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:	:	
	:	
NICOLE E. WILT	:	
	:	
Respondent.	:	Board Docket No. 23-BD-036
	:	Disc. Docket Nos. 2021-D022,
An Administratively Suspended Member of the Bar of the District of Columbia Court of Appeals (Bar Registration No. 978258)	:	2021-D066 & 2022-D009

REPORT AND RECOMMENDATION OF THE
AD HOC HEARING COMMITTEE

Respondent, Nicole Wilt, is charged with violating D.C. Rules of Professional Conduct ("Rules") 1.1(a) & (b) (competence, skill and care), 1.3(a) & (c) (diligence and zeal, and reasonable promptness), 1.4(a) & (b) (communication and failure to explain matters to client), 1.5(a) (unreasonable fee), 1.15(a) & (e) (reckless or intentional misappropriation), 1.15(a) (recordkeeping), 1.16(d) (failure to promptly refund unearned fee), 8.1(b) (knowing failure to respond to Disciplinary Counsel),[1]

[1] The Specification of Charges charged that Respondent violated "Rule 8.1(a), in that Respondent knowingly failed to respond reasonably to a lawful demand for information from a disciplinary authority." *See* Specification of Charges at 14, ¶ 56(e). The reference to Rule 8.1(a) instead of Rule 8.1(b) was a typographical error. *See* Disciplinary Counsel Brief ("ODC Br.") at 22 n.2. We agree with Disciplinary Counsel that the description of the allegedly violative conduct gave Respondent notice of the charge—Rule 8.1(b)—despite the typographical error.

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

and 8.4(d) (serious interference with the administration of justice), arising from Respondent's alleged mishandling of client funds and her representation of clients in two cases in the Superior Court of the District of Columbia. Disciplinary Counsel contends that Respondent committed all of the charged violations and should be disbarred for her misconduct. It also contends that Respondent should be required to pay $4,000.00 and $4,780.97 in restitution to two clients. Respondent did not participate in these proceedings either by written response or by appearing at the hearing, although Respondent was properly served.

As set forth below, the Hearing Committee finds that, except for its Rule 1.5(a) unreasonable fee charge, Disciplinary Counsel has proven each Rule violation by clear and convincing evidence. The Committee further recommends that Respondent be disbarred, and, that as a condition of reinstatement, Respondent be required to pay restitution of $4,000.00 to Ms. Washington and $4,780.97 to the Clients' Security Fund of the D.C. Bar ("CSF"). *See In re Johnson*, 275 A.3d 268, 281-83 (D.C. 2022) (per curiam) (imposing restitution to CSF as a condition of reinstatement).

I. PROCEDURAL HISTORY

On October 27, 2023, Disciplinary Counsel sought to serve the Specification of Charges on Respondent by alternative means, which the Court of Appeals granted on November 17, 2023. Carrying out the Court's order, Disciplinary Counsel mailed (via first class and certified mail) and emailed the Specification to Respondent on

November 20, 2023. Respondent did not file an Answer, nor did she participate in any other Hearing Committee proceeding.

A hearing was held via Zoom on March 21, 2024, where Disciplinary Counsel was represented by Assistant Disciplinary Counsel Jelani C. Lowery, Esquire. Respondent was not present, nor was counsel present on her behalf.

During the hearing, Disciplinary Counsel called Azadeh Matinpour, Esquire, Jennifer Washington, and Monique Y. Headley, and Disciplinary Counsel submitted DCX[2] 1-47, all of which were admitted into evidence. Tr. 109-12. As discussed during the hearing, Disciplinary Counsel wanted to supplement the record with the arbitration award Ms. Washington received. Tr. 109-110. Having already heard ample testimony on the award, the Committee was prepared to admit it for completeness if Disciplinary Counsel wished to include it when filing its exhibits. Tr. 110-11. Disciplinary Counsel did so—DCX 48—which we now formally admit into evidence.

Upon conclusion of the hearing, the Hearing Committee made a preliminary non-binding determination that Disciplinary Counsel had proven at least one of the Rule violations set forth in the Specification of Charges. Tr. 113-14. Disciplinary Counsel submitted its Proposed Findings of Fact, Conclusions of Law, and Recommendation as to Sanction ("ODC Br.") on April 19, 2024. Respondent did not file a brief, request additional time, or respond in any way. And as per the

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[2] "DCX" refers to Disciplinary Counsel's exhibits. "Tr." refers to the transcript of the hearing held on March 21, 2024.

Hearing Committee's briefing order, Disciplinary Counsel submitted a Statement Regarding Post-Hearing Attempted Service, which outlines its efforts to serve the briefing order and the transcript on Respondent. *See* Disciplinary Counsel's Statement (filed on May 2, 2024).

II. FINDINGS OF FACT

The following findings of fact are based on the testimony and documentary evidence admitted at the hearing, and these findings of fact are established by clear and convincing evidence. *See* Board Rule 11.6; *In re Cater*, 887 A.2d 1, 24 (D.C. 2005) ("clear and convincing evidence" is more than a preponderance of the evidence, it is "evidence that will produce in the mind of the trier of fact a firm belief or conviction as to the facts sought to be established").

A. Background

1. Respondent is a member of the Bar of the District of Columbia Court of Appeals, having been admitted on December 10, 2007, and assigned Bar number 978258. DCX 1.

B. Trust Account Violations (Count I)

2. Respondent maintained a trust account at PNC Bank titled "Nicole Mackin Wilt Esq" ending in #8811. DCX 18.

3. Respondent regularly entered into hourly fee agreements with her clients that required them to pay advances of legal fees, which Respondent would bill against as she performed work on their cases. *See* DCX 10 at 4-16, 40-42, 47-50, 53-56, 80-82; DCX 21; DCX 32. When the advanced fees were drawn down

below $500.00, clients were required to replenish their accounts with additional advanced fees. *See, e.g.*, DCX 10 at 5, 8, 14; DCX 21 at 2; DCX 32 at 2.

4. Respondent accepted advance fee payments through Square and PayPal. DCX 8 at 4-9; DCX 14 at 59-86; Tr. 29, 33-35 (Matinpour). When Square and PayPal routed the advance fees to Respondent's trust account, they deducted their financial services fees from the transferred funds. Tr. 34 (Matinpour); *see, e.g.*, DCX 14 at 63-67, 70-71, 76). This meant that the amount deposited in Respondent's trust account was less than the amount of the advanced fee the client paid. DCX 10 at 207-208, 215-216, 223; Tr. 33-35 (Matinpour).

5. Respondent did not maintain client ledgers or other records that showed when client funds were deposited into or withdrawn from her trust account or how much money she held in trust for each client at any given time. DCX 14 at 1; Tr. 28-29 (Matinpour).

6. Respondent routinely wrote checks on her trust account for round-numbered sums to herself and to Nicholas Wilt, her then-husband, who worked as a paralegal in her firm. DCX 18 (bank statements showing majority of checks written in round numbers); DCX 19 (selected specific examples of such checks); Tr. 32 (Matinpour). Respondent did not indicate on the checks, or anywhere else, which client's advanced legal fees were being withdrawn from the trust account. DCX 19; Tr. 32 (Matinpour).

7. Respondent also used the funds in her trust account to pay for personal and/or business operating expenses. Tr. 29-31 (Matinpour); DCX 18 at 17, 21-22, 29, 35, 39, 42.

8. On January 1, 2020, Respondent should have been holding at least $13,050.41 in trust for ten clients—Eric Birts ($1,396.64), Michael Ceres ($879.03), April Davis ($1,812.50), Marisa Jennings ($1,000.00), Carmen Leon ($1,562.50), Tabatha McNeill ($1,375.00), Starkoda Plummer ($937.50), Roger Scaife ($1,312.50), Tracey Scott ($687.50), and Darrell Shipman ($2,087.24)—but the balance in her trust account was $1,761.06. DCX 17 at 1-4, 8-9, 13-21, 24, 27; DCX 18 at 18; DCX 20 at 1, 3-7; Tr. 36-42 (Matinpour).

9. On June 22, 2020, Respondent should have been holding at least $7,881.59 in trust for nine clients—Eric Birts ($1,792.50), Michael Ceres ($350.77), Rita Collins ($625.00), April Davis ($62.50), Seon French ($2,000.00), Marisa Jennings ($1,000.00), Tabatha McNeill ($26.08), James Scholler ($687.50), and Darrell Shipman ($1,337.24)—but the balance in her trust account was $1,347.64. DCX 17 at 1-4, 7-13, 17, 22, 27; DCX 18 at 31; DCX 20 at 1-4, 6-7; Tr. 36-42 (Matinpour).[3]

10. On December 1, 3, and 4, 2020, Respondent overdrew her trust account. She should have been holding at least $2,147.78 in trust for four clients—Karen

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[3] Disciplinary Counsel asserted that Respondent should have held $243.30 in trust for Tracey Scott. However, our review of the evidence shows that Ms. Scott owed Respondent $243.30, as of June 22, 2020. DCX 20 at 6; DCX 17 at 24.

Coles ($250.00), Tracey Scott ($123.95), Darrell Shipman ($200.10), and Jennifer Washington ($1,573.73). DCX 6 at 5-10; DCX 17 at 5-6, 24-32; DCX 18 at 47; DCX 20 at 2, 6-8; Tr. 36-42 (Matinpour).[4]

11. PNC reported the overdrafts to Disciplinary Counsel. DCX 6 at 5-10. Shortly thereafter, Disciplinary Counsel issued a subpoena to Respondent for her financial records. DCX 6 at 11-15; Tr. 18 (Matinpour).

12. In response to the subpoena, Respondent provided incomplete records. DCX 9 at 4-6; Tr. 20 (Matinpour). Disciplinary Counsel sent multiple follow-up requests to Respondent, asking for the additional information necessary to audit her trust account. DCX 9; DCX 11; DCX 15; Tr. 22 (Matinpour).

13. Respondent provided additional information, but ultimately the records she was able to provide did not explain when and on what basis each client's funds were withdrawn from the trust account. Tr. 28-31 (Matinpour). Specifically,

- Respondent did not provide any client ledgers or a general ledger;
- Respondent did not provide information about which clients sent Respondent payments via Square;
- For most checks drawn on the trust account, Respondent did not write anything on the memo line or otherwise

[4] Disciplinary Counsel asserted that Respondent should have held $500.00 in trust for Karen Coles. However, our review of the evidence shows that Respondent was required to hold only $250.00 in trust. Ms. Coles owed Respondent $125 prior to November 11, when she paid $500.00 (leaving $375.00 that should have been held in trust as advance fees). Respondent earned $125.00 on November 17, and thus Respondent was required to hold $250.00 in trust when the account was overdrawn. DCX 20 at 2; DCX 17 at 5-6.

record which client's funds were being withdrawn (*see* DCX 19 (selection of twenty checks written to herself or to Mr. Wilt)); and

- There were inconsistencies within Respondent's own records, which were also occasionally inconsistent with the bank records.

Tr. 28-29; *see also* DCX 14 at 1; DCX 20 at 2, 6 (Ms. Matinpour unable to explain the credit of $437.50 in the Coles matter and $875.00 in the Scholler matter).

14. Respondent acknowledged that she did not keep adequate records. DCX 8 at 2 (Respondent admitting that she kept "poor records and it is unethical to try to recreate records."); DCX 14 at 1 (Respondent acknowledging that she "kept no reconciliations for time period requested"); DCX 12 at 1 (Respondent recognizing her "lack of poor accounting"); *see also* Tr. 31 (Ms. Matinpour testifying that Respondent's records were incomplete and inconsistent with the bank records). Respondent "bill[ed] clients regularly, or when they ask[ed]," and she "calculate[d] billable hours and disburse[d] earned money" from her IOLTA account to herself "on an irregular basis, according to personal needs." DCX 12 at 3.

15. Respondent acknowledged that she mishandled trust funds and that she should be sanctioned. DCX 12 at 1 ("[I]t is being abundantly clear that I was mishandling Trust Funds in multiple ways. I want to acknowledge this . . . . **I fully understand that I will be sanctioned**." (emphasis in original)); DCX 14 at 1 ("I want to acknowledge again that I was mishandling trust funds.").

C. Washington Representation (Count II)

16. On July 9, 2020, Jennifer Washington retained Respondent to represent her in a legal dispute with her employer. DCX 21; Tr. 53-54 (Washington). They executed an engagement agreement that defined the scope of the representation as "Represent you in issues relating to disputes with your employer in a manner agreed upon by Attorney and Client." DCX 21 at 1. The agreement called for an hourly fee of $250 with an advance of $1,500. *Id.*

17. Ms. Washington paid Respondent $1,500.00 via Square. DCX 10 at 264. The next day, Square deposited $1,456.20 into Respondent's #8811 trust account. DCX 18 at 33. This amount represented Ms. Washington's $1,500.00 payment minus a $43.80 deduction by Square for processing fees.

18. Ms. Washington understood that the first step would be for Respondent to send a demand letter. Tr. 55 (Washington). Respondent sent a demand letter to Ms. Washington's employer, The Westchester Corporation. DCX 22. Westchester rejected the demand. DCX 23.

19. Respondent communicated with Ms. Washington about the demand letter before sending it and after receiving the rejection. Tr. 56-58 (Washington). The next step was to file a complaint in D.C. Superior Court. Tr. 58 (Washington).

20. On September 9, 2020, Ms. Washington and Respondent executed a new engagement agreement. DCX 24. This new agreement contained the same description of the scope of the representation—"Represent you in issues relating to disputes with your employer in a manner agreed upon by Attorney and Client." *Id.*

at 1. The agreement called for an hourly fee of $250 with an advance of $2,500. *Id.* at 1-2. Ms. Washington paid Respondent $2,500 via Square. DCX 10 at 271.

21. On September 10, 2020, Square deposited $2,572.55 into Respondent's #8811 trust account. DCX 18 at 39. This amount appears to represent Ms. Washington's $2,500.00 fee plus a $150.00 fee of another client, April Davis, minus Square's processing fees. *See* DCX 10 at 271; DCX 18 at 39.

22. A month later, Respondent sent a draft complaint to Ms. Washington by email. DCX 25. Ms. Washington wanted to change some of the statements in the complaint but accepted the language Respondent proposed. Tr. 60-61 (Washington). On October 20, 2020, Ms. Wilt filed the complaint in D.C. Superior Court. DCX 26.

23. On December 10, 2020, counsel for Westchester filed a motion to dismiss. DCX 27. Respondent did not tell Ms. Washington this motion had been filed. Tr. 62 (Washington). Respondent did not file an opposition, and the Court dismissed the case with prejudice on December 31, 2020. DCX 28.

24. Ms. Washington did not learn about the motion or the ruling until January 5, 2021, when Respondent sent an email saying "[n]ot the best news. The Judge [d]ismissed the case, as she believed the facts did not support our claims." DCX 30; Tr. 62-63, 71-72 (Washington). Respondent did not disclose that she had not filed an opposition to the motion to dismiss. *See* DCX 30.

25. After reading the court order, Ms. Washington discovered that Respondent had not opposed the motion to dismiss. Tr. 64-65 (Washington). She asked Respondent for an explanation but never received one. *Id.*

26. Respondent told Ms. Washington she would file a motion for reconsideration, but she never did. DCX 30; DCX 31.

27. Even though the case was dismissed, Respondent tried to negotiate a settlement with Westchester. DCX 29 at 1; Tr. 65-67 (Washington). She demanded $25,000.00, but Westchester would only agree to $300.00. DCX 29 at 1; Tr. 67 (Washington). Ms. Washington refused to accept $300.00. Tr. 67 (Washington).

28. Ms. Washington hired a new attorney to try to revive her case, but the court dismissed the new case saying that she could not re-litigate the same issue. Tr. 67 (Washington).

29. Ms. Washington asked for a refund. Tr. 68 (Washington). Respondent resisted until Ms. Washington mentioned filing a complaint with the Bar. Tr. 68-69, 72 (Washington). Respondent then offered to give Ms. Washington a $2,000.00 refund if she did not report the matter. *Id.*

30. Ms. Washington refused Respondent's $2,000.00 offer and filed her complaint with Disciplinary Counsel. Tr. 69 (Washington). She also filed a fee-dispute arbitration request with the D.C. Bar's Attorney-Client Arbitration Board (ACAB), which ultimately issued an award requiring Respondent to return the full $4,000.00 Ms. Washington had paid her. DCX 48; Tr. 69-70 (Washington).

D. Headley Representation (Count III)

31. On August 8, 2021, Monique Headley retained Respondent. DCX 32; Tr. 78-81 (Headley). They executed an engagement agreement that defined the scope of the representation as "Represent you in issues relating to disputes with your co-op in a manner agreed upon by A[ttorney] and C[lient]." DCX 32 at 1. The agreement called for an hourly fee of $350.00 with an advance of $5,000.00 to "be paid before any work is done." *Id.* at 1-2.

32. The agreement stated that $2,500.00 of the $5,000.00 advance was "earned upon receipt and non-refundable." DCX 32 at 2. Respondent did not discuss the fee with Ms. Headley; only Respondent's then-husband, Nicholas Wilt spoke to Ms. Headley about the fee, and he did not explain the non-refundable clause. Tr. 83-84 (Headley).

33. Ms. Headley paid the $5,000.00 advance on August 8, 2021, through LawPay. DCX 39 at 2; Tr. 81-82 (Headley).

34. On October 29, 2021, Respondent filed a complaint on Ms. Headley's behalf in D.C. Superior Court, without providing Ms. Headley an opportunity to review it before filing. DCX 34 at 5-11; Tr. 86-87 (Headley). Respondent filed no other pleadings in Ms. Headley's case. Tr. 89 (Headley); *see* DCX 35 at 1-2. From the beginning of the engagement, there was "barely . . . any communication." Tr. 87. Other than on two occasions, at most, Ms. Headley would not hear back from Respondent after having reached out by phone, text, or email. Tr. 87-88. And in

those times Ms. Headley heard back, Respondent spoke to her about a different case—thus, Ms. Headley's case "wasn't really getting that much attention." Tr. 88.

35. A month after Respondent filed the complaint, Respondent blindsided Ms. Headley with a resignation letter stating that she was leaving the practice of law, that she would be withdrawing from the representation, and that two other attorneys would be taking over her case. DCX 36; Tr. 89-93 (Headley). Ms. Headley tried to contact Respondent to understand what was happening, but Respondent did not answer. Tr. 90 (Headley).

36. Ms. Headley was overwhelmed and stressed when she received the letter. Tr. 89-90 (Headley). The first hearing in her case was scheduled for January, and she did not know how to proceed. Tr. 91-93 (Headley). She was not comfortable with the two attorneys listed in Respondent's resignation letter taking over her case because Respondent had not communicated with her in advance about the transition and the new attorneys had never contacted her directly. DCX 37; DCX 38; Tr. 92 (Headley).

37. Ms. Headley could not find another attorney to take over her case, in part because it was "too last minute to be finding a lawyer" and because she had spent all the money she could afford to spend on legal fees at the time. Tr. 92-93 (Headley). She proceeded with the case *pro se*. Tr. 94 (Headley).

38. Ms. Headley asked Respondent to return her client file and to provide an accounting of the advanced fee she had paid. DCX 37; DCX 38. Respondent did not respond directly, but on December 10, 2021, Nicholas Wilt sent an invoice to

Ms. Headley claiming the firm had earned $4,755.97, and refunded the remaining $244.03. DCX 39; Tr. 94-97 (Headley). He refused to send Ms. Headley her client file claiming that it could only be sent to her new attorney—even though Ms. Headley was unrepresented at the time. Tr. 93, 107-108 (Headley).

39. Ms. Headley had not received any bills throughout the representation and believed she was being overcharged. DCX 36; DCX 37; DCX 40. She immediately emailed Mr. Wilt disputing the charges on the invoice. DCX 40; Tr. 96-98 (Headley). Respondent did not communicate with Ms. Headley to attempt to resolve the fee dispute. Tr. 99 (Headley).

40. On December 3, 2021, Ms. Headley filed a disciplinary complaint. DCX 42 at 4. Disciplinary Counsel sent the complaint to Respondent along with a subpoena for Ms. Headley's client file. *Id.* at 2-5, 24-26. Respondent did not respond to the complaint or the subpoena. Tr. 42-44 (Matinpour). Nicholas Wilt sent a copy of Ms. Headley's file to Disciplinary Counsel but noted that it was incomplete because certain information remained in Respondent's possession. DCX 43; Tr. 42-44 (Matinpour).

41. Ms. Headley filed a request for arbitration with the ACAB. DCX 41. An arbitration hearing was held on September 26, 2022. DCX 44; Tr. 100-01 (Headley). Respondent did not participate. Tr. 100 (Headley). The ACAB issued a Decision and Award on September 28, 2022, that required The Wilt Law Firm, PLLC to refund the remaining $4,755.97, plus another $25.00 for the ACAB filing

fee. DCX 44. The ACAB directed Respondent to provide the refund to Ms. Headley on or before October 31, 2022. *Id.* Respondent did not comply. Tr. 101 (Headley).

42. Ms. Headley then filed a Motion to Confirm the Arbitration Award in D.C. Superior Court. DCX 45; Tr. 102-03 (Headley). Ms. Headley had significant difficulty serving Respondent. Tr. 102-03 (Headley). She had to hire multiple process servers and search for her in different states before finally serving her. *Id.* On May 3, 2023, the court confirmed Ms. Headley's arbitration award and entered judgment in the amount of $4,780.97. DCX 46; Tr. 103 (Headley).

43. Respondent has not paid the judgment, but Ms. Headley was able to recover the money from the CSF. Tr. 104 (Headley).

III. CONCLUSIONS OF LAW

In Count I, Disciplinary Counsel argues that Respondent violated Rules 1.15(a) & (e) by intentionally or recklessly misappropriating advance fees and failing to keep adequate records of these funds. In Counts II and III, Disciplinary Counsel argues that Respondent mishandled two cases and thereby violated a variety of Rules, and further engaged in misconduct during Disciplinary Counsel's subsequent investigation of Ms. Headley's complaint.

A. Disciplinary Counsel Proved that Respondent Violated Rule 1.15(a) & (e) by Recklessly Misappropriating Client Funds (Count I).

Rule 1.15(a) prohibits misappropriation of entrusted funds. Misappropriation is "any unauthorized use of [a] client's funds entrusted to [the lawyer], including not only stealing but also unauthorized temporary use for the lawyer's own purpose, whether or not [the lawyer] derives any personal gain or benefit therefrom." *In re*

Nave, 197 A.3d 511, 514 (D.C. 2018) (per curiam) (alterations in original) (quoting *In re Anderson*, 778 A.2d 330, 335 (D.C. 2001)).

Rule 1.15(e) provides that "[a]dvances 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."

Misappropriation occurs where (1) client funds were entrusted to the attorney; (2) the attorney used those funds for the attorney's own purposes; and (3) such use was unauthorized. *In re Harris-Lindsey*, 242 A.3d 613, 620 (D.C. 2020) (citing *In re Travers*, 764 A.2d 242, 250 (D.C. 2000)); *In re Harrison*, 461 A.2d 1034, 1036 (D.C. 1983) (Misappropriation is defined as "any unauthorized use of client[] [or third party] funds entrusted to [the lawyer], including not only stealing but also unauthorized temporary use for the lawyer's own purpose, whether or not he derives any personal gain or benefit therefrom" (citation and quotation marks omitted)).

Misappropriation is essentially a *per se* offense and does not require proof of improper intent. *See Anderson*, 778 A.2d at 335. It occurs where "the balance in [the attorney's] trust account falls below the amount due [to] the client [or third party]." *In re Ahaghotu*, 75 A.3d 251, 256 (D.C. 2013) (internal quotation marks and citations omitted). Thus, "when the balance in [a] [r]espondent's . . . account dip[s] below the amount owed" to the respondent's client or clients, misappropriation has occurred. *In re Chang*, 694 A.2d 877, 880 (D.C. 1997) (per curiam) (appended Board Report) (citing *In re Pels*, 653 A.2d 388, 394 (D.C. 1995)).

Second, Disciplinary Counsel must establish whether the misappropriation was intentional, reckless, or negligent. *See Anderson*, 778 A.2d at 336; *see also In re Krame*, 284 A.3d 745, 767 n.11 (D.C. 2022) ("This [C]ourt has . . . never sustained a Rule 1.15(a) charge absent some finding of a culpable mindset at least rising to the level of negligence."). Intentional misappropriation most obviously occurs where an attorney takes a client's funds for the attorney's personal use. *See Anderson*, 778 A.2d at 339 (intentional misappropriation occurs where an attorney handles entrusted funds in a way "that reveals . . . an intent to treat the funds as the attorney's own" (citations omitted)).

"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." *Ahaghotu*, 75 A.3d at 256 (internal quotation marks and citation 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." (internal citations and 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.'" *Anderson*, 778 A.2d at 339 (quoting 57 Am.

Jur. 2d *Negligence* § 302 (1989)). Thus, an objective standard should be applied in assessing whether a respondent's misappropriation was reckless. *See In re Gray*, 224 A.3d 1222, 1232-33 (D.C. 2020) (per curiam); *see also In re Delsordo*, 241 A.3d 305, 307 (D.C. 2020) (per curiam) (finding non-negligent misappropriation, and thus substantially different discipline in reciprocal matter, where respondent did not reconcile trust account and made some deposits into the wrong account, and despite a finding that "no money was actually missing according to the firm's records," and despite claims that he "had earned and was owed the money," and that he "did . . . calculations in his head and . . . knew how much he was entitled to receive" (internal quotations omitted)). Extensive commingling and a poor system of record-keeping that results in misappropriation is not, in itself, sufficient to support a finding of recklessness. *See In re Dailey*, 230 A.3d 902, 912 (D.C. 2020) (per curiam) (noting the absence of a "flagrant disregard for third-party or client funds" that might support a finding of recklessness).

Finally, where Disciplinary Counsel establishes the first element of misappropriation (unauthorized use) but fails to establish that the misappropriation was intentional or reckless, "'then [Disciplinary] Counsel proved no more than simple negligence.'" *Anderson*, 778 A.2d at 338 (quoting *In re Ray*, 675 A.2d 1381, 1388 (D.C. 1996)). "Negligent misappropriation is an attorney's non-intentional, non-deliberate, non-reckless misuse of entrusted funds or an attorney's non-intentional, non-deliberate, non-reckless failure to retain the proper balance of entrusted funds. Its hallmarks include a good-faith, genuine, or sincere but

erroneous belief that entrusted funds have properly been paid; and an honest or inadvertent but mistaken belief that entrusted funds have been properly safeguarded." *In re Abbey*, 169 A.3d 865, 872 (D.C. 2017) (citations omitted); *see also Anderson*, 778 A.2d at 339 (providing that negligent misappropriation occurs where "the unauthorized use was inadvertent or the result of simple negligence" (citations omitted)).

Disciplinary Counsel alleges that Respondent misappropriated on January 1, 2020, June 22, 2020, and during the first week in December 2020 when the balance in her trust account fell below the amount of unearned advance fees. ODC Br. at 15 (citing Disciplinary Counsel's Proposed Findings of Fact 8-10). According to Disciplinary Counsel, Respondent "repeatedly dipped into those funds for both personal and business expenses, frequently writing checks in round-numbered sums to herself and her then-husband, Nicholas Wilt." *Id.* (citing Disciplinary Counsel's Proposed Findings of Fact 6-7). Disciplinary Counsel moreover asserts that no client agreed for Respondent to take any advance fee before earning it. *Id.*

As to state of mind, Disciplinary Counsel concedes that it does not have direct evidence of her state of mind, but argues that her misappropriations were intentional if she regularly reconciled her account (and thus knew that she was taking entrusted funds), and were reckless if she did not regularly reconcile her account (and thus displayed a conscious disregard for the safety of the entrusted funds). ODC Br. at 24-25.

First, we find that Disciplinary Counsel has proven that Respondent misappropriated on January 1, June 22, and December 1, 3, & 4 of 2020. On January 1, 2020, Respondent's balance in her IOLTA account was $1,761.06, when she should have been holding at least $13,050.41 for ten clients in that same account. FF 8. On June 22, 2020, Respondent's balance in her IOLTA account was $1,347.64, when she should have been holding at least $7,881.59 for eight clients. FF 9. And on December 1, 3, & 4, Respondent's IOLTA account was overdrawn when she was required to hold at least $2,147.78 for four clients. FF 10. Indeed, during the investigation, Respondent admitted that she mishandled entrusted funds. FF 15.

Second, we find that Disciplinary Counsel has proven that Respondent misappropriated recklessly. A respondent misappropriates recklessly when he commingles and writes "numerous trust account checks to himself and his firm without proper record-keeping or accounting, resulting in inaccurate and incomplete records and trust account balances that repeatedly fell below the amount of the entrusted funds that should have been maintained." *In re Ugwuonye*, 207 A.3d 173, 174 (D.C. 2019) (per curiam). Aside from commingling, this is precisely what Respondent did here.

Respondent failed to track her handling of entrusted funds in client-specific or general ledgers. During a fifteen-month period, she wrote at least twenty checks to herself (or to Mr. Wilt) on her IOLTA account when she needed money, without identifying the relevant client on the memo lines of the checks, or anywhere else.

FF 13. Her IOLTA account was overdrawn several times. FF 10, 15. As Respondent's conduct reflects the "hallmarks of recklessness," we conclude that Disciplinary Counsel proved that Respondent engaged in reckless misappropriation. *See In re Smith*, 70 A.3d 1213, 1217 (D.C. 2013) (finding that writing "thirty-one checks to himself and fail[ing] to keep adequate records, even overdrawing the account at one point" were indicators of recklessness rather than negligence) (citing *In re Pels*, 653 A.2d 388, 395-96 (D.C.1995) (large number of personal checks drawn from account and attorney's failure to maintain records of the flow of funds were aggravating factors that supported a conclusion of reckless, rather than negligent, misappropriation); then citing *In re Micheel*, 610 A.2d 231, 235-36 (D.C. 1992) (finding reckless disregard where attorney "made no attempt to keep track of his client's funds, but indiscriminately wrote checks on the account at a time when he knew or should have known that the account was overdrawn")); *Gray*, 224 A.3d at 1229 (finding reckless misappropriation based in part on the respondent's "grossly inadequate recordkeeping" and "taking money out of the commingled account whenever he needed it" despite knowing "he was required to hold his clients' entrusted funds in a trust account").

B. Disciplinary Counsel Proved that Respondent Violated Rule 1.15(a) by Failing to Keep Complete Records (Count I).

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) ("Financial records are complete only when an attorney's documents

are 'sufficient to demonstrate [the] attorney's compliance with his ethical duties.'" (quoting *In re Clower*, 831 A.2d 1030, 1034 (D.C. 2003) (per curiam))). 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 (quoting *Clower*, 831 A.2d at 1034); *see also Pels*, 653 A.2d at 396 (finding Rule 1.15(a) violation when attorney showed a "pervasive failure" to maintain contemporaneous records accounting for the flow of client funds within various bank accounts). Thus, "[t]he records themselves should allow for a complete audit even if the attorney or client is not available." *Edwards*, 990 A.2d at 522.

Disciplinary Counsel asserts that the records Respondent provided to Disciplinary Counsel "did not disclose which clients' funds were in the trust account at any given time," and Disciplinary Counsel was thus unable to complete its audit of the trust account. ODC Br. at 16-17. Disciplinary Counsel further points to Respondent's admission that she did not keep adequate records. *Id.* at 17.

We agree with Disciplinary Counsel and with Respondent's admission. FF 13-14. As discussed above, Respondent's records were sufficient to show that she should have held more in her account than she did. However, they were insufficient to "tell a full story" of how she handled all funds or to "allow for a complete audit" of her IOLTA account. For example, the records did not explain when and on what basis each client's funds were withdrawn from the trust account. Because

Respondent's records were incomplete and insufficient, Respondent violated Rule 1.15(a).

C. Disciplinary Counsel Proved that Respondent Violated Rules 1.1(a) & (b) and 1.3(a) & (c) by Failing to Competently, Zealously, and Diligently Represent her Client (Count II).

Rule 1.1(a) requires a lawyer to "provide competent representation to a client," which requires utilizing the "legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation." *See In re Drew*, 693 A.2d 1127, 1132 (D.C. 1997) (per curiam) (lawyer who has requisite skill and knowledge, but who does not apply it for particular client, violates obligations under Rule 1.1(a)). A lawyer violates Rule 1.1 if there is a "serious deficiency" in the representation of a client, whereby the attorney commits "an error that prejudices or could have prejudiced a client and the error was caused by a lack of competence." *In re Yelverton*, 105 A.3d 413, 421-22 (D.C. 2014) (quoting *In re Evans*, 902 A.2d 56, 69-70 (D.C. 2006) (per curiam) (appended Board Report)).

Rule 1.1(b) requires a lawyer to "serve a client with skill and care commensurate with that generally afforded to clients by other lawyers in similar matters." The Rule is "better tailored [than Rule 1.1(a)] to address the situation in which a lawyer capable to handle a representation walks away from it for reasons unrelated to his competence in that area of practice." *In re Lewis*, 689 A.2d 561, 564 (D.C. 1997) (per curiam) (appended Board Report).

The competency, skill, and care of an attorney under Rules 1.1(a) and (b) must be evaluated in terms of the representation required and provided in the particular matter at issue:

> Competent handling of a particular matter includes inquiry into and analysis of the factual and legal elements of the problem, and use of methods and procedures meeting the standards of competent practitioners. It also includes adequate preparation and continuing attention to the needs of the representation to assure that there is no neglect of such needs. The required attention and preparation are determined in part by what is at stake; major litigation and complex transactions ordinarily require more elaborate treatment than matters of lesser consequence.

Rule 1.1 cmt. [5].

Rule 1.3(a) states that an attorney "shall represent a client zealously and diligently within the bounds of the law." "Neglect has been defined as indifference and a consistent failure to carry out the obligations that the lawyer has assumed to the client or a conscious disregard of the responsibilities owed to the client." *In re Wright*, 702 A.2d 1251, 1255 (D.C. 1997) (per curiam) (appended Board Report) (citing *In re Reback*, 487 A.2d 235, 238 (D.C. 1985) (per curiam), *adopted in relevant part*, 513 A.2d 226 (D.C. 1986) (en banc) ("*Reback II*")). Rule 1.3(a) "does not require proof of intent, but only that the attorney has not taken action necessary to further the client's interests, whether or not legal prejudice arises from such inaction." *In re Bradley*, Board Docket No. 10-BD-073, at 17 (BPR July 31, 2012) (citing *Drew*, 693 A.2d at 1133), *adopted in relevant part*, 70 A.3d 1189, 1191 (D.C. 2013) (per curiam); *see also Lewis*, 689 A.2d at 564 (appended Board Report) (finding a Rule 1.3(a) violation even where "[t]he failure to take action for a

significant time to further a client's cause . . . [does] not [result in] prejudice to the client").

The Court has found neglect in violation of Rule 1.3(a) where an attorney persistently and repeatedly failed to fulfill duties owed to the client over a period of time. *See, e.g.*, *In re Ukwu*, 926 A.2d 1106, 1135-36 (D.C. 2007) (appended Board Report) (respondent violated Rule 1.3(a) when he repeatedly failed to inform his clients about the status of their cases, prepare his clients for hearings and interviews with immigration officials, or prepare himself for court appearances); *Wright*, 702 A.2d at 1255 (appended Board Report) (respondent violated Rule 1.3(a) by failing to respond to discovery requests, a motion to compel, and a show cause order); *In re Chapman*, Bar Docket No. 055-02, at 19-20 (BPR July 30, 2007) (respondent violated Rule 1.3(a) where he did virtually no work on the client's case during the eight-month term of the representation, failed to conduct any discovery, and did not respond to discovery requests from the opposing party), *recommendation adopted*, 962 A.2d 922, 923-24 (D.C. 2009) (per curiam); *see also In re Outlaw*, 917 A.2d 684, 688 (D.C. 2007) (per curiam) (finding neglect where the client's case laid dormant for almost two years and allowed the statute of limitations to expire); *In re Vohra*, 68 A.3d 766, 780 (D.C. 2013) (appended Board Report) (finding neglect in part because the respondent failed to file a proper motion to reopen, and because "his delay of approximately nine months after the incorrect E–2 applications were returned in February 2005, before re-filing").

Rule 1.3(c) provides that an attorney "shall act with reasonable promptness in representing a client." "Perhaps no professional shortcoming is more widely resented by clients than procrastination," and "in extreme instances, as when a lawyer overlooks a statute of limitations, the client's legal position may be destroyed." Rule 1.3 cmt. [8]. The Court has held that failure to take action for a significant time to further a client's cause, whether or not prejudice to the client results, violates Rule 1.3(c). *See, e.g.*, *In re Speights*, 173 A.3d 96, 101 (D.C. 2017) (per curiam). Comment [8] to Rule 1.3 provides that "[e]ven when the client's interests are not affected in substance . . . unreasonable delay can cause a client needless anxiety and undermine confidence in the lawyer's trustworthiness," making such delay a "serious violation."

Disciplinary Counsel argues that the same misconduct that violated Rules 1.1(a) & (b) also violated Rules 1.3(a) & (c). *See In re Johnson*, 298 A.3d 294, 312 (D.C. 2023) (same facts supporting Rule 1.1(a) & (b) violations also supported Rule 1.3(a) violation). Specifically, it argues that Respondent failed to oppose the motion to dismiss, which allowed Ms. Washington's case to be dismissed with prejudice, and subsequently took "no action after the dismissal to attempt to salvage Ms. Washington's case" (including failing to file a motion to reconsider, which Disciplinary Counsel alleges Respondent promised to do). ODC Br. at 17-18.

We agree with Disciplinary Counsel. After Westchester filed a motion to dismiss Ms. Washington's complaint, Respondent failed to file an opposition. This led to the court dismissing the complaint with prejudice. FF 23. Respondent notified

Ms. Washington of the dismissal several days later, but did not disclose that she had not opposed the motion to dismiss. FF 24. Indeed, Ms. Washington learned of Respondent's failure to oppose only after reading the court's order, and when she asked Respondent for an explanation, she did not receive one. FF 25. Then, instead of filing a motion for reconsideration (as she told Ms. Washington she would do), Respondent unsuccessfully continued attempting to settle the case, even though the court had already dismissed Ms. Washington's complaint with prejudice. FF 26-27.

Respondent's lack of competence, diligence, and zeal while representing Ms. Washington violated Rules 1.1(a) & (b), and 1.3(a) & (c). *See Johnson*, 298 A.2d at 311 (finding violations of 1.1(a) & (b) in part for allowing the statute of limitations to run and failing to correct errors after being made aware of them); *In re Steele*, 868 A.2d 146, 150 (D.C. 2005) (finding violations of Rules 1.3(a) & (c) where the respondent failed to file an opposition to a motion for summary judgment and failed to notify the client of the result); *In re Butler*, Board Docket No. 22-BD-003, at 21, 23-24 (BPR Jan. 26, 2024) (finding violations of Rule 1.1(a) & (b) in part because the respondent failed to oppose a motion for summary judgment, failed to file a supplemental or late opposition once the court vacated its order granting summary judgment, and failed to communicate with his client).

D. Disciplinary Counsel Proved that Respondent Violated Rules 1.4(a) & (b) by Failing to Communicate with Ms. Washington and Ms. Headley (Counts II & III).

Rule 1.4(a) provides that "[a] lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for

information." Under Rule 1.4(a), an attorney must not only respond to client inquiries, but must also initiate contact to provide information when needed. *See, e.g.*, *In re Robbins*, 192 A.3d 558, 564-65 (D.C. 2018) (per curiam); *In re Bernstein*, 707 A.2d 371, 376 (D.C. 1998). The purpose of this Rule is to enable clients to "participate intelligently in decisions concerning the objectives of the representation and the means by which they are to be pursued." Rule 1.4 cmt. [1]. To that end, a lawyer must provide the client with "accurate information about [the] lawyer's actions on his behalf" throughout the representation. *In re Brown*, 310 A.3d 1036, 1047 (D.C. 2024). In determining whether Disciplinary Counsel has established a violation of Rules 1.4(a) and (b), the question is whether the respondent fulfilled his client's reasonable expectations for information. *See In re Schoeneman*, 777 A.2d 259, 264 (D.C. 2001) (citing Rule 1.4, cmt. [3]). Attorneys are obligated to respond to client requests for information even when there are no new developments to report. *See In re Lattimer*, 223 A.3d 437, 440, 442-43 (D.C. 2020) (per curiam). In addition to responding to client inquiries, a lawyer must initiate communications when necessary. *See In re Hallmark*, 831 A.2d 366, 374 (D.C. 2003) (citing Rule 1.4, cmt. [1]).

Similarly, Rule 1.4(b) states than an attorney "shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation." This Rule provides that the attorney "must be particularly careful to ensure that decisions of the client are made only after the client has been informed of all relevant considerations." Rule 1.4, cmt. [2]. The Rule

places the burden on the attorney to "initiate and maintain the consultative and decision-making process if the client does not do so and [to] ensure that the ongoing process is thorough and complete." *Id.*

As to Count II, Disciplinary Counsel argues that Respondent first did not tell Ms. Washington about the motion to dismiss, then did not explain that she should have filed an opposition (once her case was already dismissed), and then did not communicate with Ms. Washington about her options moving forward. ODC Br. at 19. When Ms. Washington found out that Respondent had not opposed the motion to dismiss, Disciplinary Counsel asserts that Respondent refused to answer her subsequent questions. *Id.*

As to Count III, Disciplinary Counsel argues that Respondent did not send Ms. Headley any bills during the representation, so Ms. Headley thus had "no knowledge of how much of her retainer had been exhausted until after the representation ended." ODC Br. at 19. It further argues that Respondent did not respond to Ms. Headley's inquires when Ms. Headley found out Respondent was giving up the practice of law and thus withdrawing from her case. *Id.*

We agree with Disciplinary Counsel. In Count II, and as just explained, Respondent did not notify Ms. Washington of Westchester's motion to dismiss. FF 23. Nor did she inform Ms. Washington that she did not file an opposition to that motion, which led to the court dismissing Ms. Washington's case. FF 24. When confronted by Ms. Washington, Respondent offered no explanation and did not

guide her about her options moving forward. Instead, Respondent claimed she would file a motion for reconsideration, but she never did. FF 25-26.

In Count III, from the time Respondent was hired, to the time she filed the complaint, Respondent did not satisfy Ms. Headley's reasonable expectations for communication. Indeed, there was barely any communication, even after Ms. Headley reached out to her by phone, email, and text. FF 34. And when they did communicate, Respondent would discuss a different case, causing Ms. Headley to feel that her case was not being prioritized. *Id.* And before Respondent filed the complaint, she did not provide Ms. Headley an opportunity to review it. FF 34; *see also In re Ekekwe-Kauffman*, 210 A.3d 775, 789 (D.C. 2019) (per curiam) (finding a violation of Rule 1.4(a) for '"routinely fail[ing] to consult with and keep [the client] informed about the status of her matter,"' including by not providing the client with a copy of the complaint before it was filed, despite the client's request to do so (quoting Board Report)).

Then, the month before Ms. Headley's hearing, Respondent unexpectedly sent Ms. Headley a resignation letter explaining that two attorneys would take over her case. FF 35. Because neither Respondent nor the new attorneys communicated with Ms. Headley, Ms. Headley was uncomfortable with the arrangement and thus tried to contact Respondent. FF 35-36. But Respondent did not respond, and with the first hearing looming, Ms. Headley had to proceed *pro se* because she could not find another attorney to take over. FF 35, 37. As Disciplinary Counsel explains, by not communicating with Ms. Headley and not responding to her reasonable requests for

information, Respondent put Ms. Headley "in a position where [she] could not make informed decisions" about her case. ODC Br. at 19-20; *see In re Shepherd*, Bar Docket Nos 313-98 & 83-99, at 6-7, 14-15 (BPR Dec. 10, 2003) (finding a Rule 1.4(a) violation because the respondent did not advise the client that he was transferring her case to another attorney, and "did not keep himself apprised of the status of the case" as the other attorney had only four days to secure the client's signature before the initial conference), *recommendation adopted*, 870 A.2d 67 (D.C. 2005) (per curiam).

Respondent also failed to provide Ms. Headley with any bills throughout the representation. FF 39. Nor did Respondent communicate with Ms. Headley after Ms. Headley, in an email to Mr. Wilt, disputed the invoice he had sent her at the end of the representation. These inactions further left Ms. Headley in the dark about how her case was (or was not) progressing and how much of her retainer had been exhausted. *See* FF 39. And they further our finding that Respondent violated Rules 1.4(a) and (b). *See In re Thyden*, Bar Docket No. 257-92, at 15 (BPR Feb. 7, 2002) (finding violations of Rules 1.4(a) and (b) where the respondent's sole communication with the client was a bill with no descriptions to the charges, and where the client's questions about the bill and lack of descriptions were left unanswered), *recommendation adopted*, 877 A.2d 129 (D.C. 2005).

E. Disciplinary Counsel Did Not Prove that Respondent Violated Rule 1.5(a) by Charging an Unreasonable Fee, But Did Prove that Respondent Violated Rule 1.16(d) by Failing to Promptly Refund an Unearned Fee (Count III).

Rule 1.5(a) provides that:

> A lawyer's fee shall be reasonable. The factors to be considered in determining the reasonableness of a fee include the following:
>
> > (1) The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
> > (2) The likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
> > (3) The fee customarily charged in the locality for similar legal services;
> > (4) The amount involved and the results obtained;
> > (5) The limitations imposed by the client or by the circumstances;
> > (6) The nature and length of the professional relationship with the client;
> > (7) The experience, reputation, and ability of the lawyer or lawyers performing the services; and
> > (8) Whether the fee is fixed or contingent.

"The prototypical circumstance of charging an unreasonable fee is undoubtedly one in which an attorney did the work that he or she claimed to have done, but charged the client too much for doing it." *In re Cleaver-Bascombe*, 892 A.2d 396, 403 (D.C. 2006). However, "[i]t cannot be reasonable to demand payment for work that an attorney has not in fact done." *Id.* The Court has concluded that even negligent overbilling violates Rule 1.5(a). *See In re Bailey*, 283 A.3d 1199, 1208 (D.C. 2022) ("The extent of Bailey's overbilling suggests that he was, at the very least, negligent."); *see also id.* at 1208 n.4 ("[H]ere, Disciplinary Counsel sought to prove only that the overbilling was 'unreasonable' or negligent so as to constitute a violation of Rule 1.5(a) . . . .").

The Court of Appeals has held that "Rule 1.5(a) can be violated by the act of charging an unreasonable fee without regard to whether the fee is collected."

Cleaver-Bascombe, 892 A.2d at 403 (quoting Board Report). The Court has not addressed whether simply labelling a fee as nonrefundable violates Rule 1.5(a). However, the Board has concluded that it does not violate Rule 1.5(a). *See In re Ponds*, Board Docket No. 17-BD-015, at 24-32 (BPR June 24, 2019).

Whether nonrefundable fees are reasonable requires a fact-specific inquiry: The question is whether the client knowingly agreed to the fee, whether the attorney performed the work contemplated in the agreement, and whether the fee was objectively reasonable for the task involved, taking into consideration the applicable factors set forth in Rule 1.5(a).

Rule 1.16(d) provides:

> 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).

Failure to refund any unearned portion of a fee violates Rule 1.16(d). *See, e.g.*, *In re Samad*, 51 A.3d 486, 497 (D.C. 2012) (per curiam) (finding a violation where the respondent claimed that he did some work on the case, but did not "suggest that he earned the entire flat fee or that he returned any portion of the fee"); *In re Carter*, 11 A.3d 1219, 1222-23 (D.C. 2011) (per curiam) (finding a violation of Rule 1.16(d) where the attorney failed to pay an ACAB award for unearned fees); *Ekekwe-Kauffman*, 210 A.3d at 795 (finding a violation of Rule 1.16(d) where the attorney

did not begin refunding the client until almost five years after the D.C. Superior Court affirmed the ACAB award for unearned fees); *In re Kanu*, 5 A.3d 1, 10 (D.C. 2010) (finding a violation of Rule 1.16(d) where the attorney failed to abide by a clause in her retainer agreement promising a refund if she failed to meet her clients' objectives).

Disciplinary Counsel argues that charging Ms. Headley a non-refundable fee—in this case $2,500.00 of the $5,000.00 advance fee—"violates Rule 1.5(a) because it allows the attorney to keep client funds without performing legal services to earn those funds." ODC Br. at 20. "Indeed," states Disciplinary Counsel, Respondent was required to refund "any unearned portion of the fee when the representation concluded," and when Ms. Headley disputed the charges in the bill, Respondent "never communicated with her or attempted to resolve the dispute." *Id.* at 21. Nor did Respondent refund Ms. Headley after the Attorney Client Arbitration Board awarded Ms. Headley $4,780.97. *Id.* Respondent further did not refund Ms. Headley even after the D.C. Superior Court issued a judgment of that amount. *Id.*

First, we find that Disciplinary Counsel has not proven a violation of Rule 1.5(a) when Respondent labeled her $2,500.00 advance fee as nonrefundable. We understand Disciplinary Counsel to be making the same argument here as it did in *In re Ponds*. ODC Br. at 20-21; *Ponds*, Board Docket No. 17-BD-015, at 24 ("Disciplinary Counsel also argues that [the] [r]espondent separately violated Rule 1.5(a) when he labeled [his client]'s fee "nonrefundable" in his engagement agreement."). But the Board majority in *Ponds* disagreed with Disciplinary Counsel,

noting first that neither *Mance* nor the language in Rule 1.5 instructs that merely describing a fee as nonrefundable is *per se* unreasonable. *Ponds*, Board Docket No. 17-BD-015, at 25. The majority next found it "counterintuitive to think that a lawyer could label a flat fee 'nonrefundable' in an engagement agreement, receive the flat fee and properly deposit it in her IOLTA account, represent the client ably to the full scope of the agreement, then transfer the agreed-upon flat fee after completing the agreed-upon work into her operating account, yet still have charged an unreasonable fee under Rule 1.5(a)." *Id.* at 25-26. The Court did not address this conclusion; instead, it addressed whether the respondent's misappropriation was negligent or reckless. 279 A.3d 357, 358, 362 (D.C. 2022) (per curiam) (finding reckless misappropriation and disbarring the respondent). And absent the Court's direction on this issue, the Board's finding is precedential, so we cannot agree with Disciplinary Counsel on this charge.

But we agree with Disciplinary Counsel that Respondent violated Rule 1.16(d) by failing to refund unearned fees. Respondent did not earn all of the $5,000 she received from Ms. Headley, to represent her "in issues relating to disputes with [her] co-op in a manner agreed upon by A[ttorney] and C[lient]." FF 31. When Respondent filed her withdrawal, at most Respondent had responded to Ms. Headley's two requests and had filed the complaint. FF 34-35. Eventually, the ACAB ordered Respondent to refund Ms. Headley $4,780.97 ($4,755.97 + $25.00 for the filing fee) by October 31, 2022. FF 41. But Respondent did not and has not done so, even after the court entered a judgment confirming the award. FF 42-43.

Ms. Headley was able to recover the amount from the CSF (FF 43), but Respondent failing to refund these unearned fees violates Rule 1.16(d).

F. Disciplinary Counsel Proved that Respondent Violated Rules 8.1(b) and 8.4(d) by Knowingly Failing to Respond Reasonably to Disciplinary Counsel's Investigation, Which Then Seriously Interfered with the Administration of Justice (Count III).

Rule 8.1(b) provides that "a lawyer . . . in connection with a disciplinary matter, shall not . . . knowingly fail to respond reasonably to a lawful demand for information from . . . [a] disciplinary authority . . . ." Knowledge may be inferred from circumstances. Rule 1.0(f). Thus, a knowing failure to respond to a request from Disciplinary Counsel regarding an ethical complaint constitutes a violation of Rule 8.1(b). *See, e.g.*, *In re Lea*, 969 A.2d 881, 887-88 (D.C. 2009). Note that "Rule 8.1(b) specifically addresses the requirement of responding to [Disciplinary] Counsel as opposed to the more general requirements of Rule 8.4(d)." *In re Rivlin*, Bar Docket Nos. 436-96 *et al.*, at 38 n.20 (BPR Oct. 28, 2002).

Rule 8.4(d) provides that it is professional misconduct for a lawyer to "[e]ngage in conduct that seriously interferes with the administration of justice." Failure to respond to Disciplinary Counsel's inquiries and orders of the Board and the Court also constitutes a violation of Rule 8.4(d). Rule 8.4 cmt. [2]; *see, e.g.*, *In re Doman*, 314 A.3d 1219, 1231 (D.C. 2024) (per curiam) (failure to respond to Disciplinary Counsel's inquiries); *Edwards*, 990 A.2d at 524 (same).

Disciplinary Counsel argues that though Respondent initially cooperated with its investigations, Respondent then "stopped communicating with Disciplinary Counsel entirely." ODC Br. at 22. In addition to not responding to its inquiries and

subpoenas related to Ms. Headley's complaint, she moreover "has not participated in the disciplinary proceedings since the charges were filed." *Id.* at 22-23.[5]

We agree that Respondent violated Rules 8.1(b) and 8.4(d). Though Respondent initially responded to Disciplinary Counsel's inquiries (*see* Count I), Respondent did not respond to Ms. Headley's complaint, which Respondent received from Disciplinary Counsel with a corresponding subpoena for Ms. Headley's file. FF 40. Instead, Mr. Wilt in response sent a copy of Ms. Headley's file to Disciplinary Counsel, but noted that it was incomplete because certain information remained in Respondent's possession. *Id.* Respondent's failure to respond to Disciplinary Counsel violates Rule 8.4(d), and her knowing failure violates Rule 8.1(b).

IV. RECOMMENDED SANCTION

In this case, Disciplinary Counsel has asked the Hearing Committee to recommend the sanction of disbarment and require Respondent to pay restitution of $4,000.00 to Ms. Washington and $4,780.97 to the CSF. For the reasons described below, we recommend that Respondent be disbarred for reckless misappropriation,

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[5] We do not rely on her failure to participate in this proceeding in finding that Respondent violated Rule 8.1(b) and 8.4(d) because it occurred after Disciplinary Counsel filed the Specification of Charges. *See* Order, *In re Morten*, 18-BD-027 (BPR May 7, 2021), appended Hearing Committee Report at 90 ("[A] respondent in a disciplinary proceeding is entitled to "'fair notice as to the reach of the grievance procedure and the precise nature of the charges.'" (quoting *In re Ruffalo*, 390 U.S. 544, 552 (1968))).

and that as a condition of reinstatement, Respondent be required to pay restitution of $4,000.00 to Ms. Washington and $4,780.97 to the CSF.

A. Presumptive Sanction of Disbarment

The law regarding misappropriation is clear and consistent: absent "extraordinary circumstances," disbarment is the presumptive sanction for intentional or reckless misappropriation. *In re Addams*, 579 A.2d 190, 191 (D.C. 1990) (en banc) ("[I]n virtually all cases of misappropriation, disbarment will be the only appropriate sanction unless it appears that the misconduct resulted from nothing more than simple negligence."); *see also In re Hewett*, 11 A.3d 279, 286 (D.C. 2011). We discern no extraordinary circumstances or substantial mitigating factors to rebut the presumption of disbarment. And we further recommend that, should Respondent seek reinstatement, she should be required to prove her payment of restitution of $4,000.00 to Ms. Washington and $4,780.97 to the CSF. *See* FF 30, 42-43. *See In re Hager*, 812 A.2d 904, 922-23 (D.C. 2002) (disgorgement may be imposed as a reasonable condition of reinstatement under D.C. Bar R. XI, § 3(b) to prevent unjust enrichment).

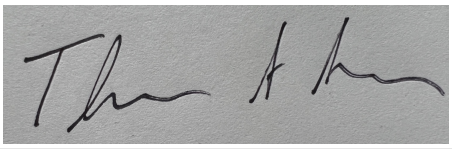
V. CONCLUSION

For the foregoing reasons, the Committee finds that Respondent violated Rules 1.1(a) & (b) (competence, skill and care), 1.3(a) & (c) (diligence and zeal, and reasonable promptness), 1.4(a) & (b) (communication and failure to explain matters to client), 1.15(a) & (e) (reckless misappropriation), 1.15(a) (recordkeeping), 1.16(d) (failure to promptly refund unearned fee), 8.1(b) (knowing failure to respond to

Disciplinary Counsel), and 8.4(d) (serious interference with the administration of justice), and should receive the sanction of disbarment, with reinstatement conditioned on Respondent paying restitution as described above. We further recommend that Respondent's attention be directed to the requirements of D.C. Bar R. XI, § 14, and their effect on eligibility for reinstatement. *See* D.C. Bar R. XI, § 16(c).

AD HOC HEARING COMMITTEE

Mark E. Schamel, Chair



Thomas Alderson, Public Member

Christopher Leonardo, Attorney Member