Bar LEO 355 (June 2010), which was written specifically to provide guidance on the application of *Mance* to members of the Bar who accept flat fees from clients, states, "[i]n the event that the lawyer wishes to make interim withdrawals or transfers from the trust account, the lawyer *should* address the issue in the fee agreement." (emphasis in original). LEO 355 further states:

> In the absence of any agreement with the client regarding milestones by which the lawyer will have earned portions of the fixed fee, the lawyer will have the burden to establish that whatever funds have been transferred to the lawyer's operating account have been earned.
>
> * * *
>
> Further, the lawyer should give notice to the client of the withdrawal so that the client will have an opportunity to review the amount of the withdrawal, question the lawyer and perhaps contest it.

The Court's holding in *Mance* was motivated in significant part by a concern to create a framework that "enables the client to realistically dispute a fee where the funds are already in the lawyer's possession by disallowing a self help resolution by the lawyer." *Mance*, 980 A.2d at 1203 (quoting *Iowa Sup. Ct. Bd. of Prof'l Ethics and Conduct v. Apland*, 577 N.W.2d 50, 56 (Iowa

1998)). The Court was also concerned about the practice of a lawyer's "front-loading" of legal fees, stating that such a practice

> in the context of the anticipated length and complexity of the representation will not excuse the lawyer from safekeeping the client's funds until it can reasonably be said that they have been earned in light of the scope of the representation.

Mance, 980 A.2d at 1204-05. These concerns led the Court to emphasize that any withdrawal of fees from trust must be based on the client's informed consent, because "the attorney can keep the fee only by providing a benefit or providing a service for which the client has contracted" given "the attorney's obligation to refund any amount of advance funds to the extent that they are unreasonable or unearned if the representation is terminated by the client." *Id.* at 1206-07 (quoting *In re Sather*, 3 P.3d 403, 413 (Colo. 2000)).

With regard to an attorney's obligation on request to surrender a client's file after termination of the representation, the District of Columbia has for many years followed the rule that the file is the property of the client. *See, e.g.*, D.C. Bar LEO 333 (December 2005) ("The Committee has recognized that the surrender of all files to the client at the termination of a representation is the general rule . . . ."). And as stated in *In re Thai*, a "'client should not have to ask twice' for h[er] file." 987 A.2d 428, 430 (D.C. 2009) (per curiam) (quoting *In re Landesberg*, 518 A.2d 96, 102 (D.C. 1986)).

(c) Discussion

In the Carlos matter (Count One), as set forth in subsection III(C)(1) of this Report, Respondent had no fee agreements with Ms. Carlos. Thus, there were no "milestones" or other clearly agreed mechanisms by which Respondent might have become entitled to take interim payments from the advance fees he received. *Mance*, 980 A.2d at 1204. While it is Respondent's burden *vis-a-vis* his client to establish that he earned all portions of the advance fees which he

withdrew from his trust account, ODC has provided clear and convincing evidence that Respondent did not earn the fees he took. As discussed below, Respondent never completed any of the assignments he was given, never provided Ms. Carlos with notice that he was taking any portion of her advance fee payments, and never received her permission to take any interim fee payments. The record is clear that Respondent did not discuss with Ms. Carlos how he would handle the flat fees he received, did not tell her he would charge on the basis of time spent, and did not receive her permission to make such withdrawals. FF 38. Therefore, on termination of the representation he was required by Rule 1.16(d) to surrender any unearned portion of those fees, as Ms. Carlos directed him to do (FF 57, 95).

With regard to the employee wage cases and the BB&T/Jackson issue, Respondent was retained "to resolve" those matters, and the two separate $4,000 flat fees he was paid for those parts of his work encompassed all services needed to finish the representation from beginning to end. FF 35, 101. Respondent never resolved those matters, so he never became entitled to the full advance fees he was paid. Ms. Carlos took the Rhonda Neal matter away from Respondent because she was dissatisfied with his work, and resolved that matter herself. FF 47. Ms. Carlos likewise resolved the Maduwuba matter herself (FF 68, 71), and Respondent had only the most minimal involvement in the tandem lawsuit Mr. Maduwuba filed (FF 67), although Respondent kept all of the additional $900 he was paid for that lawsuit (FF 72). In the Preston Joyner matter, which evolved into litigation, Ms. Carlos once again discharged Respondent soon after making an additional payment of $2,500 (FF 54, 57), and the only activity of Respondent in that lawsuit was filing an Answer and attending two court scheduling conferences (FF 55-56). Respondent, however, front-loaded his billing on the employee wage matters, taking the entire flat fee payment of $4,000 by April 27, 2015, and taking all of the additional $2,500 for the Preston Joyner matter

by June 24, 2015. FF 133.

With regard to the Jamaar Brooks lawsuit, Respondent was paid $5,000 in advance, although it was Ms. Carlos' clear understanding that the $5,000 covered more than just the motion Respondent prepared[53] to have the initial entry of a default in that lawsuit vacated. FF 90. Respondent also would have understood that vacating the default would be only a finite and ministerial undertaking, given the improper service of the complaint in that matter (FF 88), and, as Respondent noted in the consent motion to vacate which he prepared (DCX 9 at 90 (citing *Haskins v. U.S. One Transp. LLC*, 755 F.Supp.2d 126, 129 (D.D.C. 2010))), "strong policies favor[ ] the resolution of genuine disputes on their merits." Respondent nevertheless fully and improperly front-loaded his withdrawal of fees in that matter (FF 91) before he was discharged and was directed to transfer all unearned fees to successor legal counsel (FF 95). And even if one assumes *arguendo* that Ms. Carlos had signed a fee agreement for the Brooks lawsuit limiting the scope of Respondent's work solely to the motion to vacate and allowing him to charge legal fees based on time spent, Respondent's own *post-hoc* recreation of his time filed at the end of the hearing showed he had billable time of only $4,960 (FF 100). Under no set of circumstances, therefore, was Respondent entitled to retain the entire $5,000 he received for the Jamaar Brooks lawsuit.

In the combined Jonathan Love/Daphne Nelson aspect of Respondent's work for which he received an advance of $1,600 (FF 77), Respondent did very little to reach a resolution with Mr. Love (FF 80, 82-83), and nothing at all about Ms. Nelson (FF 79). Respondent, however, once again fully and improperly front-loaded his withdrawal of the $1,600 advance fee he had received (FF 81), and never sought or received Ms. Carlos' permission to pay himself any portion of those

[53] For reasons that are unclear in the record, the motion to vacate the default judgment in the Jamaar Brooks lawsuit was prepared by Respondent for the signature of Ms. Carlos, not Respondent. DCX 9 at 91.

funds (FF 84). Similarly, on the BB&T/Jackson issue Respondent did little work. FF 105. During the hearing Respondent attempted to justify his retaining all of the $4,000 he received for the BB&T/Jackson representation by claiming he reallocated those funds to other matters, but Respondent never sought or received Ms. Carlos' permission to do so. FF 110-11.

Neither during the time Respondent represented Ms. Carlos and ESS nor thereafter did he account for the flat fees he had received, or turn over any unused fees to successor legal counsel as Ms. Carlos requested. FF 113. That failure deprived Ms. Carlos of her clear right under *Mance* to question and/or contest the fee withdrawals he made. It is not the task of this Hearing Committee to determine precisely what amount(s) of the fees Respondent received were not earned. Rather, it was Respondent's obligation under Rule 1.16(d) in the first instance to seek to reach an agreement with Ms. Carlos on that question. In not fulfilling that obligation, in improperly front-loading his fees, in reallocating fees without Ms. Carlos' permission, in keeping her in the dark on how he was handling the flat fees he received, and in not turning over any amounts to successor counsel following Ms. Carlos' request, Respondent violated Rule 1.16(d).

With regard to Ms. Drayton's request for her file, as set forth in FF 168-71 and 174, Respondent's holding her file for ransom until he received $200 and then only providing the file more than two months later, after Ms. Drayton submitted an ODC complaint, were the actions of a hasty, overbearing, and thoughtless lawyer. FF 170. Rule 1.16(d) holds members of the Bar to a far higher standard, and Respondent violated that Rule by not promptly surrendering her file as she asked when she terminated his services.

5. Rule 8.1(b)

ODC alleges that Respondent violated Rule 8.1(b) by knowingly failing to respond reasonably to lawful demands for information in ODC's investigations of the Carlos matter

(Specification Count One, ¶ 23(d)) and the management of Respondent's law firm trust account (Specification Count Three, ¶ 67(c)).[54] Although Respondent's submissions to ODC in the Carlos matter leave much to be desired in terms of timeliness and completeness, the Hearing Committee finds that these deficiencies do not rise to the level of a Rule 8.1(b) violation. The Hearing Committee does conclude, however, there is clear and convincing evidence that Respondent violated Rule 8.1(b) in connection with ODC's investigation of Respondent's law firm trust account management.

(a) Text of the Rule

Rule 8.1(b) states that a lawyer in connection with a disciplinary matter shall not

> [f]ail to disclose a fact necessary to correct a misapprehension known by the lawyer . . . to have arisen in the matter, or knowingly fail to respond reasonably to a lawful demand for information from [a] disciplinary authority . . . .

(b) Applicable Authorities

The text of Rule 8.1(b) requires any failure to respond reasonably to a lawful demand for information from a disciplinary authority to be "knowing." The term "knowingly" is defined by Rule 1.0(f) so as to denote "actual knowledge of the fact in question" but "[a] person's knowledge may be inferred from circumstances." The term "reasonably" is defined by Rule 1.0(j) when used in relation to conduct by a lawyer as denoting "the conduct of a reasonably prudent and competent lawyer." ODC's post-hearing brief cites no cases governing the application of Rule 8.1(b) (ODC Br. at 80-81), nor does ODC's Reply Brief do so (Reply Brief at 26-28). At a minimum, however, Rule 8.1(b) is violated when a lawyer completely fails to respond to inquiries from ODC. *In re*

[54] Although Respondent's failures to comply with ODC's requests for information and the Court-enforced subpoena ODC issued in the Drayton matter (FF 172-85, 188-89, 191) might be deemed to violate Rule 8.1(b), Count Two of the Specification does not allege Respondent violated that Rule in the Drayton matter. *See* Specification at ¶ 50. This Report therefore reaches no conclusion concerning Rule 8.1(b) in that matter.

Cater, 887 A.2d 1, 17 (D.C. 2005). Respondent's post-hearing brief cites a number of cases holding essentially the same thing (Resp. Br. at 40-41).

(c) Discussion

In the Carlos matter (Count One), ODC sent its first inquiry to Respondent on July 17, 2017, requesting a response by July 27, 2017. FF 115. Receiving no reply, ODC sent a follow-up letter on August 7, 2017, requesting a response by August 17, 2017. FF 116. No response was received by August 17, 2017, but a response was received by ODC on August 30, 2017. FF 117. Respondent at that time provided a two-page cover letter and approximately 100 pages of background documents concerning the Carlos representation (DCX 12), but no time, billing or other financial records (FF 118). On November 30, 2018, ODC sent Respondent a subpoena for IOLTA account records relating to Ms. Carlos, for which the response date was December 10, 2018. FF 121. Respondent did not respond by that date (FF 122), and on April 9, 2019 ODC sent him a follow-up request (FF 123). Not having heard from Respondent, on May 13, 2019 ODC sent him an additional follow-up letter (FF 124), and on May 24, 2019 ODC received a response from him (FF 125), consisting of a two-page cover letter and approximately 30 pages of financial documents. DCX 17. Although this response contained several non-letterhead, unsigned, and undated retainer agreements (*id*. at 284, 288, 293), no e-mails or other documents were provided to support Respondent's contention that the retainer agreements had actually been sent (FF 126), and the ledgers he provided for the employee wage matters and the Jamaar Brooks lawsuit were incomplete (FF 129(b), (f)). Respondent subsequently produced along with his hearing exhibits three e-mails that purported to attach fee agreements (FF 127), a complete ledger for the employee wage matters (FF 132), and a complete ledger for the Jamaar Brooks lawsuit (FF 136). Respondent's replies to ODC's demands for information were clearly late and incomplete, but

absent ODC's citation of clear precedent holding this intermediate level of noncompliance violates Rule 8.1(b), the Hearing Committee concludes that no Rule 8.1(b) violation has been proved under Count One.

Respondent's conduct in connection with ODC's post-overdraft investigation of his trust account management presents a distinctly different factual picture, involving more than just a repetition of his habit (described above) of making untimely responses to ODC's requests for information (FF 237, 243-44). Respondent failed completely to respond to two very pointed issues that ODC raised. First, ODC's December 19, 2018 letter to Respondent directed him to provide his internal records showing all deposits and withdrawals from his trust account for the period beginning with October 2018 through the present. FF 236. Neither Respondent's February 19, 2019 reply nor his August 28, 2019 reply did so. FF 237, 246. Second, because Mr. Broussard calculated a trust account reimbursement obligation only for 2017-2018 (FF 239), ODC's May 23, 2019 letter to Respondent asked him to explain what steps (if any) he had taken to calculate and reimburse his trust account for credit card and bank charges during 2015-2016. FF 242(b). Respondent's eventual reply on August 28, 2019 failed to respond to ODC's inquiry on this subject. FF 247. In neither of these two respects did Respondent act "reasonably," *i.e.*, as would "a reasonably prudent and competent lawyer" under Rule 1.0(j), because his replies were totally non-responsive on those issues. Respondent's conduct was also "knowing" within the meaning of Rule 8.1(b) and Rule 1.0(f), because he had clearly received and was responding to ODC's inquiries. Accordingly, the Hearing Committee concludes there is clear and convincing evidence that Respondent violated Rule 8.1(b).

6. Rule 8.4 (d)

ODC alleges that Respondent violated this rule in connection with all three of the Counts

of the Specification. For the reasons set forth in the preceding subsection III(C)(5), the Hearing Committee concludes that in the Carlos matter Respondent's conduct was not "improper" and therefore does not meet the first prong of the tri-partite test of *In re Hopkins*, 677 A.2d 55, 60-61 (D.C. 1996) (discussed below), which is a requirement for finding a Rule 8.4(d) violation. However, the Hearing Committee concludes there is clear and convincing evidence that Respondent violated Rule 8.4(d) in the Drayton matter, and in connection with ODC's investigation of Respondent's trust account management.

(a) Text of the Rule

Rule 8.4(d) states that it is professional misconduct for an attorney to "[e]ngage in conduct that seriously interferes with the administration of justice."

(b) Applicable Authorities

Comment [2] to Rule 8.4(d) states:

> Paragraph (d)'s prohibition of conduct that "seriously interferes with the administration of justice" includes conduct proscribed by the previous Code of Professional Responsibility under DR 1-102(A)(5) as "prejudicial to the administration of justice." The cases under paragraph (d) include acts by a lawyer such as: failure to cooperate with Disciplinary Counsel; failure to respond to Disciplinary Counsel's inquiries or subpoenas; . . . [and] failure to obey court orders. . . . Paragraph (d) is to be interpreted flexibly and includes any improper behavior of an analogous nature to these examples.

D.C. Bar Rule XI, § 8(a), also states, in pertinent part, "An attorney under investigation has an obligation to respond to [ODC's] written inquiries in the conduct of an investigation . . . ." Rule 8.4(d) is violated if a lawyer's conduct causes the unnecessary expenditure of time and resources in a judicial proceeding. *In re Cole*, 967 A.2d 1264, 1266 (D.C. 2009).

For the purpose of applying Rule 8.4(d), the Court for many years has applied the tri-partite analytical framework stated in *Hopkins*, 677 A.2d at 61; *In re Martin*, 67 A.3d 1032, 1051 (D.C. 2013). First, the conduct must be improper, *i.e.*, the respondent either acted improperly or failed

to act when he should have. Second, the conduct must bear directly upon the judicial process with respect to an identifiable case or tribunal. Third, the conduct must taint the judicial process in more than a *de minimis* way (*Hopkins*, 677 A.2d at 60-61; *Martin*, 67 A.3d at 1051), but to find a violation of Rule 8.4(d) does not require a demonstration that the violator actually caused the court to malfunction or make an incorrect decision. *Hopkins*, 677 A.2d at 59-60; *In re Uchendu*, 812 A.2d 933, 941 (D.C. 2002).

(c) Discussion

There is clear and convincing evidence that Respondent violated Rule 8.4(d) in the Drayton Matter (Count Two of the Specification). On April 9, 2019, ODC sent Respondent a follow-up request for information, pointing out that a prior response he had provided did not address matters raised by ODC, and enclosed with the letter a subpoena for any and all records relating to his representation of Ms. Drayton, to be produced by April 22, 2019. FF 177-78. Respondent did not respond to ODC's letter, or provide any documents by the April 22, 2019 deadline. FF 179. On May 8, 2019, ODC sent Respondent another follow-up letter requesting compliance with the subpoena and a response to the allegations in Ms. Drayton's complaint to ODC. FF 180. Respondent did not respond to that additional follow-up letter or produce any documents responsive to the subpoena. FF 181. On May 22, 2019, ODC filed with the Court a motion to enforce the subpoena in the Drayton matter; Respondent did not file any response to the motion with the Court. FF 182. On June 25, 2019, the Court granted ODC's motion, and on the same day ODC e-mailed Respondent a copy of the Court's order, again asking him to provide all of his financial records for Ms. Drayton, all e-mails exchanged with Ms. Drayton, and all other documents requested in ODC's subpoena. FF 185-86. The foregoing recitation clearly demonstrates that Respondent's conduct was improper because he repeatedly failed to cooperate

with ODC's investigation in the Drayton matter; Respondent's conduct bore directly upon the judicial process with respect to at least one identifiable case or tribunal, *i.e.*, the proceeding initiated by ODC to enforce its subpoena in the Drayton matter; and Respondent interfered with the judicial process in more than a *de minimis* way by requiring the Court unnecessarily to divert its attention to dealing with ODC's motion to enforce the subpoena. *Cole*, 967 A.2d at 1266-67. Respondent's non-cooperation as outlined in this paragraph also grossly wasted the time and resources of ODC in connection with its investigation of the Drayton matter. Respondent thereby violated Rule 8.4(d).

In addition, there is clear and convincing evidence that Respondent violated Rule 8.4(d) in connection with ODC's post-overdraft investigation of his law firm trust account (Count Three of the Specification). For the reasons set forth above in subsection III(C)(5), Respondent's conduct was improper because he knowingly failed to respond reasonably to lawful demands for information from ODC. Respondent's conduct bore directly on a specific case, *i.e.*, ODC's investigation of his trust account management (Disciplinary Docket No. 2018-D357). Respondent's knowing failures to respond reasonably to ODC also tainted the judicial process in more than a *de minimis* way because he once again wasted the time and resources of ODC,[55] which under D.C. Bar Rule XI, § 6, acts as an arm of the Court. *See also* Comment [2] to Rule 8.4(d) ("[t]he cases under paragraph (d) include acts by a lawyer such as [ ] failure to cooperate with Disciplinary Counsel [and] failure to respond to Disciplinary Counsel's inquiries"). The Hearing Committee therefore concludes that Respondent violated Rule 8.4(d) by his failures to respond reasonably to ODC's requests for information.

[55] Total expenses for the Bar's disciplinary system, including the costs of ODC, account for approximately 25% of the Bar's operating budget. *The Washington Lawyer*, July/August 2021, at 37.

IV. RECOMMENDATION AS TO SANCTION

In *In re Thyden*, 877 A.2d 129, 144 (D.C. 2005), the Court cited seven factors relevant to determining a disciplinary sanction: (A) the seriousness of the conduct at issue; (B) the prejudice, if any, to the client which resulted from the conduct; (C) whether the conduct involved dishonesty and/or misrepresentation; (D) the presence or absence of violations of other provisions of the disciplinary rules; (E) whether the attorney has a previous disciplinary history; (F) whether the attorney has acknowledged the wrongful conduct; and (G) circumstances in mitigation or aggravation of the misconduct. *See also In re Chapman*, 962 A.2d 922, 924 (D.C. 2009) (per curiam). Each of these factors is discussed below.

In re Hutchinson, 534 A.2d 919, 924 (D.C. 1987) (en banc), *Cater*, 887 A.2d at 17, and *In re Cleaver-Bascombe*, 986 A.2d 1191 (D.C. 2010) (per curiam), also note the relevance in sanction determinations of the need to maintain the integrity of the legal profession, to protect the public and the courts, and to deter future or similar misconduct by the respondent and other lawyers. In addition, the recommended sanction should also be consistent with sanctions for comparable misconduct. *See* D.C. Bar R. XI, § 9(h)(1); *In re Elgin*, 918 A.2d 362, 373 (D.C. 2007). These additional factors are also discussed in this Part IV.

A. Seriousness of Misconduct

The Hearing Committee concludes that Respondent's misconduct is very serious. Even negligent misappropriation is a serious lapse because it "tends to 'jeopardize . . . client funds held in trust and undermines public confidence in the bar[,]'" *In re Fair*, 780 A.2d 1106, 1115 (D.C. 2001) (quoting *In re Pels*, 653 A.2d 388, 389 (D.C. 1995)), and in the Hearing Committee's view Respondent pushed right up to the borderline between reckless and negligent misappropriation. Moreover, as discussed in subsection III(C)(2) of this Report, Respondent committed two different types of misappropriation, one being of long duration, and the other being relatively short and acute.

B. Prejudice to the Client

Ms. Carlos was clearly prejudiced by Respondent's failure to live up to all of his obligations under *Mance*, including advising her of how he was handling her advance fee payments, giving her an opportunity to question his billing, and providing a refund of fees that he had not earned.

The prejudice to Ms. Drayton was more subtle. The OEA administrative law judge's decision was issued on August 20, 2018. FF 166. Ms. Drayton made the first documented request for her file on October 3, 2018 (FF 169), shortly after the expiration of the 35-day period for taking a further appeal (DCX 26 at 390). It may be that Ms. Drayton might have been able to present circumstances for relief from that deadline if Respondent had provided Ms. Drayton with her file promptly, as he was required to do by Rule 1.16(d). As it was, Ms. Drayton was so disheartened by Respondent's refusal to release her file that she just gave up the will to continue fighting for reinstatement in her job. Tr. 915:9-916:2 (Drayton) ("I just had enough").

ODC's post-overdraft investigation of Respondent's trust account management brought to light a third type of client harm, *i.e.*, Respondent's undue delay in making refunds to clients of unearned funds that remained in his trust account, which he paid only after the initiation of ODC's investigation. FF 229-30 (Mr. Gibbs); FF 232 (Lilly's Mexican Market/Diaz); FF 234 (Alyssa Perez).

C. Conduct Involving Dishonesty

ODC has not charged Respondent with violating Rule 8.4(c), *i.e.*, conduct involving dishonesty, fraud, deceit, or misrepresentation. The absence of a Rule 8.4(c) violation usually results in a less severe sanction. *In re Yelverton*, 105 A.3d 413, 428 (D.C. 2014). The Hearing Committee has taken this factor fully into account.

This does not mean, however, that Respondent's conduct was completely free of taint. To the contrary, as stated in *In re Shorter*, 570 A.2d 760, 768 (D.C. 1990) (per curiam), "what may not legally be characterized as an act of fraud, deceit or misrepresentation may still evince dishonesty," and such dishonesty may "encompass[] conduct evincing 'a lack of honesty, probity

or integrity in principle'" or a "'lack of fairness and straightforwardness'" (quoting *Tucker v. Lower*, 434 P.2d 320, 324 (Kan. 1967)). Measured by that standard, Respondent's unilaterally reallocating funds in the Carlos matter without telling his client that he was doing so (FF 110-11) lacked honesty, integrity, and straightforwardness as described in *Shorter*.

D. Presence of Other Rule Violations

In addition to negligent misappropriation, this case presents multiple violations of Rule 1.5(b) relating to providing written retainer agreements to clients; multiple violations of the record-keeping requirements of Rule 1.15(a); multiple examples of Respondent's paying himself from client fees not yet earned, in violation of Rule 1.15(e); multiple violations of Rule 1.16(d) relating to surrendering papers and property on termination of representation; two violations of Rule 8.1(b) in connection with ODC's post-overdraft investigation of Respondent's trust account by knowingly not responding reasonably to requests for information from ODC; and two violations of Rule 8.4(d) relating to serious interference with the administration of justice.

E. Previous Disciplinary History

Respondent has no previous record of discipline in the District of Columbia, but he clearly had one in Maryland, and it is the character of that discipline which is particularly troubling to the Hearing Committee, because it so clearly put Respondent on notice of his need to pay closer attention to trust account record keeping. FF 218-19.

F. Acknowledgement of Wrongful Conduct

In his post-hearing brief, Respondent concedes (as he must) his *per se* negligent misappropriation violation. In all other respects he concedes nothing, and in his post-hearing brief even takes back some of the contrition he expressed to the Hearing Committee. FF 170 and n. 26; FF 216 and n. 37.

G. Aggravation/Mitigation

Respondent has submitted a number of character references for the consideration of the Hearing Committee. These include a letter dated October 9, 2020 (apparently written expressly

for the purpose of the hearing in this matter) from the Hon. Aileen E. Oliver, Associate Judge of the District Court of Maryland for Montgomery County (RX 372), and an e-mail dated July 22, 2020 to Respondent from the Hon. Thomas M. DiGirolamo, United States Magistrate Judge for the District of Maryland (praising Respondent and wishing him well on the closure of his private law office in 2020; *see* n. 10, *supra*) (RX 377). Also included in the compendium are two letters from professional colleagues who have known Respondent for many years (RX 371, dated October 14, 2020; RX 373, dated October 11, 2020). The other items provided by Respondent are communications from various clients thanking him for his work (RX 375-76, 380-95). The Hearing Committee has carefully considered all of these communications.

H. Protecting the Public and the Profession

Protecting clients and the judicial system is a principal – if not the principal – function of the disciplinary system. *In re Goffe*, 641 A.2d 458, 464 (D.C. 1994) (per curiam); *In re Haupt*, 422 A.2d 768, 771 (D.C. 1980) (per curiam). Deterring future and similar misconduct is likewise an important purpose of the disciplinary system. *In re Kline*, 11 A.3d 261, 265 (D.C. 2011); *Uchendu*, 812 A.2d at 941; *In re Kennedy*, 542 A.2d 1225, 1231 (D.C. 1988); *Hutchinson*, 534 A.2d at 924.

Of all the factors relating to a sanction recommendation, the Hearing Committee views this one as the most important because Respondent's Rule violations relate to the basics of practicing law: having retainer agreements; properly managing trust funds; turning over unearned fees and a client file on termination of a representation; and responding promptly and completely in connection with a disciplinary investigation by ODC. By its sanction recommendation, the Hearing Committee seeks to reemphasize to the Bar that these basic requirements of practice – which are intended to protect the public – always need to be given close attention by every attorney.

I. Comparability of Recommended Sanction

Negligent misappropriation ordinarily results in a six-month suspension. *In re Chang*, 694 A.2d 877, 880 (D.C. 1997) (per curiam) (appended Board Report). For purposes of comparability

of sanction, the Hearing Committee has considered three cases, all involving a finding of negligent misappropriation coupled with the violation of various other Rules.

In *Fair*, 780 A.2d at 1115-16, the Court imposed a fourteen-month suspension coupled with a requirement that the attorney show fitness before resuming practice, stating, however, that a more severe sanction would not be outside of the permissible range. The attorney was found to have engaged in two different types of negligent misappropriation – as subsection III(C)(2) finds was true of Respondent – and therefore the Court aggregated two six-month suspension periods. The Court also accepted the Hearing Committee's recommendation that two additional months of suspension were warranted because of the attorney's other Rule violations (Rule 1.3(a) (diligence and zeal); Rule 1.3(b) (intentional neglect); Rule 1.5(a) (unreasonable fee); and Rule 8.4(d) (serious interference with the administration of justice).

In *In re Midlen*, 885 A.2d 1280 (D.C. 2005), in addition to negligent misappropriation, the attorney's misconduct included, *inter alia*, a violation of Rule 1.15(b) (providing timely accountings upon request of the client); Rule 1.16(d) (upon termination of representation, failure to deliver files to successor counsel), and Rule 8.4(c) (dishonesty). *Id*. at 1289-91. The Court agreed with the Board's alternative recommended sanction in concluding that an eighteen-month suspension from practice was warranted. *Id*. at 1292.

In re Boykins, 999 A.2d 166 (D.C. 2010), involved the additional violations of Rule 1.15(a) (record keeping); 1.15(b) (failure to notify and pay medical providers promptly out of settlement proceeds); Rule 8.1(a) (knowing false statements of fact in a disciplinary proceeding); 8.4(c) (dishonesty because of reckless false statements made to Disciplinary Counsel); and 8.4(d) (serious interference with the administration of justice). *Id.* at 171-72. The Board recommended a two-year suspension, to which neither the respondent nor Disciplinary Counsel excepted (*id*. at 173), but accepted Disciplinary Counsel's additional recommendation for imposing the additional requirement of showing fitness before resuming the practice of law (*id*. at 172-78).

The Hearing Committee does not see the need for recommending a showing of fitness before Respondent resumes the practice of law, particularly in light of his testimony about having learned from his mistakes in the present case (Tr. 1805:3-1807:12), and the letters Respondent has submitted from Judges Oliver and DiGirolamo, and from his colleagues, as discussed in Section IV(G) of this Report.[56]

Even if one views Respondent's misappropriations as a unitary event rather than – under the analysis of *Fair*, *supra*, and subsection III(C)(2) of this Report – as two separate occurrences, given the totality of Respondent's misconduct the Hearing Committee believes that it falls in the middle of the suspension ranges in *Fair* and *Midlen*, and therefore recommends a suspension from practice of sixteen months.

V. CONCLUSION

For the reasons set forth above, the Hearing Committee recommends that Respondent should be suspended from the practice of law for a period of sixteen months pursuant to D.C. Bar Rule XI, § 3(a)(2).

Respectfully submitted,

Martin Shulman

Martin Shulman, Esq., Chair

Matthew Heller

Matthew Heller, Public Member

Christina Biebesheimer

Christina Biebesheimer, Esq., Attorney Member

[56] "[T]o justify requiring a suspended attorney to prove fitness as a condition of reinstatement, the record in the disciplinary proceeding must contain clear and convincing evidence that casts a serious doubt upon the attorney's continuing fitness to practice law." *Cater*, 887 A.2d at 6. Proof of a "serious doubt" involves "more than 'no confidence that [a] Respondent will not engage in similar conduct in the future.'" *In re Guberman*, 978 A.2d 200, 213 (D.C. 2009) (alteration in original). It connotes '"real skepticism, not just a lack of certainty."' *Id.* (quoting *Cater*, 887 A.2d at 24).