DISTRICT OF COLUMBIA COURT OF APPEALS
BOARD ON PROFESSIONAL RESPONSIBILITY
HEARING COMMITTEE NUMBER SEVEN

In the Matter of:	:	
	:	
STEVE LARSON-JACKSON,	:	
	:	Board Docket No. 23-BD-045
Respondent.	:	Disciplinary Docket Nos. 2017-D280, 2019-D298, 2020-D207, 2022-D011
	:	
A Member of the Bar of the	:	
District of Columbia Court of Appeals	:	
(Bar Registration No. 414847)	:	

REPORT AND RECOMMENDATION OF HEARING COMMITTEE NUMBER SEVEN

Respondent, Steve Larson-Jackson, is charged with violating the following District of Columbia Rules of Professional Conduct ("D.C. Rules") and the following Maryland Rules of Professional Conduct ("MD Rules") which apply to his conduct as a licensed attorney in the District of Columbia under D.C. Rule 8.5(b)(1):

Count I (BOA IOLTA I): D.C. Rule 1.15(a), in that he failed to maintain complete records regarding his handling of trust account funds.

Count II (Washington Estate): D.C. Rule 1.15(a), in that he failed to maintain complete records of his handling of trust account funds and recklessly and/or intentionally misappropriated client funds, by taking entrusted funds for personal use before he had earned them.

Count III (Cyrus Matters): MD Rule 19-301.1, in that he failed to provide competent representation; MD Rule 19-301.5(a), in that he collected estate funds as fees without court approval; MD Rule 19-301.15(a), in that he engaged in reckless and/or intentional misappropriation, by collecting and using estate funds in payment of his fees without prior court approval and by transferring entrusted funds to accounts that held a negative balance; MD Rule 19-301.15(a), in that he commingled client funds with personal funds; MD Rule 19-301.15(a), in

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

that he failed to maintain complete records of his handling of trust account funds; MD Rule 19.308.4(c), in that he authorized disbursement of estate funds without court approval for reimbursement of a fiduciary and for payment of fess to himself and took fees in excess of what he disclosed to the court; and MD Rule 19.308.4(d), in that he engaged in conduct prejudicial to the administration of justice by failing to obtain court approval for fees and misappropriating client funds.

Count IV (Jones Estate): MD Rule 19-301.5(a), in that he collected an unreasonable fee by failing to obtain the required court approval; MD Rule 19-301.15(a), in that he failed to maintain complete records of his handling of trust account funds; MD Rule 19-301.15(a), in that he engaged in reckless and/or intentional misappropriation by using estate funds without court approval; MD Rule 19-308.4(c), in that he filed false accountings and collected and used estate funds without court approval; and MD Rule 19-308.4(d) in that he engaged in conduct prejudicial to the administration of justice by failing to obtain court approval for fees, misappropriating client funds, and filing false accountings.

Count V (Long Matter): D.C. Rule 1.4(a), in that he failed to keep his client reasonably informed about his hourly fees; D.C. Rule 1.5(a), in that he charged and collected an unreasonable fee; and D.C. Rule 1.15(a) in that he recklessly and/or intentionally misappropriated client funds, by taking entrusted funds for personal use before he had earned them.

Count VI (Paden Matter): MD Rule 19.301.4(a)(2) in that he failed to keep his client reasonably informed about his hourly fees; and MD Rule 19-301.15(a) in that he recklessly and/or intentionally misappropriated client funds by using estate funds without court approval and by spending more than he had earned.

Count VII (Scaife Matter): MD Rule 19-301.5(a), in that he collected an unreasonable fee; MD Rule 19-301.15(a), in that he engaged in reckless and/or intentional misappropriation by using estate funds without court approval and by spending more than he had earned; MD Rule 19-308.4(c), in that he collected and used estate funds without court approval; and MD Rule 19-308.4(d) in that he engaged in conduct prejudicial to the administration of justice by failing to obtain court approval before using estate funds.

Count VIII (BOA IOLTA II): D.C. Rule 1.15(a), in that he failed to maintain complete records of his handling of trust account funds and commingled personal funds with trust account funds.

Count IX (FINRA Application): D.C. Rule 8.4(c), in that he engaged in dishonesty by submitting false responses to FINRA under oath and by failing to update his application to FINRA to disclose subsequent investigations and litigations. Disciplinary Counsel contends that for committing all of the charged violations, Respondent should be disbarred.

Respondent contends that the District of Columbia Court of Appeals, the District of Columbia Board of Professional Responsibility and this Hearing Committee have no jurisdiction over his conduct before the Courts of the State of Maryland and that the Maryland Grievance Committee's decision not to pursue a complaint against him for his handling of the Goode Estate is dispositive of charges against him regarding that Estate (Count III); he therefore seeks dismissal of all counts relating to his conduct before the Courts of Maryland. Respondent further argues that he has the right to spend client funds once they are earned and that the clients who testified did not prove that he misappropriated or commingled their funds. He also contends that their testimony does not prove any of the charges against him by clear and convincing evidence. As to the charges that he took payment for Estate work without court approval, Respondent argues that Disciplinary

Counsel failed to prove that court approval was required for the estates in question because, he asserts, under Maryland law court approval is not required for payment from estates classified as "unsupervised." Finally, he argues that in the event there is to be any discipline he is entitled to disability mitigation under *In re Kersey*, 520 A.2d 321 (D.C. 1987) due to medical issues described in his expert's report.

As set forth below, the Hearing Committee finds that Respondent as a member of the Bar of the Court of Appeals of the District of Columbia is subject to jurisdiction of the Court of Appeals of the District of Columbia for his conduct before courts in the State of Maryland and that Disciplinary Counsel has proven by clear and convincing evidence that Respondent engaged in a lengthy pattern of intentionally misappropriating and commingling client funds, of intentionally failing to keep and maintain required records, of intentionally taking disbursements from estate accounts without court approval, of collecting unreasonable fees, and of failing to keep clients properly informed of their matters and that he engaged in dishonesty in certain of his filings with courts, in filings under oath with FINRA and by his failure to update such filings. We therefore recommend that Respondent be disbarred.

I. PROCEDURAL HISTORY

On September 28, 2023, Disciplinary Counsel served Respondent with a Specification of Charges ("Specification"). Respondent filed an Answer on November 1, 2023, and the hearing was originally scheduled to be held in May 2024. On March 11, 2024, Respondent's then-counsel, Justin Flint and Channing Shor, filed a motion to withdraw from the case. The Hearing Chair granted the motion on March 20, 2024, noting that it appeared that granting the motion would neither prejudice Respondent nor necessarily delay the hearing. On March 25, 2024, however, Respondent filed a motion requesting that the proceedings be paused for 90 days to allow him to

find new counsel. The Hearing Committee Chair denied the motion without prejudice to Respondent filing a motion to continue the hearing on the basis that he has hired new counsel or has made diligent efforts to do so. After Respondent hired new counsel, Wendell Robinson, the hearing was continued to August 19, 2024. The violations phase of the hearing concluded on August 23, 2024, and the mitigation phase was completed on September 24, 2024.

Respondent filed a motion to dismiss on June 28, 2024, and renewed his motion several times during the hearing. We include a recommended disposition of Respondent's motion below.

During the hearing, Disciplinary Counsel submitted DCX[1] 1-52, 54-93, 95-100, 103-104, 106-107, 109-111, 113-117, 119-125, 127-136, 138, 140-144, and 146. Those exhibits were admitted into evidence[2] except for DCX 85 and 140-144, which were excluded. Disciplinary Counsel called as witnesses Respondent, Raymond Paden (a former client), Azadeh Matinpour (Disciplinary Counsel's investigator), Allora Cyrus (a former client), Aimee Griffin (Ms. Cyrus's successor counsel), Kelly Unger (a custodian of records for FINRA), Matthew Hertz (an expert witness in probate litigation), and Diane Long (a former client). Respondent's counsel initially objected to Respondent being called as a witness and asserted that he had instructed Respondent to invoke his Fifth Amendment rights because testimony might subject him to accusations of perjury.[3] Tr. 55-58. The Hearing Committee Chair instructed Respondent to take the witness stand invoke his Fifth Amendment rights on a question-by-question basis. Tr. 58. Ultimately,

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[1] "DCX" Refers to Disciplinary Counsel's exhibits. "RX" refers to Respondent's exhibits. "Tr." refers to the transcript of the hearing held on August 19-23 and September 24, 2024.

[2] DCX 95, 103, and 113 were admitted over Respondent's objection.

[3] Respondent's counsel, Mr. Robinson, was particularly concerned about Respondent being impeached with the statements contained in his Answer, which had been drafted with prior counsel. Tr. 62-63. The Hearing Committee Chair explained that the Answer contained judicial admissions, and that Respondent was free to explain any disagreement he might have with his prior admissions, but could not refuse to testify on that basis. Tr. 63-64.

Respondent testified and did not invoke his Fifth Amendment right not to testify. However, at various points throughout the hearing, Respondent invoked his Fifth Amendment right not to respond to questions from Disciplinary Counsel. *E.g.*, Tr. 78-79, 84-85, 90, 100-101 (Larson-Jackson). Respondent did not present exhibits or witnesses, but renewed his motion to dismiss. Tr. 985-987.

Upon conclusion of the violations phase of the hearing, the Hearing Committee made a preliminary non-binding determination that Disciplinary Counsel had proven multiple ethical violations set forth in the specification of charges. Tr. 990; *see* Board Rule 11.11. In the sanctions phase of the hearing, Respondent presented evidence of disability in mitigation of sanction under *Kersey*.[4] When the hearing resumed on September 24, 2024, Respondent called as a witness Dr. Christiane Tellefsen and submitted RX 15, which was admitted into evidence. Tr. 1036. Disciplinary Counsel called as a witness Dr. Phillip Candilis and submitted DCX 147-153, which were admitted into evidence.

Disciplinary Counsel submitted its Proposed Findings of Fact, Conclusions of Law, and Recommendation as to Sanction on November 8, 2024, and Respondent filed his Proposed Findings of Fact, Conclusions of Law, and Recommendation as to Sanction on December 5, 2024. Disciplinary Counsel filed its Reply on December 1, 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 facts 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

[4] Respondent filed the required Notice of Intent to Raise Disability in Mitigation with the Board, pursuant to Board Rule 7.6, on November 1, 2023.

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 fact sought to be established").

1. Respondent is a member of the Bar of the District of Columbia Court of Appeals, admitted by motion on August 3, 1988, and assigned Bar number 414847. DCX 1. Respondent is also licensed to practice law in Maryland. Tr. 21.

2. From 2017 through 2024, Respondent was a solo practitioner of the law firm of Steve Larson-Jackson, at times doing business as The Law Firm of Larson-Jackson PC and as The Law Firm of LarJack PLLC. *See* Tr. 77-78, 114-115, 151 (Larson-Jackson); DCX 5; DCX 6..

3. Respondent had four Interest on Lawyer Trust Accounts ("IOLTA"). DCX 15; Tr. 388 (Matinpour)[5]. Respondent also maintained three operating accounts for his practice and a personal checking account. DCX 15; Tr. 388 (Matinpour). Those accounts are as follows:

IOLTA Accounts:

- Trust Account Bank of America IOLTA 3181 ("BOA IOLTA I"); DCX 5; Tr. 77:10 (Larson-Jackson);
- Bank of America IOLTA 1136 ("BOA IOLTA II"); DCX 6, 78, 114; Tr. 81:5-8 (Larson-Jackson);
- United Bank IOLTA 5955; DCX 8; Tr. 97-98 (Larson-Jackson);
- Citibank IOLTA 4074; DCX 10; Tr. 104-105 (Larson-Jackson);

Operating Accounts:

- Bank of America Operating Account 1123; DCX 7, 77, 113; Tr. 82 (Larson-Jackson);

[5] Citations to witness testimony from the hearing note the name of the testifying witness in parentheses immediately after the citation.

- United Bank Operating Account 1237; DCX 9 at 4; Tr. 101 (Larson-Jackson);
- Citibank Operating Account 1152; DCX 12; Tr. 110-111 (Larson-Jackson);

Personal Account:

- Citibank Account 9345; DCX 11; Tr. 108-109 (Larson-Jackson).

BOA IOLTA I - LACK RECORDS (COUNT I)

4. On August 3, 2017, Disciplinary Counsel received a notice from the Bank of America that Respondent's Bank of America IOLTA I had been was over-drafted on July 27. DCX 18.

5. In response to Disciplinary Counsel's inquiry regarding this overdraft, Respondent claimed that it was caused by a bounced check. DCX 20 at 1; Tr. 115, 143 (Larson-Jackson); Tr. 401 (Matinpour). Disciplinary Counsel then subpoenaed Respondent's financial records including retainer agreements, invoices, billing records, disbursement sheets, and client ledgers for the period June 1-August 31, 2017. DCX 21 (subpoena for documents); DCX 23 (letter asking about deposits); Tr. 399, 402 (Matinpour).

6. In response, Respondent admitted that he did not have disbursement journals, ledgers, or reconciliation records for the account. DCX 22 at 2. He stated that only one client was associated with this account, that all payments came from his one client, and that he took funds as the work was done. DCX 22 at 1-2; Tr. 403 (Matinpour).

7. In response to questions about three cash deposits, Respondent admitted that those were not related to the one client but could only speculate about the reason for the deposits. DCX 24 at 8-9; Tr. 398, 404 (Matinpour).

8. Respondent's lack of records prevented Disciplinary Counsel from auditing the Bank of America IOLTA I trust account to determine whether or the extent to which commingling or misappropriation occurred from June 1 to August 31, 2017.

GLENDA WASHINGTON (COUNT II) (D.C.)

9. In July 2018, Respondent entered into a retainer agreement with Glenda Washington to represent her as the personal representative in a probate matter in the District of Columbia, the Estate of Andrew J. Washington. DCX 24 at 16-19; Tr. 460 (Matinpour). The agreement called for an initial payment of $3,000 which Respondent would bill against at the rate of $400 an hour. DCX 24 at 17; Tr. 459-460 (Matinpour). The agreement also stated that Respondent would provide Washington with an invoice every thirty days once the $3,000 retainer payment was exhausted. DCX 24 at 17.

10. Washington wired $3,000 into Respondent's United Bank IOLTA (5955) on July 27, 2018, bringing the balance in that account to $4,111.57. DCX 16 at 2; DCX 25 at 2; DCX 30 at 3; Tr. 460 (Matinpour).

11. According to his billing records, Respondent did not begin work on Washington's case until August 2, 2018, when he worked 30 minutes and therefore earned $200. DCX 24 at 20; Tr. 470 (Matinpour).

12. Several days before he began work, Respondent withdrew $2,150 from the United Bank IOLTA (5955) by transferring $1,400 into his United Bank operating account (1237) and taking the other $750 in cash. DCX 16 at 2; DCX 25 at 1-2, 4. Thus by the end of the day on July 30, the trust account held $1,961.57, and was already more than $1,000 short of the $3,000 advance payment he received for the Washington matter. This was before he had completed any work on the matter. DCX 16 at 2; DCX 25 at 2; Tr. 461-462, 464 (Matinpour); *see* DCX 24 at 20 (invoice).

13. Most of the $1,400 that Respondent transferred to his operating account (1237) was immediately withdrawn. DCX 16 at 2; DCX 25 at 5, 8. Before the transfer, the operating account held $89.30. DCX 25 at 5; Tr. 462 (Matinpour); *see* DCX 16 at 2. On the same day he transferred $1,400 into the operating account, Respondent withdrew $1,350.00, leaving a balance of $139.30. DCX 16 at 2; DCX 25 at 5, 8; Tr. 462-463 (Matinpour).

14. On August 2, 2018—the day he earned $200 for working one half hour on the matter—Respondent transferred an additional $1,650 from his United Bank IOLTA (5955) to his United Bank operating account (1237), leaving just $311.57 in the trust account. DCX 16 at 3; DCX 24 at 20; DCX 25 at 9-10; Tr. 471 (Matinpour). He then immediately withdrew $1,700 from the operating account with a check written to himself. At the end of the day, the balance was back to $89.30. DCX 9 at 166, 169.

15. According to his own records, Respondent earned only $200 by working on Washington's case, and the trust account should therefore have held no less than $2,800 in unearned fees on August 2, 2018. DCX 16 at 3; DCX 24 at 20. In fact, the IOLTA account held only $311.57. DCX 16 at 3; DCX 25 at 10; Tr. 471 (Matinpour).

16. Respondent's records and the evidence cited above show that Respondent took funds from the Washington estate, failed to deposit or keep them in trust, and spent them personally, without having earned them.

UNITED BANK OVERDRAFT (COUNT II)

17. On March 5, 2020, after receiving a notice from United Bank that Respondent's trust account (5955) was overdrawn (DCX 26), Disciplinary Counsel asked Respondent to explain the circumstances of the overdraft and to describe his procedures for handling entrusted funds as

well as for complete financial records for the period from September 1, 2019, through November 30, 2019. DCX 27; DCX 23 at 1-3.

18. In follow-up communications, Disciplinary Counsel asked Respondent to provide additional financial records for the same United Bank trust account for July 1, 2018, through April 30, 2019. DCX 29 (letter and subpoena); DCX 31.

19. Respondent's records and the explanations he provided to Disciplinary Counsel were insufficient to determine the reason for the overdraft or to show that he handled entrusted funds in accordance with his fiduciary obligations. In particular, Respondent was unable to explain or provide documents supporting the source of multiple deposits and could not explain multiple withdrawals. DCX 24 at 3-4, 6; DCX 28; DCX 30 at 3-7 (period between July 1, 2018, and April 30, 2019).

20. For example, Respondent could not explain a $749 cash deposit into his IOLTA on September 6, 2019. DCX 24 at 3. He also could not explain transactions such as a cash withdrawal and an Office Depot purchase on August 6, 2018, nor could he identify any client to which those funds were attributable. Tr. 472 (Matinpour); *see* DCX 16 at 3.

21. In his response to questions regarding these transactions, Respondent explained that he "spent funds he had earned directly from his trust account on personal expenditures instead of transferring the earned funds to his operating account before using them" and in retrospect that he "should have maintained better records." DCX 30 at 7.

22. Respondent attributed the overdraft to a "mathematical error," DCX 28 at 1, but could not specifically identify the error or how it caused the overdraft.

23. Respondent's lack of records prevented Disciplinary Counsel from auditing the United Bank trust account to determine whether or the extent to which commingling or

misappropriation occurred from September to November 2019 or July 2018 to April 2019. *See* Tr. 451-457 (Matinpour); *see also* DCX 24, 28, 30, 32.

ALLORA CYRUS (COUNT III) (MD)

24. In February 2016, Allora Goode Cyrus retained Respondent in connection with probating the estate of her mother, Mary Goode. DCX 36; DCX 39 at 1; Tr. 602-604 (Cyrus); Tr. 931-932 (Hertz).

25. Respondent's retainer agreement required Cyrus to pay an advance fee of $3,000 to be earned at $340 an hour. DCX 36 at 1; Tr. 153, 217-218 (Larson-Jackson); Tr. 605 (Cyrus); Tr. 708-709 (Matinpour). He further agreed to send Cyrus a bill every 30 days "detailing the work that has been done the preceding month." DCX 36 at 1.

26. On February 26, 2016, Respondent opened the estate in the Orphans' Court for Baltimore County, Maryland; Cyrus was appointed to be the personal representative. DCX 39, 41, 56.

27. On the day she retained him, Cyrus paid Respondent the $3,000 advance fee with a personal check; Respondent cashed the check that same day. DCX 37 at 1-2; Tr. 605 (Cyrus); Tr. 708-709 (Matinpour). Respondent admitted he could not state where (or if) he deposited these funds into one of his trust accounts or any other accounts. *Compare* DCX 4 at 10, *with* Specification ¶ 32. *See* DCX 69 at 2; Tr. 709-710 (Matinpour).

28. The review of Respondent's IOLTA accounts by the Investigator for Disciplinary Counsel does not show the deposit of these funds into any of them, and we find that he did not deposit them into a trust account. We also find that Respondent did not seek or obtain approval

from the court[6] before cashing the check and that he had not earned a fee of $3,000 by this point in time.

29. Later that month, Cyrus paid Respondent an additional $3,000 by personal check. DCX 38; Tr. 617-618 (Cyrus). On February 26, 2016, Respondent cashed the second check. DCX 38. Again, Respondent could not state whether he deposited these funds into one of his trust accounts or any other accounts. *Compare* DCX 4 at 10-11, *with* Specification ¶¶ 33-34. *See* DCX 69 at 2. He did not seek or obtain approval from the court before demanding or cashing the second check.

30. In October 2016, Cyrus paid Respondent $1,000 from her personal funds, and he deposited the money into his Citibank trust account (4074) on October 28, 2016. A week later, by November 5, 2016, Respondent had withdrawn the funds from his Citibank trust account, leaving a balance of $29.42. DCX 16 at 10; DCX 34 at 6, 10-11; Tr. 714 (Matinpour). He did not seek or obtain approval from the court before withdrawing the funds.

31. On November 30, 2016, Cyrus paid Respondent an additional $6,000 which Respondent deposited into the Citibank trust account. DCX 16 at 10; Tr. 715 (Matinpour). Within five days, Respondent had withdrawn the $6,000 from his Citibank trust account leaving an account balance of $5.92. DCX 16 at 10; DCX 34 at 11, 17-18; Tr. 715 (Matinpour). Again, Respondent took these funds without seeking and obtaining approval for any attorney's fees from the court.

32. By December 5, 2016, Respondent had received a total $13,000 from Cyrus for the estate matter and spent it all without seeking and obtaining approval from the court to receive any

[6] As set forth below, *infra* note 12, under Maryland Estates and Trusts Code § 7-602, an attorney must file a petition with the court and the court must approve the petition before receiving fees for legal services provided to an estate or a personal representative.

fees for his services to Cyrus or the estate. *See* DCX 16 at 10; DCX 34 at 10, 17; DCX 37 at 2; DCX 38.

33. Two weeks later, on December 19, 2016, Respondent filed his first and only petition for legal fees with the Maryland court. DCX 49. The petition stated: "[t]his is the first request and there will be no request for additional attorneys' fees from the estate." DCX 49 at 2. In the petition, Respondent materially misrepresented the amount of his fees. He requested a total reimbursement of $6,500 for legal fees, which was only half of the $13,000 he had already received. DCX 49 at 2; Tr. 628-629 (Cyrus); Tr. 939 (Hertz).

34. The Maryland court approved the petition the day after it was filed, authorizing only $6,500 in fees not the $13,000 Respondent had already received. DCX 51. Nevertheless, he continued to seek, receive, and spend additional fees from Cyrus without any further authorization from the court.

35. On the same day that he filed his fee request, December 19, 2016, Respondent filed an accounting of the estate's assets and expenditures. DCX 50. The accounting stated that Cyrus had been reimbursed $6,500 for legal fees that had not been approved by the court in advance and $22,453 for personal funds expended for the benefit of the estate; it did not reveal, however, that the latter amount included legal fees which Cyrus had paid to Respondent. DCX 50 at 7; *see* DCX 138 at 3-4 (Hertz report). Cyrus did not see the petition before it was filed. Tr. 629-630 (Cyrus). By filing this and other accountings of estates he represented, Respondent showed that he knew that he was required to file accountings of those estates' management and that those accountings must accurately state the fees he had taken and earned.

36. On the day after he filed the petition, Respondent deposited a $3,000 check from the estate to his personal Citibank checking account (9345). DCX 16 at 11; DCX 34 at 23, 26-27;

Tr. 634-635 (Cyrus); Tr. 715 (Matinpour). Respondent regularly spent funds from the Citibank checking account to pay personal expenses, rather than to hold entrusted funds. *See* DCX 16 at 11; DCX 34 at 23, 29. At the time of the deposit, the personal checking account held $9.71, and he does not dispute[7] that the funds were personal, rather than entrusted. DCX 16 at 11; DCX 34 at 23. Because Respondent had represented to the court that only $6,500 in fees would be charged to the estate and he had already been paid in excess of that amount, the $3,000 then paid should have been treated as an advance fee and deposited into a trust account.

37. Respondent never deposited the $3,000 fee into a trust account and within the next few weeks spent nearly all of it on personal expenses, leaving a balance of only $33.25. DCX 16 at 11; DCX 34 at 29; Tr. 715-716 (Matinpour).

38. In November 2017, Respondent sent Cyrus an email invoice requesting she pay him an additional $14,981 in fees. DCX 54 at 1, 4; Tr. 637-639 (Cyrus). Even if Respondent considered the fees to have been earned, they should have been placed in a trust account because he had represented to the court his total fee would be only $6,500 and because he had not received the required court approval to take any additional fees. Nevertheless, Respondent instructed her to wire the funds to his United Bank operating account (1237) rather than any of his trust accounts. DCX 54 at 4; Tr. 638-640 (Cyrus). At the time, Respondent regularly spent funds from the United Bank operating account to pay business expenses, rather than to hold entrusted funds. *See* DCX 16 at 12; Tr. 717 (Matinpour).

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[7] When asked at the hearing whether the Citibank personal checking account belonged to him, Respondent claimed to not remember and asserted the Fifth Amendment; however, he did not contest that his name, his address, and a check bearing his signature appeared on an account statement (DCX 11). Tr. 108-110. In a September 2022 letter from his former counsel to Disciplinary Counsel, however, Respondent claimed to have "determined that he mistakenly deposited funds from Ms. Allora Cyrus into his personal account at Citibank," with an account number ending in 9345. DCX 69 at 2.

39. The following month, Cyrus paid Respondent $8,000 with a check drawn on her mother's estate. DCX 16 at 12; DCX 34 at 42; Tr. 640 (Cyrus); Tr. 718 (Matinpour). On December 4, 2017, Respondent deposited the check into the United Bank operating account. DCX 16 at 12; DCX 34 at 38, 41-42; Tr. 716-718 (Matinpour). Before the deposit, the account held $733.10; at the end of the day, it held $8,020.80. *See* DCX 16 at 12; DCX 34 at 38. Respondent does not dispute that the $733.10 balance included personal funds.[8]

40. Within a few days, Respondent withdrew $7,000 in cash from the account. DCX 16 at 12; DCX 34 at 36, 41; Tr. 716-717 (Matinpour). Within a few more days, he spent almost all of the rest of the money, leaving a balance of only $102.27 on December 11, 2017. DCX 16 at 12; DCX 34 at 36-37, 39; Tr. 717 (Matinpour). Respondent did not seek or obtain court approval for any additional fees.

41. A few weeks later, Respondent sent Cyrus a new invoice, claiming an additional $2,661.80 worth of work and a total outstanding balance of $9,642.80. DCX 55 at 1-3; Tr. 642 (Cyrus).

42. In January 2018, Cyrus sent Respondent a $2,661.80 check from the estate account. DCX 16 at 13; DCX 34 at 48; Tr. 648 (Cyrus); Tr. 719-720 (Matinpour). On January 9, 2018, Respondent deposited the check directly into his United Bank operating account (1237), which held a negative balance of -$92.27. DCX 16 at 13; DCX 34 at 45, 48; Tr. 718-720 (Matinpour). The deposit brought the balance to $2,569.53. DCX 16 at 13; DCX 34 at 45, 48. Again, Respondent had not sought or obtained court approval for any additional fees.

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[8] When asked at the hearing whether the United Bank operating account belonged to him, Respndent invoked the Fifth Amendment, but he did not contest that his name and address appeared on an account statement (DCX 9 at 55). Tr. 100-101. In his Answer to the Specification of Charges, however, Respondent admitted that "he had an operating account ending in 1237 with United Bank but upon [Respondent]'s information and belief this account was closed in January 2018." DCX 4 at 2.

43. Two days later, Respondent withdrew $665 in cash from the operating account. DCX 16 at 13; DCX 34 at 43, 47. He had not made any other deposits in the meantime. DCX 16 at 13; DCX 34 at 43, 47.

44. That same day, on January 11, 2018, Respondent transferred $1,859 from the United Bank operating account (1237) to the United Bank trust account (5955), leaving a balance of just $35.53 in the operating account. DCX 16 at 13; DCX 34 at 43, 45, 47, 50; Tr. 718-719 (Matinpour). He then spent almost all the money he had transferred to the trust account. By the end of January 2018, the trust account balance was just $154.05. DCX 16 at 13; DCX 34 at 49-51; Tr. 719 (Matinpour). Respondent still had not sought or obtained court approval to receive any additional fees from the estate.

45. Respondent advised Cyrus that she should reimburse herself from the estate for the amounts she paid him in legal fees without advising her that such payments must be approved in advance by the court. DCX 45 at 1; Tr. 232-234, 237-238 (Larson-Jackson); Tr. 620-621 (Cyrus).

46. Respondent's records and the evidence cited above show that Respondent repeatedly took funds from the Goode estate, failed to deposit them into trust, and spent them personally, all without obtaining court approval to do so and without rendering invoices to show that the amounts taken had even been earned.

47. In the course of handling the estate, Respondent advised Cyrus that she needed to establish a trust in her own name. Tr. 609, 625 (Cyrus). In March 2016, Respondent requested $4,000 to prepare the trust but did not provide Cyrus with an agreement setting forth the terms of the representation. Tr. 609-611, 681 (Cyrus). Cyrus gave Respondent a $4,000 check for the trust, which he deposited directly into his Citibank operating account (1152). DCX 16 at 9; DCX 34 at 2, 5; Tr. 711 (Matinpour).

48. No court approval was shown to be necessary for Respondent to take fees for the preparation of a trust for Ms. Cyrus personally, and although she referred to the amount to be paid for this work as a retainer, it was not shown by clear and convincing evidence that Respondent had not earned the $4,000 in fees before he deposited it into his operating account.

49. On September 11, 2020, Cyrus filed a disciplinary complaint against Respondent. DCX 60 at 3-9; Tr. 426-427 (Griffin); Tr. 653 (Cyrus). Disciplinary Counsel subpoenaed Respondent's file and financial records in the Cyrus matter. DCX 63 (subpoena for client file/financial records), 68, 70. In response to the subpoena and follow-on inquiries, Respondent provided incomplete records, preventing Disciplinary Counsel from fully auditing the relevant trust accounts. *See*, *e.g.*, DCX 68; DCX 66-67 (client file and financial records); DCX 69 (re payments/accounts); DCX 71-72, 74. Without having all of Respondent's client records including all retainer agreements, billing statements and client ledgers, Disciplinary Counsel was unable to determine the full extent of Respondent's misappropriations and commingling of funds from the Goode Estate. *See* Tr. 398-405 (Matinpour).

MICHAEL JONES (COUNT IV) (MD)

50. In February 2020, Respondent began representing Michael Jones, the personal representative in the Estate of George Druery Jones, a Maryland estate proceeding. *Compare* DCX 4 at 16, *with* Specification ¶ 65. *See* DCX 91 at 1; DCX 123 at 161. Respondent did not produce a retainer agreement in response to Disciplinary Counsel's demand. Tr. 721-722 (Matinpour).

51. On February 21, 2020, Jones initially paid Respondent a $3,000 advance fee. *Compare* DCX 4 at 16, *with* Specification ¶ 66. *See* DCX 91 at 1; Tr. 722-723 (Matinpour).

Respondent failed to maintain records demonstrating where he deposited the advance fee. Tr. 722 (Matinpour).

52. In October 2020, Jones paid Respondent an additional $1,500 by a personal check. DCX 91 at 2; DCX 77 at 6. Even though he had not received any court approval of his fees, Respondent did not deposit the check into trust. Instead, on October 30, 2020, he deposited it into his Bank of America operating account (1123). DCX 16 at 14; DCX 77 at 3, 5-6; *see* Tr. 724 (Matinpour).

53. Less than two months later, most of that money was gone; on December 22, 2020, the balance in the operating account was $293.80. DCX 16 at 14; DCX 77 at 7-17; Tr. 724 (Matinpour). The next day, Respondent deposited another check from the Jones estate, this time for $1,842.02, into the same operating account, even though he had received no court approval. DCX 16 at 15; DCX 77 at 17, 21-22.

54. Within a week, Respondent took $1,400 of the estate funds from the account in the form of two checks written to himself. DCX 16 at 15; DCX 77 at 18, 23-24. Tr. 725-726 (Matinpour). After those checks, the account held $647.43, DCX 16 at 15, meaning that nearly $1,400 of the $1,842 in estate funds Respondent had just deposited into the account was gone. Respondent had not sought or obtained authority from the Court to receive any fees from the estate.

55. On March 23, 2021, Respondent received a $2,600 wire from the Jones estate into the same operating account. DCX 16 at 16; DCX 77 at 27; Tr. 729 (Matinpour). A week later, a series of transfers left the balance at just $59.70, and the estate's money was gone. DCX 16 at 16; DCX 77 at 27, 29; Tr. 729-730 (Matinpour).

56. On April 19, 2021, Respondent received an $800 wire transfer from the Jones estate into the same operating account. DCX 16 at 16; DCX 77 at 35; Tr. 731 (Matinpour). Once again,

Respondent took the estate funds within a week, by which time the balance in Respondent's operating account dropped to $100.00. DCX 16 at 16; DCX 77 at 35-37; Tr. 731 (Matinpour).

57. Respondent filed an accounting of the Jones estate on June 21, 2021. DCX 81. Similar to the Cyrus matter, the accounting showed that Jones had reimbursed himself for $4,500 of legal fees paid to Respondent. DCX 81 at 6. It also showed that estate funds were used to pay Respondent; specifically, the December 2020 check for $1,842.02 and the wire transfers for $2,600 on March 23, 2021, and $800 on April 19, 2021. DCX 81 at 6, 24; Tr. 732-733 (Matinpour). As in the Cyrus matter, Respondent did not seek or obtain the court authorization for his fees, or for the personal representative to reimburse himself for fees paid to Respondent.

58. On August 13, 2021, still without having filed any petition for fees with the Maryland court, Respondent deposited a $4,000 check from the Jones estate into his Bank of America operating account (1123). DCX 16 at 19; DCX 77 at 57, 59-60; Tr. 735 (Matinpour). A few days later, he transferred the same amount—$4,000—from the operating account to his Bank of America IOLTA II (1136). DCX 16 at 19, 21; DCX 77 at 57; DCX 78 at 3; Tr. 735 (Matinpour). But by August 24, 2021, he then transferred over $900 of the funds back to his operating account. DCX 16 at 21; DCX 77 at 57; DCX 78 at 3-4. Respondent's transfers from the trust account left just $3,075.08 at the end of that day, $924.92 less than the $4,000 he should have kept in trust. DCX 16 at 21; DCX 78 at 4.

59. On September 8, 2021, Respondent finally filed a petition for fees with the court, seeking $11,066 for himself and $4,000 for Jones as personal representative. DCX 84 at 1; DCX 138 at 4. When he filed the petition, Respondent's Bank of America IOLTA II (1136) contained, at best, $3,000 of estate funds from the August 13 deposit. Although the court had not granted the petition, Respondent made multiple transfers from that account to his operating

account, reducing the balance in the trust account to $75.08 by October 7, 2021, thereby eliminating the possibility that any estate funds remained in trust. DCX 16 at 21; DCX 78 at 1-13; Tr. 735-736 (Matinpour).

60. As of April 5, 2023, the Maryland court had not granted any request by Respondent for fees. DCX 93 (docket sheet).

61. Respondent's records and the evidence cited above show that Respondent repeatedly took funds from the Jones estate, failed to deposit them into trust, and spent them personally, all without obtaining court approval to do so and without rendering invoices to show that the amounts taken had even been earned.

DIANE LONG (COUNT V) (D.C.)

62. On November 30, 2020, Diane Long retained Respondent to assist her in probating the estate of her twin sister in the District of Columbia. DCX 96; Tr. 875-878 (Long). Respondent's retainer agreement stated that his advance fee would be $5000 to be earned at an hourly rate of $300, and that he would send Long monthly invoices. DCX 96 at 1-2; Tr. 878 (Long); *see* DCX 100.

63. On the same day, Ms. Long wired Respondent the $5,000 advance fee, which was deposited into his Bank of America IOLTA II (1136). DCX 16 at 20; DCX 95 at 3; Tr. 878, 884 (Long); *see* DCX 100 at 4. That same day, Respondent received a $4,750 wire transfer from an unrelated party into the same account. DCX 16 at 20; DCX 95 at 3. Immediately before these payments, the trust account had a $100 balance. DCX 16 at 20; DCX 95 at 3; Tr. 486 (Matinpour). After the payments, the balance was $9,850. DCX 16 at 20; DCX 95 at 3.

64. In just over three months, Respondent made multiple cash withdrawals and transfers out of the trust account, leaving a balance of $1,000.08 on March 5, 2021. DCX 95 at 5-19; DCX 16 at 20.

65. According to his April 30, 2021 invoice to Long, however, Respondent had earned only $2,804.75 for his work on the Long matter by March 5, 2021. *See* DCX 16 at 23; DCX 98 at 2-8. He should therefore have had at least $2,195.25 of Long's $5,000 advance payment in his trust account, yet the account held just over $1,000. DCX 16 at 20, 23; Tr. 495-496 (Matinpour); *see* DCX 98 at 2.

66. That invoice showed that beginning February 26, 2021, Respondent started charging Long $400 per hour instead of the $300 per hour rate promised in the retainer agreement. Tr. 878, 884-885 (Long); Tr. 492 (Matinpour); DCX 96 at 1-2; *see* DCX 16 at 23-25; DCX 98 at 2-4. When Long inquired about the rate change, Respondent never gave an explanation. Tr. 885 (Long). Respondent overcharged Long more than $1,000 by billing at the higher rate from February 26, 2021 to April 30, 2021. *See* DCX 100; DCX 16 at 23-25 (April 30, 2021 overcharge of $250 is excluded from exhibit due to formatting glitch).

67. Respondent's records and the evidence cited above show that Respondent took funds from the Long estate and failed to deposit or keep them in trust without rendering invoices to show that the amounts taken had even been earned and significantly overcharged the estate without explanation.

RAYMOND PADEN (COUNT VI) (MD)

68. On January 25, 2021, Raymond C. Paden retained Respondent to assist him with probating the estates of his father and his brother and becoming the legal guardian of his mother. DCX 104; Tr. 321-322 (Larson-Jackson); Tr. 339-341 (Paden); *see also In re Estate of Ralph*

Cothran Paden Sr., Orphan's Court for Prince George's County, Maryland, Estate Number 120684 (2021); *In re Estate of Ralph Cothran Paden Jr.*, Orphan's Court for Prince George's County, Maryland, Estate Number 120685 (2021).

69. Shortly after retaining Respondent, Paden's mother passed away on February 11, 2021. DCX 111 at 1; Tr. 336 (Paden). Respondent and Paden agreed that Respondent would also assist in probating Paden mother's estate. Tr. 322 (Larson-Jackson); Tr. 354-355, 358-359 (Paden).

70. Respondent's retainer agreement required Paden to pay an advance fee of $5,000 that would be earned at a $300 hourly rate. DCX 104 at 2; Tr. 340-341, 344 (Paden); Tr. 503 (Matinpour). The agreement stated that Respondent would draw down from the advance and provide monthly bills after the advance fee was exhausted. DCX 104 at 2.

71. On January 26, 2021, Paden wired $5,000 to Respondent's BOA IOLTA II (1136). DCX 16 at 20; DCX 103 at 3; Tr. 346-347, 362 (Paden); *see* Tr. 486, 707 (Matinpour); Tr. 960 (Hertz). In the five weeks after receiving the funds, without securing the required court approval, Respondent made multiple cash withdrawals and transfers from the trust account, leaving a balance of only $1,000.08 on March 5, 2021. DCX 16 at 20; DCX 103 at 3-11; Tr. 707-708 (Matinpour); Tr. 960 (Hertz).

72. In addition, Respondent's records show that his work on the matter would not have justified the withdrawals even if he had obtained court approval. His invoice shows that Respondent earned only $956 for legal work in Paden's three family probate matters from January 26, 2021 to March 5, 2021. *See* DCX 16 at 26; DCX 110 at 1.

73. Respondent did not file a petition for attorney's fees until nearly a year later, on February 25, 2022, when he filed the first petition for attorney's fees in the mother's probate matter. DCX 109 at 1; DCX 111 at 4.

74. Soon thereafter, Respondent filed a petition for attorney's fees in the brother's probate matter on August 12, 2022. *See* Docket No. 31, *In re Estate of Ralph Cothran Paden Jr.*, Orphan's Court for Prince George's County, Maryland, Estate No. 120685.

75. According to the public docket, Respondent never filed a petition for attorney's fees in Paden's father's probate matter. *See In re Estate of Ralph Cothran Paden Sr.*, Orphan's Court for Prince George's County, Maryland, Estate No. 120684.

76. Respondent's records and the evidence cited above show that Respondent took funds from the Paden estates, failed to deposit them into trust, and spent them personally, all without obtaining court approval to do so and without rendering invoices to show that the amounts taken had even been earned.

VERNA SCAIFE (COUNT VII) (MD)

77. In July 2021, Verna Scaife retained Respondent in connection with probating in Maryland the estate of Freddie Mae Collins. DCX 115; DCX 116; Tr. 322 (Larson-Jackson). Scaife, who was personal representative, wrote a check to Respondent for $3,000 from the estate account as an advance fee to be earned at an hourly rate of $400. DCX 115 at 1; DCX 114 at 6. On August 30, 2021, Respondent deposited the check into his BOA IOLTA II (1136). DCX 16 at 21; DCX 114 at 3, 5-6.

78. From August 30, 2021, through October 7, 2021, Respondent made multiple transfers from the trust account holding Scaife's payment to his Bank of America operating account (1123) without securing any court approval, such that by October 7, 2021, the balance in the trust account was only $75.08. DCX 16 at 21; DCX 114 at 7-13.

79. In addition, Respondent's billing records show that he withdrew more than he claimed to have earned for his work on the matter. Respondent's October 7, 2021 invoice to Scaife

shows earned fees of only $2,054.09; therefore, even if he had obtained approval to withdraw that amount, he would still have been required to keep at least $945.91 of the $3,000 advance payment in trust, yet the trust account then held just $75.08. DCX 16 at 21, 29; DCX 117 (Invoice) at 1-2.

80. In days following October 7, Respondent spent all of the money he had transferred to the BOA operating account (1123) on personal expenses. DCX 16 at 27; DCX 113 at 1-9. By October 12, 2021, the balance in the account was $87.41. DCX 16 at 27; DCX 113 at 9.

81. Respondent did not file a request for attorney's fees until May 23, 2022, months after he had already spent Scaife's advance payment without authorization. DCX 116 at 4.

82. Respondent's records and the evidence cited above show that Respondent repeatedly took funds from the Collins estate, failed to deposit them into trust, and spent them personally, all without obtaining court approval to do so and without rendering invoices to show that the amounts taken had even been earned.

BOA IOLTA II (COUNT VIII)

83. Disciplinary Counsel opened an investigation into Respondent and his BOA IOLTA II (1136) in response to a notice from Bank of America regarding that account. DCX 120; Tr. 481-482 (Matinpour).

84. On December 14, 2021, Disciplinary Counsel issued a subpoena to Bank of America for records related to the BOA IOLTA II for the period of October 1, 2020, through November 30, 2021. DCX 121; Tr. 482-483 (Matinpour). Disciplinary Counsel sent Respondent a letter advising him that it had reviewed his bank records and had concerns about potential commingling of funds and multiple, round number cash withdrawals from the account. DCX 122; Tr. 482-484 (Matinpour). Disciplinary Counsel also sent Respondent a subpoena requiring him to

produce pertinent records for the period from October 1, 2020, through November 30, 2021. DCX 122; Tr. 482, 484 (Matinpour).

85. In response, Respondent was unable to identify any client matter for two deposits (for $350 and $1,218). *See* DCX 16 at 20-21; DCX 6 at 15, 37. *Compare* DCX 123 at 2, *with* DCX 125 at 3. Respondent admitted that $1,218 was misidentified but provides no further explanation. Tr. 487, 489-490 (Matinpour).

86. Respondent was unable to identify "with certainty" the purpose of a $1,000 transfer from his BOA operating account (1123) into his BOA IOLTA II (1136) in February 2021. *See* DCX 6 at 19; DCX 16 at 20; Tr. 487 (Matinpour). *Compare* DCX 123 at 2, *with* DCX 125 at 2-3.

FINRA MATTER (COUNT IX)

87. In 2019, Respondent applied to become an arbitrator for the Financial Industry Regulatory Authority ("FINRA"). DCX 129 at 6-26 (FINRA application); Tr. 323 (Larson-Jackson); Tr. 552-553 (Unger).

88. In his application, Respondent was asked:

> Has any other professional entity or body with licensing authority cited you for malpractice, denied, suspended, barred, or revoked your registration or license (e.g., insurance, real estate, securities, legal, medical, etc) or otherwise disciplined you; or restricted your activities in any way?

DCX 129 at 16 (question (e)). Respondent truthfully answered "No" to this question. *Id.*; Tr. 560 (Unger).

89. At the time, he was the subject of a disciplinary investigation in District of Columbia's Attorney Disciplinary Docket No. 2017-D280 (the "BOA I Recordkeeping Matter"), but he had not been suspended or otherwise disciplined in that matter. DCX 18-22.

90. However, question (f) of the FINRA application also asked whether Respondent had been "notified, in writing," that he was the subject of any "regulatory complaint or proceeding

that could result in a 'yes' answer" to the question above, or any "investigation that could result in a 'yes' answer" to the same question. DCX 129 at 16 (question (f)(i) and (f)(ii)).

91. Respondent falsely answered "no" to both questions. DCX 129 at 16; Tr. 328-329 (Larson-Jackson); Tr 560-561 (Unger). His answer to the first part of the above question was false because he had been notified in writing that he was the subject of a disciplinary complaint in the BOA I Recordkeeping Matter. DCX 19-21. His answer to the second part of the question was false because he had been notified in writing that Disciplinary Counsel had opened an investigation, and the investigation could result in suspension or other discipline. DCX 21.

92. Respondent also falsely answered "no" to a question (y), which asked whether he was "now the subject of any complaint, investigation or proceeding that could result in a 'yes' answer to" a range of questions including both the original question about discipline (question e), and the questions about notice of a complaint or investigation (question f(i) and f(ii)). DCX 129 at 20; Tr. 561 (Unger).

93. Question (bb) asked "[h]ave you ever been a named party in any type of civil litigation?" DCX 129 at 20. Respondent answered "yes." He was then required to explain the circumstances and attached supporting documentation. *Id.*

94. Respondent did not disclose at least six matters in which he was a named party, including a malpractice matter in which he was the defendant and a matter before the U.S. Internal Revenue Service involving an investigation of Respondent's tax liability over a period of eight years, namely:

- *Forghani v. Larson-Jackson*, 2004-CA-003705-C; DCX 131;
- *Angra v. Larson-Jackson*, 2006-CA-009000-M; DCX 132;
- *Battino v. Larson-Jackson*, 2008-SC(3)-3521; DCX 133;
- *Pavsner v. Larson-Jackson*, 2009-CA-002078-B; DCX 134;
- *U.S. v. Larson-Jackson*, 1:11-MC-00686-RWR; DCX 135; and

• *Internet Financial Services, LLC v. Law Firm of Larson-Jackson, P.C.*¸ 1:02-CV-01207-RMC; DCX 136.

95. On October 21, 2019, a FINRA employee sent Respondent an email attaching a list of cases, including some he had disclosed and two he had not, and asked Respondent to confirm that he was the party named in the cases. DCX 129 at 40; Tr. 572 (Unger).

96. Respondent acknowledged his involvement in the two cases, but he still did not disclose the additional matters. DCX 129 at 37-40; *see* Tr. 572 (Unger).

97. As part of his application, Respondent swore or affirmed that he read and understood his obligations and that his answers were true and complete to the best of his knowledge. DCX 129 at 26. His application also imposed on Respondent an ongoing duty to disclose adverse information to FINRA. DCX 129 at 26; Tr. 573, 578-580 (Unger).

98. On January 6, 2020, Respondent's application was approved. DCX 127; Tr. 552 (Unger).

99. By April 13, 2020, Respondent had successfully completed all components of FINRA's mandatory Basic Arbitrator Training program and was available for selection as an arbitrator. DCX 128; Tr. 554 (Unger).

100. In addition to the disciplinary investigation that Respondent failed to disclose in his application, Disciplinary Counsel docketed three more investigations afterward, 2019-D298, 2020-D207, and 2022-D011, and Respondent was also sued for malpractice by Cyrus in 2020. Tr. 580 (Unger); DCX 76 at 10-16; DCX 129 at 3.

101. Respondent did not disclose to FINRA the new disciplinary matters or that he had been sued for legal malpractice. DCX 129 at 3; Tr. 572-573, 580 (Unger).

102. In February 2023, Disciplinary Counsel notified FINRA about the pending disciplinary matters, and FINRA temporarily placed Respondent on inactive status pending the outcome of this case. Tr. 583, 585 (Unger).

103. As set forth above, Respondent's FINRA application was intentionally dishonest in numerous material respects and his failure to supplement that application with several material, required disclosures was also dishonest, and this dishonesty was practiced under oath.

III. CONCLUSIONS OF LAW

A. Respondent's Motion to Dismiss for Lack of Jurisdiction

Respondent moved to dismiss Counts III, IV, VI, and VII because the alleged misconduct took place in Maryland, and, he contends, enforcement of the Maryland Rules of Professional Conduct is "left to the sound discretion of the Maryland Attorney's Grievance Commission and the Maryland Office of Bar Counsel." R. Motion to Dismiss (filed June 28, 2024); *see also* R. Br. at 1-3.

Contrary to Respondent's argument, D.C. Bar Rule XI, § 1(a) provides:

> All members of the District of Columbia Bar, all persons appearing or participating pro hac vice in any proceeding in accordance with Rule 49(c)(1) of the General Rules of this Court, all persons licensed by this Court Special Legal Consultants under Rule 46(c)(4), all new and visiting clinical professors providing services pursuant to Rule 48(c)(4), and all persons who have been suspended or disbarred by this Court are subject to the disciplinary jurisdiction of this Court and its Board on Professional Responsibility . . . .

Thus, as the D.C. Court of Appeals has explained, "[t]he D.C. Bar's jurisdiction arises from consensual covenant, not geographic location." *In re O'Neill*, 276 A.3d 492, 499 (D.C. 2022) (citing *In re Ponds*, 888 A.2d 234, 235 n.1 (D.C. 2005)). Because Respondent continues to be a member of the D.C. Bar, the Court "is fully empowered to rescind its 'proclamation . . . that [he is] fit to be entrusted with professional and judicial matters, and to aid in the administration of justice . . . .'" *Id.* at 500 (quoting D.C. Bar Rule II, § 2(a)).

The Court regularly disciplines attorneys for violating other jurisdictions' Rules of Professional Conduct. *See In re Johnson,* 158 A.3d 913, 915 n.1 (D.C. 2017) ("A lawyer admitted to our bar may be disciplined here for conduct occurring in another jurisdiction, and in appropriate cases, as here, subject to discipline here based on the ethics rules of the other jurisdiction."); *see, e.g.*, *In re Tun*, 286 A.3d 538, 540 & n.1 (D.C. 2022) (disbarring the respondent for violations of Maryland Rules 19-303.3(a)(1) and 19-308.4(b), (c), and (d)). The D.C. Court of Appeals has full jurisdiction to impose discipline arising from conduct before a Maryland court even if Maryland Bar Counsel declined to file charges[9] or its charges were dismissed. *See, e.g.*, *In re Wilde*, 299 A.3d 592 (D.C. 2023) (disbarring the respondent for theft, forgery, and dishonesty even though charges of theft and forgery brought by Maryland's Attorney Grievance Commission based on the same underlying facts had been dismissed by a Maryland court).

Rather than recommending dismissal of the charges based on conduct taking place in Maryland, the Committee will apply the Maryland Rules as required by D.C. Rule 8.5(a) (choice of law), as explained below.

B. Choice of Law

D.C. Rule 8.5(b) governs choice of law and provides that only one set of rules can apply to particular conduct before a tribunal:

> (1) For conduct in connection with a matter pending before a tribunal, the rules to be applied shall be the rules of the jurisdiction in which the tribunal sits, unless the rules of the tribunal provide otherwise . . . .

Thus, the Maryland Rules apply to the alleged misconduct set forth in Counts III, IV, VI, and VII because they involved conduct in connection with matters pending before tribunals in Maryland.

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[9] The Maryland Attorney Grievance Commission dismissed a complaint Ms. Cyrus filed against Respondent at the same time she filed complaints with the District of Columbia and Florida Bars. DCX 146; *see* Tr. 668-678.

C. Respondent Violated D.C. Rule 1.15(a) and Maryland Rule 19-301.15(a) by Engaging in Reckless and Intentional Misappropriation as charged in Counts II-VII.

D.C. Rule 1.15(a) provides, in relevant part: "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)." Similarly, Maryland Rule 19-301.15(a) provides, in relevant part, "Funds [of clients or third persons] shall be kept in a separate account maintained pursuant to Title 19, Chapter 400 of the Maryland Rules, and records shall be created and maintained in accordance with the Rules in that Chapter." Both Rules thus prohibit misappropriation, which has been defined as "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) (quoting *In re Anderson*, 778 A.2d 330, 335 (D.C. 2001) (alterations in original)). Similarly, in Maryland, "'any unauthorized use by an attorney of [. . .] funds entrusted to him [or her],' whether or not temporary or for personal gain or benefit" constitutes misappropriation. *Attorney Grievance Comm'n v. Glenn*, 671 A.2d 463, 481 (Md. 1996) (quoting *In re Harrison*, 461 A.2d 1034, 1036 (D.C. 1983)).

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)). Funds are "entrusted" when the lawyer is "imbued with authority to prevent their unauthorized use." *Id.* at 624 (applying holding prospectively); *see Anderson*, 778 A.2d at 335; *Harrison*, 461 A.2d at 1036 (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)). Disciplinary Counsel bears the burden of proving that any fees Respondent took for himself had not been "earned or incurred" within the meaning of D.C. Rule 1.15(e) (or the corresponding Maryland Rule, 19-301.15(c)). *See In re Alexei*, 319 A.3d 404, 407-08 (D.C. 2024); *see also Attorney Grievance Comm'n v. Stinson*, 50 A.3d 1222, 1232 (Md. 2012) (per curiam) (rejecting a respondent's argument that he had already earned an initial fee payment the time he received it because "[t]he time Respondent spent with the client prior to receipt of the retainer was part of the non-billable, free, initial consultation").

In both D.C. and Maryland, misappropriation is essentially a *per se* offense and does not require proof of improper intent. *See Anderson*, 778 A.2d at 335[10]; *Glenn*, 671 A.2d at 475. Thus, an attorney commits "unauthorized use" when either "the client did not consent to the attorney's use of the funds" or "the funds or assets were accessed without required prior approval by a court" where necessary. *Harris-Lindsey*, 242 A.3d at 624 (applying holding regarding court approval prospectively).

Particularly relevant to this matter is the point *Harris-Lindsey* teaches that D.C. Rule 1.15(a) and Maryland Rule 19-301.5(a) not only apply to circumstances where an attorney is obligated to keep funds in trust because the client has not authorized their release but those rules also apply to circumstances in which a court's approval is required to allow an attorney to take the funds and that approval has not been secured. As the Court expressly held in the context of misappropriation, "'unauthorized use' of funds can be established by proving *either* that the client did not consent to the attorney's use of the funds *or that the funds or assets were accessed without required prior approval by a court*." *Id.* at 626 (emphasis supplied). The Court of Appeals of

[10] The Court has observed that all findings of misappropriation to date have involved "some finding of a culpable mindset at least rising to the level of negligence." *In re Krame*, 284 A.3d 745, 767 n.11 (D.C. 2022).

Maryland (now Supreme Court of Maryland) has similarly explained that reimbursing oneself with estate funds without required court authorization constitutes misappropriation. *See Attorney Grievance Comm'n v. Woolery*, 198 A.3d 835, 854-55 (Md. 2018).

Consistent with a common understanding, misappropriation 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); *see also 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)). This comports with logic: If the trust account has less than what the client is owed from that account, then the attorney must have taken some. This is the case even when the attorney has sufficient cash on hand in other accounts to cover the shortage. *See Pels*, 653 A.2d at 394.

If misappropriation is proven, Disciplinary Counsel must then establish whether the misappropriation was intentional, reckless, or negligent. *See Anderson*, 778 A.2d at 336. Intentional misappropriation most obviously occurs where an attorney takes a client's funds for the attorney's personal use. *See 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 (D.C. 2020) (per curiam); *see also In re Delsordo*, 241 A.3d 305, 307 (D.C. 2020) (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)).

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, nondeliberate, 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).

Respondent is charged with misappropriation of client funds from the Washington Estate (Count II), The Goode Estate (Count III), the Jones Estate (Count IV), the Long Estate (Count V), the Paden Estate (Count VI) and the Scaife Estate (Count VII). We address each seriatim.

Washington Estate (Count II). Respondent's retainer agreement for the Washington Estate confirms that client funds were entrusted to Respondent when Ms. Washington sent a "retainer payment" to Respondent *against* which he would bill and requiring direct payment *after the retainer payment was exhausted*. DCX 24 at 17. This clearly shows he was to hold client funds until they were earned. *See In re Mance*, 980 A.2d 1196, 1202 (D.C. 2009) ("[W]hen an attorney receives payment of a flat fee at the outset of a representation, the payment is an 'advance[ ] of unearned fees' and 'shall be treated as property of the client . . . until earned unless the client consents to a different arrangement.'" (quoting Rule 1.15(d) (now 1.15(e))). Thus, client funds were entrusted to Respondent. The evidence without contradiction also showed that Respondent received the $3,000 retainer payment on July 27, 2018 and three days later took $2,150 of it for personal use even though he had then earned only $200 and had not received client approval to take these funds. Findings of Fact, above, ("FF") 9-16. We therefore find that Respondent misappropriated these funds.

Goode Estate (Count III). Respondent's retainer agreement in the Goode Estate is similar to his retainer agreement for the Washington Estate in most respects material to these proceedings. *Compare* DCX 36, *with* DCX 24 at 16. Respondent's retainer agreement for the Goode Estate confirms that client funds were entrusted to Respondent when Ms. Cyrus sent a "retainer fee" payment to Respondent *against* which he would bill and requiring direct payment *after the retainer payment was exhausted*. DCX 36 at 1. There can also be no doubt that Respondent was fully aware that court approval was necessary before he could take possession of estate funds for

payment of his fees in that he in fact filed a petition for fees with the Maryland court on December 19, 2016. FF 33.[11] Thus, client funds from the Goode Estate were entrusted to Respondent. The evidence without contradiction also showed that Respondent received the $3,000 retainer payment from Ms. Cyrus the day that she retained him which he did not deposit into a trust account. FF 27-28. Thereafter, the Goode Estate paid Respondent an additional $3,000 in February of 2016, which Respondent cashed. FF 29. The Goode Estate also paid $1,000 in October of 2016 and $6,000 on November 30, 2016; both deposits were made to his Citibank trust account, but, on both occasions, Respondent withdrew nearly all of the funds within one week. FF 30-31. None of those three payments was approved by the court. FF 29-32. We therefore find that Respondent misappropriated these funds.

On December 19, 2016, Respondent filed his first and only petition for legal fees from the Goode Estate which requested approval of $6,500 in legal fees and misrepresented that this would be the total charge for fees from the estate even though Respondent had already taken $13,000 in fees. FF 33-34. This misrepresentation to the court is further proof that Respondent committed misappropriation.

Notwithstanding the representation to the court that he would be paid a total of $6,500 in fees and although he had already received $13,000, he took, an additional $8,000 in fees from the estate in December of 2017, and $2,661.80 in January of 2018[12], none of which he deposited into

[11] Under Maryland Estates and Trusts Code § 7-602, an attorney must file a petition with the court and the court must approve the petition before receiving fees for legal services provided to an estate or a personal representative. DCX 138 at 3; Tr. 934-935, 943, 956 (Hertz); Tr. 419-421 (Griffin).

[12] We note that on January 11, 2018, Respondent transferred $1,859 from his operating account into his United Bank Trust Account and that these funds were most certainly from the Goode Estate, but which he nevertheless promptly spent without court approval. FF 44.

a trust account, all of which he took personally and no payment for which had been approved by the court. FF 38-42. We therefore find that Respondent misappropriated these funds as well.

Because it was not shown by clear and convincing evident that Respondent took the $4,000 Ms. Cyrus paid for her personal estate planning before it was earned and because no court approval was shown to be necessary for this fee to be taken, we do not find that his taking of these funds directly into his operating account was a misappropriation. *See* FF 47.

On January 9, 2018, Respondent deposited a $2,661.80 check from the Goode Estate directly into his United Bank operating account, which held a negative balance of $-92.27 at the time, without seeking or obtaining court approval. *See* FF 42. Respondent thus misappropriated $92.27 when he made the deposit. *See Attorney Grievance Comm'n v. Frank*, 236 A.3d 603, 614-615 (Md. 2020).

Jones Estate (Count IV). As payment for fees on the Jones Estate, Respondent took $3,000 as an advance fee on February 21, 2020, $1,500 in October 2020, $1,842.02 on December 23, 2020, $2,600 on March 23, 2021, $800 on April 19, 2021, and $4,000 on August 13, 2021, none of which he deposited into a trust account, all of which he took personally and no payment for which was approved by the court. FF 51-58. Again, there can be no doubt that Respondent was fully aware that court approval was necessary before he could take possession of estate funds for payment of his fees in that he in fact filed a petition for fees with the Maryland court on September 8, 2021. FF 59. This petition sought approval for only $11,066 even though he had already taken $13,742.02 in fees from the estate. *Id*. Therefore, we again find that these transfers were misappropriations. In further support of which we note that between August and October 2021, Respondent transferred funds back and forth between his operating account as necessary to

try to maintain positive balances in each in complete disregard for whether the funds were to be held in trust or paid to him. FF 58-59.

Long Estate (Count V). On November 30, 2020, Ms. Long wired $5,000 to Respondent as a retainer for work on the estate, which he deposited into the Bank of America IOLTA II. FF 63. On April 30, 2021, Respondent rendered an invoice to the estate showing that by March 5, 2021, he had earned $2,804.75, for work he had done on the estate, which necessitated that he then have at least $2,195.25 in the trust account; however, he then had only $1000.08 in the trust account, showing that he had misappropriated at least $1,195.17[13] in funds that he had not earned and which should have been maintained in trust. We therefore find that Respondent misappropriated funds form the Long Estate.

Paden Estates (Count VI). Respondent's January 25, 2021 retainer agreement for the Paden Estates provided for a $5,000 advance retainer that he would bill against. FF 68, 70. On January 26, 2021, Mr. Paden wired $5,000 to respondent's Bank of America IOLTA II and, as stated above, by March 5, 2021, there was only $1,000.08 in that account. FF 71. Respondent's invoice for work on the Estates[14] ending with time entered as of April 24, 2021, shows that by March 5 he had earned only $956, requiring that he leave a balance of at least $4,044 in the trust account for the Paden retainer in addition to what he should have had in that account from the Long retainer. FF 72. We therefore find that Respondent misappropriated at least $3,043.92 from the Paden Estate which had not been earned. In addition, Respondent failed to file a fee petition

[13] We say at "least due" that amount had been misappropriated due to the fact that respondent had deposited other funds into the trust account on November 30, 2021 and there was no evidence regarding whether or not those funds were properly removed. FF 63.

[14] While this invoice is labelled "Estate of Mae L. Paden," it clearly bills for work done on all three estates. *See* DCX 110.

in any of the Paden Estates until February 25, 2022, providing an additional basis upon which to conclude that the fees taken from the Paden estate before that time were taken without approval and were therefore misappropriated.

Collins Estate (Count VII). On August 30, 2021, Respondent deposited a $3,000 advance retainer for work on the Collins estate into his Bank of America IOLTA II. FF 77. By October 7, 2021, Respondent had withdrawn substantially all of the retainer for personal use, leaving a balance in the account of only $75.08. FF 78. His October 7, 2021 invoice to Mr. Scaife showed that as of that date he had earned fees of only $2,054.09, indicating that he had taken at least $870.83 of entrusted funds without authority, regardless of whether other client funds should have been in the account. FF 79-80. In addition, Respondent did not file a petition for court approval of his fees until February 25, 2022. FF 81. We therefore find that Respondent misappropriated at least $2,024.81 from the Collins Estate.

* * *

We next address the quality of the five foregoing instances of misappropriation by Respondent. The clearly established facts regarding these misappropriations show that Respondent regularly accessed entrusted funds without client or court approval, transferred them at whim to his operating and personal accounts, often when they had very low balances, used them for purely person expenditures, and sometimes transferred funds back into the trust account when he had sufficient funds to do so. In the Maryland matters, he did so with full knowledge that he had not secured the approval required from the court—a requirement he understood, demonstrated by the fact that he regularly sought approval long after taking the funds[15]—and without the consent

[15] In response to a question about the Goode estate, Respondent testified that court approval was not required for unsupervised estates, but then conceded that he did not remember whether the Goode estate was supervised or unsupervised. Tr. 234-236.

of the client. He knew that his withdrawals were unauthorized by the court and/or his clients, as shown by his occasional efforts to replenish the funds wrongfully taken. Respondent filed petitions for legal fees and estate accountings that understated the fees that he had already taken, further showing his intention to take fees beyond those to which he was entitled and before necessary approvals. This pattern shows a very clear intention by Respondent to use entrusted funds as his own whenever he "needed" them and too often to try to cover his tracks by returning some of them to their rightful place as client entrusted funds. We therefore necessarily find that his conduct was not "merely" reckless. He did not "merely" disregard his obligation to protect funds, he specifically put them into the trust accounts, then took them and used them and sometimes tried to cover the wrongful taking, all in blatant disregard of his elemental obligations as an attorney. By treating entrusted funds as his own, Respondent engaged in intentional misappropriation in Counts II-VII. *See Anderson*, 778 A.2d at 339.

D. Respondent Violated D.C. Rule 1.15(a) and Maryland Rule 19-301.15(a) by Engaging in Commingling in Counts III and VIII.

D.C. Rule 1.15(a) and Maryland Rule 19-301.15(a) both provide, in relevant part, that: "A lawyer shall hold property of clients or third persons that is in the lawyer's possession in connection with a representation separate from the lawyer's own property."[16] Both Rules thus prohibit commingling, which occurs when an attorney fails to hold entrusted funds in an account separate from his own funds. *See, e.g.*, *Attorney Grievance Comm'n v. Cherry-Mahoi*, c, 71-72 (Md. 2005); *In re Moore*, 704 A.2d 1187, 1192 (D.C. 1997) (per curiam). Commingling is established "when a client's money is intermingled with that of his attorney and its separate identity is lost so that it may be used for the attorney's personal expenses or subjected to the claims

[16] The Maryland Rule uses the word "attorney" in place of "lawyer."

of its creditors." *In re Hessler*, 549 A.2d 700, 707 (D.C. 1988) (quoting *Black v. State Bar*, 368 P.2d 118, 122 (Cal. 1962) (en banc)); *see also Attorney Grievance Comm'n v. O'Neill*, 271 A.3d 792, 797 (Md. 2022) (explaining that the prohibition on commingling "protect[s] client funds from an attorney's creditors, 'provides peace of mind and order to disputing parties,' and generally 'reinforce[s] the public's confidence in our legal system.'" (quoting *Attorney Grievance Comm'n v. Calhoun*, 894 A.2d 518, 543 (Md. 2006))). To establish commingling, the entrusted and non-entrusted funds must be in the same account at the same time. *See In re Doman*, 314 A.3d 1219, 1230 (D.C. 2024) (per curiam). "The rule against commingling has three principal objectives: to preserve the identity of client funds, to eliminate the risk that client funds might be taken by the attorney's creditors, and most importantly, to prevent lawyers from misusing/misappropriating client funds, whether intentionally or inadvertently." *In re Rivlin*, 856 A.2d 1086, 1095 (D.C. 2004).

While Respondent clearly misappropriated $13,000 in checks that Ms. Cyrus gave him for work on the Goode Estate, is not clear whether Respondent simply cashed these checks or comingled them with his own funds. FF 27-32. It is clear, however, that on December 20, 2016, Respondent deposited a $3,000 check from the Goode Estate into his personal Citibank checking account, and that on December 4, 2017, he deposited an $8,000 check from the Goode Estate into his United Bank operating account. FF 36-44. All of these checks represented entrusted client funds because he had already received as fees an amount in excess of the $6,500 total that the court had approved as fees for the estate work. FF 38. Respondent does not dispute that both personal checking accounts and held non-entrusted funds at the time of those deposits. FF 36, 39. Thus, in each of these instances, he failed to hold entrusted funds in an account separate from his own funds and therefore committed the charged commingling in each of them.

Respondent was unable to explain with certainty various transactions in his Bank of America IOLTA II. FF 83-86. And while this provides additional proof of his failure to maintain appropriate records which we discuss below, we cannot find that this establishes wrongful comingling of client entrusted funds with clear and convincing evidence, as charged in Count VIII of the specifications because it is unclear whether the funds held in the Bank of America IOLTA II held personal and/or entrusted funds during the time period covered in Count VIII.[17]

E. Respondent Violated D.C. Rule 1.15(a) and Maryland Rule 19-301.15(a) by Failing to Keep Complete Records of Entrusted Funds.

Rule D.C. Rule 1.15(a) requires lawyers to keep "complete records of [trust] account funds and other property" and preserve them "for a period of five years after termination of the representation." Maryland Rule 19-301.15(a) similarly requires complete records of entrusted funds to be kept for "at least five years after the date the record was created." "Financial records are complete only when an attorney's documents are 'sufficient to demonstrate [the attorney's] compliance with his ethical duties.'" *In re Edwards*, 990 A.2d 501, 522 (D.C. 2010) (per curiam) (appended Board Report) (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; *see also, e.g.*, *Attorney Grievance Comm'n v. Roberts*, 904 A.2d 557, 566 (Md. 2006) (finding record-keeping violation where attorney had no business records showing how much money he was holding for client and medical providers); *In re Pels*, 653 A.2d 388, 396 (D.C. 1995) (finding record-keeping violation when attorney showed a "pervasive failure" to maintain

[17] Disciplinary Counsel's brief does not contend that Respondent engaged in commingling in Count VIII, as alleged in the Specification of Charges.

contemporaneous records accounting for the flow of client funds within various bank accounts). Thus, "[t]he records themselves should allow for a complete audit even if the attorney or client is not available." *Edwards*, 990 A.2d at 522. Respondent is charged with failing to keep complete records in Counts I-IV and VIII, which we address seriatim.

Count I. Alerted to possible problems with Respondent's Bank of America IOLTA I account by a notice from the bank, Disciplinary Counsel subpoenaed Respondent's records relating to it for the period June 1 to August 31, 2017. In response to the subpoena, Respondent admitted that he did not have disbursement journals, ledgers, or reconciliation records for the account. FF 4-6. Neither could he not explain why funds were deposited into the account. FF 7. Despite considerable effort by Disciplinary Counsel's investigator, they were unable to determine, beyond what has been found to have occurred in these proceedings, whether other commingling had occurred and, if so, to what extent. We therefore find that Respondent failed to maintain complete records of the trust funds deposited or which should have been deposited into this account.

Count II. After Disciplinary Counsel received a notice from United Bank that Respondent's trust account there was overdrawn, Disciplinary Counsel asked Respondent to explain the circumstances of the overdraft, to describe his procedures for handling entrusted funds, and to produce complete financial records for the period from September 1, 2019 through November 30, 2019 and for July 1, 2018 through April 30, 2019. FF 17-18.

Respondent's records and the explanations he provided to Disciplinary Counsel were insufficient to determine the reason for the overdraft or to show that he handled entrusted funds in accordance with his fiduciary obligations. In particular, Respondent was unable to explain or provide documents supporting the source of multiple deposits and could not explain multiple withdrawals. FF 19. Respondent explained that he "spent funds he had earned directly from his

trust account on personal expenditures instead of transferring the earned funds to his operating account before using them" and in retrospect that he "should have maintained better records." FF 21. Respondent attributed the overdraft to a "mathematical error," but could not specifically identify the error or how it caused the overdraft. FF 22. It is clear that Respondent's lack of records prevented Disciplinary Counsel from auditing the United Bank trust account to determine whether or the extent to which commingling or misappropriation occurred from September to November 2019 or July 2018 to April 2019. FF 23. We therefore find that Respondent failed to maintain complete records of the trust funds deposited or which should have been deposited into this account.

Count III. On September 11, 2020, Ms. Cyrus filed a disciplinary complaint against Respondent, in response to which Disciplinary Counsel subpoenaed Respondent's file and financial records in the Cyrus matter. FF 49. In response to the subpoena and follow-on inquiries, Respondent provided incomplete records; among the missing records requested were client retainer agreements, billing statements, and client ledgers. *Id*. Without having all of the client records that Respondent should have created, maintained, and produced, Disciplinary Counsel was unable to determine the full extent of Respondent's misappropriations and comingling of funds from the Goode Estate. *Id*. We therefore find that Respondent failed to maintain complete records of the funds from the Goode Estate that were deposited or that should have been deposited into a trust account.

Count IV. In response to Disciplinary Counsel's demand, Respondent failed to produce records sufficient to show if he had entered into a written retainer agreement with the personal representative of the Jones Estate and what he did with the $3,000 advance fee paid to him for his work on that estate. FF 50-51. We therefore find that Respondent failed to maintain complete

records of his representation of the Jones Estate and of the disposition of the funds from the estate that were deposited or that should have been deposited into a trust account.

Count VIII. Disciplinary Counsel opened an investigation into Respondent and his BOA IOLTA II in response to a notice from Bank of America regarding that account. Disciplinary Counsel then issued a subpoena to Bank of America for records related to this account and a subpoena requiring him to produce pertinent records for the period from October 1, 2020, through November 30, 2021. FF 84. In response to a letter to Respondent advising him that it had reviewed his bank records and had concerns about potential commingling of funds and multiple, round number cash withdrawals from the account, Respondent was unable to identify any client matter for various transactions from and to the account. FF 84-86. We therefore find that Respondent failed to maintain complete records of the trust funds deposited or which should have been deposited into this account.

F. Respondent Violated Maryland Rule 19-301.1 by Failing to Provide Competent Representation to the Goode Estate (Count III).

Maryland Rule 19-301.1 provides that "[a]n attorney shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation." *See also Attorney Grievance Comm'n v. Framm*, 144 A.3d 827, 842 (Md. 2016) ("The essence of competent representation under [Maryland Rule] 1.1 is adequate preparation and thoroughness in pursuing the matter." (citation omitted)). This requires "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." *See* Maryland Rule 1.1, cmt. [5]. Consequently, "[a]ttorneys remain potentially susceptible to violating [Maryland Rule] 1.1 notwithstanding they possess the requisite skill or knowledge to represent a client." *Attorney Grievance Comm'n v. Adams*, 109 A.3d 114, 125 (Md.

2015). Most pertinent to this matter, the Maryland Supreme Court has held that "an attorney's failure to maintain [client] funds in a proper trust account demonstrates incompetence." *Attorney Grievance Comm'n v. Brooks*, 258 A.3d 266, 286 (Md. 2021) (internal quotation marks and citation omitted). Accordingly, for the same reasons that establish Respondent misappropriated and commingled funds from the Goode Estate, his handling of those funds also establishes that he violated Maryland Rule 19-301.1.

G. Respondent was Not Shown to Have Violated D.C. Rule 1.4(a) and Maryland Rule 19-301.4(a)(2) by Failing to Keep Clients Reasonably Informed in Counts V and VI.

D.C. 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." Maryland Rule 19-301.4(a)(2) similarly provides that "An attorney shall . . . keep the client reasonably informed about the status of the matter." Respondent was charged with violating these rules as to the Long and the Paden matters. While certainly questions were raised and other Rule violations were proven regarding Respondent's conduct with respect to his representation of the Long and Paden Estates, Disciplinary Counsel did not establish by clear and convincing evidence that Respondent's level of communication with his clients in Counts V and VI was not reasonable. Indeed, Disciplinary Counsel does not contend in its post-hearing brief that D.C. Rule 1.4(a) and Maryland Rule 19-301.4(a)(2) were violated. We therefore do not find that violations of these specific rules were proven by clear and convincing evidence.

H. Respondent Violated D.C. Rule 1.5(a) and Maryland Rule 19-301.5(a) by Charging Unreasonable Fees to the Goode, Jones, Long and Collins Estates (Counts III-V, VII).

D.C. Rule 1.5(a) requires that "[a] lawyer's fee shall be reasonable." Maryland Rule 19-301.5(a) similarly provides that "[a]n attorney shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses." The D.C. Court of Appeals 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) . . . .").

In both the District of Columbia and Maryland, collecting a fee without obtaining a court's approval, when required, violates Rule 1.5(a). *See, e.g.*, *Attorney Grievance Comm'n v. Powell*, 192 A.3d 633, 650-651 (Md. 2018); *In re Pye*, 57 A.3d 960, 974 (D.C. 2012) (per curiam) (appended Board Report). Specifically, the Maryland Supreme Court has held that accepting payments from clients for legal services performed prior to filing the required petition with the Maryland probate court violates Rule 19-301.5(a)'s prohibition on taking an unreasonable fee. *Attorney Grievance Comm'n v. Kendrick*, 943 A.2d 1173, 1184 (Md. 2008). Accordingly, Respondent's conduct described in the Goode, Jones, and Collins Estates of failing to secure the required court approval before taking his fees also establishes that he took an unreasonable fee in violation of Maryland Rule 19-301.5(a).

In addition, although Respondent did not need advance court approval in order to withdraw his fees in the Long matter, he violated D.C. Rule 1.5(a) by overcharging for his work, applying a $400 hourly rate instead of the $300 rate provided in his fee agreement. FF 66.

I. Respondent Violated D.C. Rule 8.4(c) and Maryland Rule 19-308.4(c) by Engaging in Dishonesty in Counts III-IV, VII, and IX.

D.C. Rule 8.4(c) and Maryland Rule 19-308.4(c) both provide that it is professional misconduct for a lawyer to "[e]ngage in conduct involving dishonesty, fraud, deceit, or misrepresentation." Dishonesty is the most general of these categories. It includes "not only fraudulent, deceitful or misrepresentative conduct, but also 'conduct evincing a lack of honesty, probity or integrity in principle; a lack of fairness and straightforwardness.'" *In re Samad*, 51 A.3d 486, 496 (D.C. 2012) (quoting *In re Shorter*, 570 A.2d 760, 767-768 (D.C. 1990)). Lawyers are

held to a "high standard of honesty, no matter what role the lawyer is filling," *In re Jackson*, 650 A.2d 675, 677 (D.C. 1994) (per curiam) (appended Board Report), because "[l]awyers have a greater duty than ordinary citizens to be scrupulously honest at all times, for honesty is 'basic' to the practice of law." *In re Hutchinson*, 534 A.2d 919, 924 (D.C. 1987) (en banc); *see also Attorney Grievance Comm'n v. Agbaje*, 93 A.3d 262, 273 (Md. 2014) ("Honesty is of paramount importance in the practice of law. Candor and truthfulness are two of the most important moral character traits of a lawyer." (citations omitted)).

If the dishonest conduct is "obviously wrongful and intentionally done, the performing of the act itself is sufficient to show the requisite intent for a violation." *In re Romansky*, 825 A.2d 311, 315 (D.C. 2003). Conversely, "when the act itself is not of a kind that is clearly wrongful, or not intentional, [Disciplinary] Counsel has the additional burden of showing the requisite dishonest intent." *Id.*; *see also In re Uchendu*, 812 A.2d 933, 939 (D.C. 2002) ("[S]ome evidence of a dishonest state of mind is necessary to prove an 8.4(c) violation.").

Under the D.C. Rules, dishonest intent can be established by proof of recklessness. *See Romansky*, 825 A.2d at 315, 317. To prove recklessness, Disciplinary Counsel must establish by clear and convincing evidence that the respondent "consciously disregarded the risk" created by his actions. *Id.*; *see, e.g.*, *In re Boykins*, 999 A.2d 166, 171-172 (D.C. 2010) (finding reckless dishonesty where the respondent falsely represented to Disciplinary Counsel that medical provider bills had been paid, without attempting to verify his memory of events from more than four years prior, and despite the fact that he had recently received notice of non-payment from one of the providers). The entire context of the respondent's actions, including their credibility at the hearing, is relevant to a determination of intent. *See In re Ekekwe-Kauffman*, 210 A.3d 775, 796-797 (D.C. 2019) (per curiam).

Under the Maryland Rules, however, Disciplinary Counsel must prove that the dishonesty was intentional, *i.e.*, that the respondent made a statement "knowing that it is untrue." *Attorney Grievance Comm'n v. Smith*, 109 A.3d 1184, 1196 (Md. 2015); *see also Attorney Grievance Comm'n v. Moore*, 152 A.3d 639, 657 (Md. 2017). To violate Rule 19-308.4(c), the attorney's alleged dishonesty must not be "the product of mistake, misunderstanding, or inadvertence." *Attorney Grievance Comm'n v. Siskind*, 930 A.2d 328, 344 (Md. 2007).

The Maryland Supreme Court "has consistently found" that misappropriation also violates the prohibition against dishonesty. *Attorney Grievance Comm'n v. Gallagher*, 810 A.2d 996, 1019 (Md. 2002) (collecting cases); *see also Attorney Grievance Comm'n v. Sullivan*, 801 A.2d 1077, 1080 (Md. 2002) (finding violation of Rule 19-308.4(c) for taking fees without court authority in a probate matter). Respondent's misappropriation in the Goode (Count III), Jones (Count IV), and Collins (Count VII) matters also establishes that he violated Maryland Rule 19-308.4(c). In addition, Respondent engaged in conduct involving dishonesty by misrepresenting in his fee request the amount he had received from Ms. Cyrus in the Goode matter (Count III). FF 33. Finally, we find that Respondent engaged in dishonesty by advising Ms. Cyrus to reimburse herself for funds she paid his as legal fees without authorization in order to facilitate his wrongful receipt of funds from the estate that he was claiming as fees. FF 49. We find that it was not proven by clear and convincing evidence that Respondent engaged in dishonesty in the Jones matter by failing to disclose payments he received in accountings of the estate. The only accounting mentioned in Disciplinary Counsel's Proposed Findings of Fact, which he filed with the court on June 21, 2021, disclosed all amounts taken by Respondent to date. *See* FF 57; Disciplinary Counsel's Proposed Finding 50. Disciplinary Counsel does not identify any other accounting that failed to disclose payments he received in the Jones matter.

Under D.C. Rule 8.4(c), dishonesty includes not only fraudulent, deceitful, or misrepresentative conduct, but is a more general term that also encompasses "conduct evincing 'a lack of honesty, probity, or integrity in principle; [a] lack of fairness and straightforwardness." *In re Hager*, 812 A.2d 904, 916 (D.C. 2002) (citations omitted). It includes suppression of the truth, not just affirmative misrepresentations. *In re Shorter*, 570 A.2d 760, 767-768 (D.C. 1990). As alleged in Count IX, Respondent engaged in dishonesty by falsely answering questions relating to a pending disciplinary investigation in his FINRA application and failing to disclose his involvement in several lawsuits. FF 93-97. He engaged in further dishonesty by failing to disclose multiple additional disciplinary matters and his involvement in litigation while his application was pending. FF 90-92, 97, 100-102. These instances of dishonesty were particularly egregious due to the fact that they were made under oath. FF 97.

J. Respondent Violated Maryland Rule 19-308.4(d) by Engaging in Conduct Prejudicial to the Administration of Justice in Counts III-IV and VII.

Maryland Rule 19-308.4(d) provides that it is professional misconduct for a lawyer to "engage in conduct that is prejudicial to the administration of justice." "Generally, a lawyer violates [Maryland Rule 19-308.4(d)] where the lawyer's conduct would negatively impact the perception of the legal profession of a reasonable member of the public." *Attorney Grievance Comm'n v. Chanthunya*, 133 A.3d 1034, 1049 (Md. 2016) (quoting *Attorney Grievance Comm'n v. Shuler*, 117 A.3d 38, 45 (Md. 2015)).

> In determining whether a lawyer violated [Maryland Rule 19-308.4(d)] by engaging in conduct that negatively impacted the public's perception of the legal profession, "[the Maryland] Court applie[s] the 'objective' standard of whether" the lawyer's conduct would negatively impact the perception of the legal profession of "a reasonable member of the public . . . , not the subjective standard of whether the lawyer's conduct actually impacted the public and/or a particular person (e.g., a complainant) who is involved with the attorney discipline proceeding." *Attorney Grievance Comm'n v. Carl Stephen Basinger*, 441 Md. 703, 716, 109 A.3d 1165 (2015) (quoting *Attorney Grievance Comm'n v. Saridakis*, 402 Md. 413, 430 n. 10,

430, 936 A.2d 886, 896 n. 10, 896 (2007)) (some brackets and internal quotation marks omitted).

Attorney Grievance Comm'n v. Marcalus, 112 A.3d 375, 379 (Md. 2015).

The Maryland Supreme Court has held that "conduct constituting the misappropriation of client or third party funds [is] 'prejudicial to the administration of justice' in violation of Rule 8.4(d)." *Gallagher*, 810 A.2d at 1020 (collecting cases); *see also Sullivan*, 801 A.2d at 1080 (finding violation of Rule 19-308.4(d) for taking fees without court authority in a probate matter). Respondent's conduct described above in the Goode, Jones, and Collins matters also establishes that he engaged in conduct prejudicial to the administration of justice.

IV. RECOMMENDED SANCTION

In this case, Disciplinary Counsel has asked the Hearing Committee to recommend the sanction of disbarment.[18] Respondent argues that there should be a sanction only if the Committee finds a failure to keep records; and then, he asserts, "a lesser sanction i.e., taking CLE courses on: law office management, and record keeping, and probation for a year, is the appropriate sanction, if any." Respondent's Post Hearing Brief at 14. For the reasons described below, we recommend the sanction of disbarment.

A. Standard of Review

The sanction imposed in an attorney disciplinary matter is one that is necessary to protect the public and the courts, maintain the integrity of the legal profession, and deter the respondent and other attorneys from engaging in similar misconduct. *See, e.g.*, *In re Hutchinson*, 534 A.2d 919, 924 (D.C. 1987) (en banc); *In re Martin*, 67 A.3d 1032, 1053 (D.C. 2013); *In re Cater*, 887 A.2d 1, 17 (D.C. 2005). "In all cases, [the] purpose in imposing discipline is to serve the public

[18] In the District of Columbia, an attorney who has been disbarred may apply for reinstatement five years after the effective date of the disbarment. *See* D.C. Bar Rule XI, § 16.

and professional interests . . . rather than to visit punishment upon an attorney." *In re Reback*, 513 A.2d 226, 231 (D.C. 1986) (en banc) (citations omitted); *see also In re Goffe*, 641 A.2d 458, 464 (D.C. 1994) (per curiam).

The sanction also must not "foster a tendency toward inconsistent dispositions for comparable conduct or . . . otherwise be unwarranted." D.C. Bar R. XI, § 9(h)(1); *see, e.g.*, *Hutchinson*, 534 A.2d at 923-924; *In re Berryman*, 764 A.2d 760, 766 (D.C. 2000). In determining the appropriate sanction, the Court of Appeals considers a number of factors, including: (1) the seriousness of the conduct at issue; (2) the prejudice, if any, to the client which resulted from the conduct; (3) whether the conduct involved dishonesty; (4) the presence or absence of violations of other provisions of the disciplinary rules; (5) whether the attorney has a previous disciplinary history; (6) whether the attorney has acknowledged his wrongful conduct; and (7) circumstances in mitigation or aggravation. *See, e.g.*, *Martin*, 67 A.3d at 1053 (citing *In re Elgin*, 918 A.2d 362, 376 (D.C. 2007)). The Court also considers "'the moral fitness of the attorney' and 'the need to protect the public, the courts, and the legal profession . . . .'" *In re Rodriguez-Quesada*, 122 A.3d 913, 921 (D.C. 2015) (per curiam) (quoting *In re Howes*, 52 A.3d 1, 15 (D.C. 2012)).

B. 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) ("In virtually all cases of misappropriation, disbarment will be the only appropriate sanction unless it appears that the misconduct resulted from nothing more than simple negligence."); *see also In re Hewett*, 11 A.3d 279, 286 (D.C. 2011). The Court further held that "it is appropriate . . . to consider the surrounding circumstances regarding the misconduct and to evaluate whether the mitigating factors are highly significant and [whether] they substantially outweigh any aggravating factors such that the

presumption of disbarment is rebutted." *Addams*, 579 A.2d at 195. The Court recognized that extraordinary circumstances are present when a respondent is entitled to mitigation under *In re Kersey,* 520 A.2d 321, 326 (D.C. 1987), but the Court warned that "mitigating factors of the usual sort" are not sufficient to rebut the presumptive sanction of disbarment, and "[o]nly the most stringent of extenuating circumstances would justify a lesser disciplinary sanction." *Id*. at 191, 193.

Accordingly, once misappropriation involving more than simple negligence has been established—as it has been here to an extraordinary extent—the inquiry turns to whether sufficient mitigating factors rebut the presumption of disbarment. *In re Anderson*, 778 A.2d 330, 337-338 (D.C. 2001) (citing *Addams*, 579 A.2d at 191). Here the Committee has found over a dozen instances of misappropriation and three of commingling, coupled with numerous other violations for dishonesty and several other violations occasioned by the extensive misappropriation.

C. <u>*Kersey* Mitigation</u>

Respondent urges the Committee to find that he is entitled to mitigation of sanction based on his anticipatory anxiety, reactive anxiety disorder, cancer, and treatment for cancer, pursuant to *In re Kersey*, 520 A.2d 321 (D.C. 1987) and Board Rule 7.6. *See* Notice of Intent to Raise Disability in Mitigation (Nov. 1, 2023).

To prove he is entitled to *Kersey* mitigation, Respondent must "demonstrate '(1) by clear and convincing evidence that he had a disability; (2) by a preponderance of the evidence that the disability substantially affected his misconduct; and (3) by clear and convincing evidence that he has been substantially rehabilitated.'" *In re Schuman*, 251 A.3d 1044, 1055 (D.C. 2021) (quoting *In re Lopes*, 770 A.2d 561, 567 (D.C. 2001)).

As the Court emphasized in *Lopes*, "it was incumbent upon [respondent] to show that his illnesses, however labeled, deprived him of the meaningful ability to comport himself in his

professional conduct in accordance with the basic norms of professional responsibility." 770 A.2d at 567 (internal quotations and citation omitted).

To satisfy the first *Kersey* factor, the respondent must prove that he was impaired by a disability or addiction at the time of the misconduct. *See, e.g.*, *In re Stanback*, 681 A.2d 1109, 1114-1115 (D.C. 1996) (requiring the respondent to show that "he suffered from an alcoholism-induced impairment" at the time of the misconduct).

To satisfy the second *Kersey* factor, the respondent must prove that his misconduct was "substantially caused" by the qualifying disability or addiction. *In re Zakroff*, 934 A.2d 409, 418 (D.C. 2007) (citations omitted). "Substantial cause" requires the respondent to show that "but for [the disabling condition], his misconduct would not have occurred." *Kersey*, 520 A.2d at 327. "The 'but for' test does not require proof that the attorney's disability was the 'sole cause' of the attorney's misconduct," instead it requires that the respondent establish a "sufficient nexus" between her misconduct and her disability or addiction. *See Zakroff*, 934 A.2d at 423 (citations omitted). As a result, the respondent does not need to prove that a disabling condition caused each and every disciplinary violation to satisfy the "but for" test. *Id.*

However, in cases where a respondent has committed temporally distinct violations, he or she must prove that each instance of misconduct was substantially caused by the disabling condition. *See In re Verra*, 932 A.2d 503, 505 (D.C. 2007) (per curiam) ("[W]hile [respondent] demonstrated a causal relationship between her disorders and her misconduct arising from her representation of [her client], she had not shown it to affect her misconduct in cooperating with Bar Counsel's investigation.").

To satisfy the final *Kersey* factor, Respondent must show that he or she is "substantially rehabilitated." A respondent is substantially rehabilitated when she "no longer poses a threat to

the public welfare" or where "that threat is manageable and may be controlled by a period of probation . . . ." *In re Appler*, 669 A.2d 731, 740 (D.C. 1995); *see also In re Robinson*, 736 A.2d 983, 989-990 (D.C. 1999) (respondent failed to show substantial rehabilitation "because her conduct continued to call into question her ability to ethically represent her clients. . . . *Kersey* mitigation is not appropriate in this case because it will not guarantee the protection of the public, and of public and private rights.") (citations and quotations omitted). Thus, the substantial rehabilitation prong of *Kersey* "imposes a sort of fitness requirement on an attorney who seeks mitigation of sanctions under this doctrine." *Robinson*, 736 A.2d at 989.

Respondent's Evidence. Dr. Christiane Tellefsen, a board-certified forensic psychiatrist, prepared a report on Respondent's behalf dated November 1, 2023. DCX 153. Dr. Tellefsen has been in private practice for 37 years, worked for 16 years at Maryland State Hospital, and has a position at Mercy Medical Center in Baltimore; she has testified in approximately 120 Disciplinary proceedings in Maryland and the District of Columbia. Tr. 1027-1029. Dr. Tellefsen did not treat Respondent at any time during the relevant time frame. She was hired specifically to testify in these proceedings and her description of his condition, symptoms, and their effects were based solely on her two interviews with Respondent and a review of his medical records and the statement of charges. DCX 153 at 3.

In her report, she described the medical condition that Respondent suffered:

> His prostate cancer was diagnosed after several years of watchful waiting. He originally had an elevated prostate-specific antigen (PSA) which led to repeated biopsies over the years, none of which found any cancer until around 2016, at which point he was provided with a variety of treatment options. He elected to have radiation and hormone therapy in 2020. Each step took many months. His treatments took years and were physically debilitating, robbing him of energy and stamina. He completed his hormone treatment in January of this year and has been feeling more energetic and more himself since then.

DCX 153 at 5.

She emphasized that in 2014 Respondent was told that various biopsies indicated that he *may* have cancer, and that by 2016 he was told that the radiologist, "knew Larson-Jackson had cancer but he just was not able to find it yet." Respondent told Dr. Tellefsen that, "he would get repeated phone calls from the doctor telling him they haven't found it 'yet'" which further worsened his anxiety. He said no one was able to find the cancer until 2020. *Id*. at 9. She explained that these circumstances created great anxiety in Respondent with the possibility of a confirmed cancer diagnosis hanging over his head like the Sword of Damocles; and that his anxiety caused him to be distracted from his responsibilities, including those to his legal practice. Tr. 1036-1040 (Tellefsen).

She explained the effect of this anxiety both pre- and post-diagnosis:

> I just think that he was generally diminished in his abilities during this period of time. He just has this cloud around him throughout this period, sort of increasingly dense as time goes on. Particularly after 2018 where he's just got this chronic worry about his cancer and he doesn't talk to anybody . . . .

Id. at 1041.

After his treatment began, she explained, Respondent became sick, fatigued, inattentive, distracted, and unfocused. *Id.* at 1043. She explained that the major symptom he experienced from his post-diagnosis radiation and hormonal treatments was fatigue. *Id*. at 1044. As an example of the effect of this condition on his practice, she related that he said he had read a brief he had written during the period in which he was suffering from anxiety which he now found to be "total nonsense," but at the time he did not recognize "how bad he was doing." DCX 153 at 7; Tr. 1046.

Notably, she was asked on direct examination, "You said that [the cancer diagnosis is] all-consuming of the individual. Does that take precedence over everything else?" She replied, "I would -- yeah. I mean, I think, yes, at times. Not all the time, right? Because he's still working. He's still doing what he needs to do for the most part." *Id*. at 1052.

As to the effects of the hormonal treatment he received, she described the following symptoms:

> So, it's like taking the starter out of your car engine. . . . And to knock that out leads to a lot of side effects and muscle weakness. Fatigue is another one, brittle bones. It can play havoc with your blood sugar. He already has diabetes so can make your blood sugar go up and affect certain other aspects of your physiology like your blood lipids and that sort of thing. But you feel weak and debilitated. I mean, this is the very reason why people take testosterone to reverse those effects. So, he's also getting progesterone, so female hormone. And so, people have night sweats and-- or hot flashes, and difficulty sleeping, and all of those things which -- all of which I believe he had. I don't know about the hot flashes. I didn't specifically ask him about that, but he did have all of the other symptoms. He just felt like somebody let all the air out of his tires.

Id. at 1053-1054. She wrote that, "The radiation and hormones left him feeling fatigued and with other side effects such as severe urinary frequency and worsening of his diabetes." DCX 153 at 11. Side-effects of the hormonal treatment included that, "[H]e was impotent, complaining of irritability and poor stress tolerance. He had also developed glaucoma and anemia. After his last shot he started to slowly regain his stamina." *Id.* Regarding the symptoms he experienced, she also testified that, "[T]here's like this whole compendium of effects that go on in any patient with cancer." Tr. 1057-1058.

Respondent described to Dr. Tellefsen how his condition and treatment affected his legal practice:

- He said when he was in the moment, he was too sick and too fatigued to recognize his emotions. He said thus for the past six to seven years, he has been inattentive, distracted, and unfocused. DCX 153 at 6.
- He said he was physically and mentally debilitated during his radiation and hormone treatment and less able to account for any of the firm's finances. *Id*. at 7.
- He also said that when he was first diagnosed with cancer, he spent many months simply being distracted by the idea that he might have cancer and that he could die. . . . . He said, "the last thing on my mind while thinking about dying is where I put a check for $500.00." *Id*. at 7.
- In general, he said he thinks his preoccupation with death and cancer has been highly distracting, making it difficult for him to concentrate on his work as he would normally have done. *Id*. at 9.

- He said there were certainly times during his treatment when he was too sick to work at all. *Id.* at 10.

Based on these interviews she concluded that,

> The anxiety he described would be consistent with the psychiatric diagnosis, *Anxiety Disorder Due to General Medical Condition*. It is not unusual for patients who get pre-cancer diagnoses to have severe anxiety about the condition and then find, to some extent, their anxiety remits when they have a definitive diagnosis and are able to construct a concrete treatment plan. He largely described this situation, reporting that he had significant and impairing anticipatory anxiety from at least 2016 to 2020, when he was finally formally diagnosed with prostatic cancer.

Id. at 12. (emphasis in original).

Most pertinent to these proceedings was Respondent's description to Dr. Tellefsen of his lack of facility with the business side of his practice:

> He said he has never been great at keeping records in his office and during these years, his ability to keep records, particularly financial records, was more impaired. He said he never knew how to manage his escrow account in the first place, having not been taught this in law school. He said, "I know how to do legal work but not how to do the business side." He knew enough that he had to have separate operating and escrow accounts. He never had any ledgers up until recently.
>
> In his first firm, he had left all of this to the accountant to handle. When he first started his second law practice, he did not have enough clients to need to keep detailed records of what was going in and out of his accounts because they were small amounts and a limited number of people, and thus it was easy for him to "just remember all of it." However, his second practice became more successful, with more clients, just as he was diagnosed with cancer and underwent treatment.

Id. at 7.

The following testimony by Dr. Tellefsen was also particularly instructive to the case:

> Q. . . . So, did his cancer and his anxiety situation impact his ability to do those things that he now had to do . . . ?
>
> A. Yes. I mean, he -- before all of this started, I think he was having trouble with those things. They're not his strong point. They're his relative weakness. So, he's just -- these are things he's not good at, didn't feel like he had much education in certain aspects of this practice. And so, that's sort of his weak link in general. And

then when he starts being told, oh, you might have cancer, that's when that weakness becomes more pronounced.

Q. Okay.

A. You know, as is the case with anybody under stress, it's that it's that weak link that's going to go first. So, it's no surprise that his bookkeeping skills began to deteriorate as his anxiety was increasing over time.

Tr. 1058-1059.

In the conclusion of her report, she rendered the following opinion:

In my opinion, to a reasonable degree of medical certainty, Stephen Larson-Jackson developed a reactive anxiety disorder while being monitored for incipient prostate cancer, with the most prominent symptoms from 2018 to 2020. During this time he was able to work, although he had periods of distraction and distress that would have diminished his general ability to focus and concentrate on his professional tasks.

Once his treatment began, he had more severe symptoms, including anxiety as well as profound fatigue, mental fogginess and other side effects. During this treatment planning and execution, he reported being more impaired, so much so that there were days he was unable to work at all. From 2020 to January of 2023, he was more generally impaired in concentration, focus, and attention to detail. These impairments would more likely than not have negatively affected his day-to-day function, with a higher likelihood of errors in detail and fully completing tasks.

DCX 153 at 12.

In her testimony, Dr. Tellefsen expounded on this opinion:

Now, it's not like being pregnant where you are fully anxious or not anxious at all. This is a -- you know, it's a continuum. It's a variable. It go -- your anxiety level goes up and down depending on what's happening with his treatment or his diagnostic procedures.

So, this is a -- you know, it's a roller coaster that's going on. I'm sure he had some really good days in there and he had some bad days. But the prominent thing about it is that his anxiety was causing him to have difficulties functioning at work.

Tr. 1061.

Finally, as to his current condition, she explained,

> Since his treatment has concluded, he has felt increasingly vigorous and closer to his baseline, or pre-cancer state. He has been working in his practice without difficulty. He has no current psychiatric impairment that would interfere with his practice of law.

DCX 153 at 13.

Disciplinary Counsel's cross-examination of Dr. Tellefsen confirmed that she was not hired to treat Respondent but only to examine him for these proceedings; that he had never been diagnosed with any mental health impairment before her examination; that he had never been prescribed any medications for anxiety; that under accepted forensic psychiatric evaluations it is usually unacceptable to make diagnoses based on self-reports from individuals alone; that she never talked to his wife, family members, employees, colleagues or Judges regarding his condition at the subject time; that in all his medical records prior to her examination there were no records of Respondent complaining about anxiety, mental health issues or inability to work; that to her knowledge he had no physical manifestations of mental health issues; that during this time he was able to function at a high degree professionally on occasions and not on others; that there was never a report of Respondent making a financial or bookkeeping mistake in *favor* of the client rather than to the client's detriment; and that anxiety disorder does not typically impact one's ability to be honest. Tr. 1065-1092.

The following cross-examination was particularly insightful on the limits of her diagnosis:

> Q. You are aware that with respect in 2016, before he had the radiation, that he actually took money from a client, Ms. Cyrus, and deposited her check into his personal account, correct?
>
> A. Oh, yes. Yes.
>
> Q. Okay. And he hadn't earned the fees. In fact, he co-mingled the money because he just took her money and put it in his own personal bank account, right?
>
> A. Yeah. I mean, I don't remember the specific details. I just know that that was not the way he was supposed to do it.

> Q. So, the anxiety didn't interfere with his conscious and deliberate place where he deposited her check. He was able to do it. He conscientiously knew where he was putting it and what he did, correct?
>
> A. Yeah. I don't think that those early years are part of what I've been talking about. I think that -- I -- you know, that doesn't -- his anxiety problems became much more apparent around 2018. So, before that I -- whatever he was doing is whatever he was doing.
>
> Q. Okay. And, in fact, his duty to keep records of his clients where money comes in and goes out that occurs in 2016, 2017, 2018, that anxiety doesn't impair his ability to consciously keep records that -- of his clients, does it?
>
> A. I don't believe it did at that time. I think it did later.

Tr. 1089-1090.

Dr. Tellefsen also testified that anxiety disorder customarily results in problematic issues of omission, forgetting or being unable to do things that are supposed to be done, rather than acts of commission, like taking client funds and depositing them into your personal account. Tr. 1102-1103.

Disciplinary Counsel Evidence. Disciplinary Counsel retained Dr. Phillip Candilis, the Medical Director of St. Elizabeth's Hospital in Washington, D.C., and a licensed surgeon with certifications in psychiatry and forensic psychiatry. Tr. 1116-1117. At the time of his testimony, he was a professor at George Washington University and president-elect of the American Academy of Psychiatry and the Law. Tr. 1118-1119; DCX 147. He regularly consults with the Federal Bureau of Investigation, the Department of Justice, and the Drug Enforcement Administration on regulatory matters and frequently testifies in court and on disciplinary matters as an expert. Tr. 1120-1121. He has published 52 peer-reviewed articles on psychiatry in addition to as many unreviewed articles. DCX 147.

Dr. Candilis was retained by Disciplinary Counsel to determine if respondent suffered a disability during the time of alleged behavior, whether a mental condition affected his behavior, and, if so, whether he was rehabilitated. Tr. 1126-1127. In order to do so he reviewed Respondent's medical records, interviewed Respondent twice and asked if there were other persons he could interview. *Id*. at 1127, 1130.

Dr. Candilis testified that he did not agree with Dr. Tellefsen's opinion "at all." *Id*. at 1128. He explained that the DSM-5 standard—which Dr. Tellefsen acknowledged was an important standard for forensic evaluations (Tr. 1030)—required proof of a direct connection between the condition and the behavior, literature that supports the possibility of such a connection and facts that support the connection in the instant case.[19] *Id*. at 1129-1130. As he explained,

> [T]he diagnosis connecting anxiety to a medical condition is a pathophysiological diagnosis. There has to be a specific medical connection between the medical condition and the anxiety. What she was talking about and what . . . Mr. Larson-Jackson was talking to me about is worry about health or worry about death. That's an adjustment disorder.

Id. at 1128-1129.

Later in his testimony he explained the difference between a layman's understanding of "anxiety" which a layman might describe a fully unimpaired person to be suffering, and the clinical form which requires impairment before there can be any diagnosis:

> So, for something to qualify for the DSM, there has to be social and occupational impairment or a dysfunction in social and occupational impairment. That's what makes it a diagnosis. So, general anxiety in a way that lay people might understand it is not a diagnosis. It has to impair social and occupational functioning for it to become a DSM diagnosis. So, yes, people feel anxiety at many different times. It may go up and down. As Dr. Tellefsen, said that it doesn't qualify as a disorder unless it meets these criteria, and it has to look like -- it has to phenomenologically

[19] The DSM is the Diagnostic and Statistical Manual of Mental Disorders; published by the American Psychiatric Association. *See DSM-5-TR*, American Psychiatric Ass'n, https://www.psychiatry.org/psychiatrists/practice/dsm.

> look like a condition that we're aware of, like an anxiety disorder due to a medical condition.

Tr. 1149-1150.

Dr. Candilis testified that he found no evidence that anxiety was causing the behavior with which Respondent was charged; that Respondent was not aware of any such connection; and that none was suggested by collaterals, family members, fellow employees, or colleagues. Tr. 1132. He explained that rather than any such connection, what instead was occurring was, "[t]hat he had a response to a difficult diagnosis and difficult circumstances throughout his life, but that there was no nexus to the behavior that Disciplinary Counsel was interested in." *Id.*

Dr. Candilis emphasized the importance of information from his interaction with others to determine whether any connection exists. He explained that his investigation of Respondent's history at the time showed that,

> Well he was being treated as a competent adult. I mean, there was no concern for his []ability to make decisions very complex, very difficult decisions, everything from eye surgery to the cancer treatments[. He] was making choices that were supported by his team, sometimes not. He chose to travel at times, for example, and they counseled him again as a competent patient, as a competent person, to please keep the treatment continuous one right after the other uninterrupted.

Tr. 1134.

Dr. Candilis said that Respondent discussed no symptoms of depression; that his radiologist, whom he interviewed, did not see any behavior or cognitive problems; that Respondent made no indication of mental health issues, and

> despite going through very difficult things, overcoming racism as a child in school, which he was very clear about and how difficult it was applying to law school despite his lack of support from his dean, going through a bankruptcy, rebuilding a practice, going through some very difficult things, anxiety and the other mental health condition didn't appear.

Tr. 1134-1135. His examinations and investigation found that Respondent had no history of depressive symptoms, homicidal or suicidal ideation, anxiety, psychotic symptoms, paranoia, fixed false beliefs, imagined thought readings, or auditory or visual hallucinations. Tr. 1152-1153.

Dr. Candilis explained that while speaking exclusively to the patient may be acceptable in a standard treatment context, it is not in a forensic examination: "Well what we do in the clinic we [usually] take our patient's words for things . . . . But not in forensics. That's an independent evaluation and it requires assessment--confirmation of the information that's being used." Tr. 1136.

Dr. Candilis did not minimize the tribulation Respondent experienced with his physical health issues; as he candidly said under cross-examination: "No one's denying that cancer has an outsized psychological effect on anybody." Tr. 1173. What Dr. Candilis said was that he simply saw no connection between the cancer diagnosis and the charges made in this proceeding:

> A. It was clear that [the cancer diagnosis] was devastating, that he had a very difficult time anticipating the -- in the years leading to the formal diagnosis, and that he had the support of his family, sometimes his wife, who went with him to treatment. . . .
>
> Q. What did the diagnosis of cancer cause for him? Was it just pure anxiety?
>
> A. Yeah, I accept that he felt anxious about it. And it's a -- that's not the issue for me. You have asked me whether it had interfered with his functioning.
>
> Q. Right.
>
> A. So, I accept that that's what he experienced, and I tried to make the connection between the diagnosis, the anxiety, and the behavior.
>
> Q. And what was your conclusion on that?
>
> A. That there was no connection.

Tr. 1138.

Dr. Candilis next explained that a thorough examination of Respondent's other activities during the subject period is also essential to an accurate diagnosis and confirms the absence of any connection between respondent's health and the charged behavior:

> We asked him about all sorts of things that might be of similar complexity and stress. This is the way of forensic evaluations. If you're not there at the time, say, an insanity defense, you don't know what happened, you have to look at behavior before, during, and after, camera footage, witnesses, police reports. This was a little different but it's still retrospective and a search for information around the time of the alleged behavior.
>
> * * *
>
> We asked about his mortgage, insurance -- car insurance. There was no effect there. He told us, in fact, he changed his practice when work dried up. He came out of a bankruptcy, I mentioned earlier. He was able to do things of similar complexity and stress, even outside the medical setting. So, he's working with his ophthalmologist on cataract surgery and glaucoma. He's working with his oncologists on the medical treatment versus surgical or radiation treatments. And again, he's treated like any capable [person]. We'll see that in all the different authorizations that are signed. You're aware that we have to sign all sorts of consents and financial authorizations for hospitals and doctors nowadays. Those are all throughout the chart. There's no suggestion that he's unable to manage the finances of a very complex medical system or of the legal system that he was working with.

Tr. 1139-1140.

It was very telling that Dr. Candilis noted that rather than blaming his behavior on his health, Respondent complained that the rules regarding trust accounts were unclear. "He was clear that there weren't sufficient instructions or rules for him on the IOLTA, that there were better rules for traffic than there were for this particular area of the regulation. He didn't feel that [he] should be held responsible for something that was this unclear[.]" Tr. 1140.

When asked about the significance of the pattern of transferring funds from the trust accounts to the operating accounts when the latter were low, Dr. Candilis explained,

> A. Well, that's a good value. It indicates intent. They happen -- these transfers happen under certain circumstances. If there were a mental health condition, for example, it might be much more disorganized or not in his favor sometimes or what

have you. But when it's directed in this way, there's a learning. And forensics is about identifying patterns.

Q. And what was the pattern you observed in this case?

A. He moved from IOLTA into operations or personal accounts at times of low or negative balance.

Q. Did you ever observe that it went the opposite way, that money was moved to the benefit of the client?

A. I didn't see that.

Tr. 1142. In regard to three specific deposits of trust funds by Respondent into operating and personal accounts with low or negative balances, Dr. Candilis explained that, "They were being moved in order to rescue a low account. [That shows deliberateness;] it's planful behavior. It has a purpose." *Id.* at 1143.

In further support of his opinion, Dr. Candilis explained that Respondent was never referred to a mental health professional; that his radiologist found no mental health difficulties interacting with him; that his business activities, including gold trading, shows he was highly functional; and that he was doing other complicated, very stressful things throughout this period of time without issue. Tr. 1144-1146.

Based on his examination and investigation, Dr. Candilis was firm in his diagnosis that there was no evidence that Respondent suffered any mental health condition or disability. He was firm in this diagnosis because it was validated by so many different independent sources, clinical records, direct interviews with him and one of his doctors, all of which confirmed "that [Respondent] was treated as an able person, as a competent person[; there was not] . . . any support for the suggestion that there was a disabling [mental health] condition . . . ." Tr. 1153-1154.

Findings and Conclusions. We accept much of Dr. Tellefsen's testimony regarding the devastating emotional effects of the early suggestion that Respondent was suffering cancer, the

long-period of time waiting for confirmation of a diagnosis, the diagnosis itself and the cancer treatments. She ably described the "whole compendium of effects" that accompany these conditions, including worry, sickness, fatigue, distraction, lack of focus and, indeed, anxiety in the layman's sense of anxiety, that which causes many if not most humans to lie awake some or even many nights. Tr. 1056-1057. Dr. Candilis, too, readily acknowledged these devastating effects, using the very same adjective, and later referring to the "outsized psychological effect" a cancer diagnosis has on anybody. Tr. 1138, 1172-1173.

What Respondent failed to prove, is that these devastating effects caused him to suffer a disability or that they substantially affected his misconduct, two essential elements of a *Kersey* mitigation. Dr. Tellefsen failed to persuade us that there was any connection between the effects of his cancer diagnosis and the extensive wrongful conduct we set forth in the foregoing findings of fact.

This finding begins with the absence of any proof of a mental health condition. As Dr. Tellefsen admitted on cross-examination, Respondent had never been diagnosed with any mental health impairment before her examination; there were no records of Respondent complaining about anxiety, mental health issues or inability to work; he had no physical manifestations of mental health issues; he had never been prescribed any medications for anxiety; during this time, he was able to function at a high degree professionally; there was never a report of Respondent making a financial or bookkeeping mistake in *favor* of the client rather than to the client's detriment; anxiety disorder does not typically impact one's ability to be honest, and anxiety does not usually result in acts of commission rather than the customary acts of omission.

Dr. Candilis added to this litany of reasons why Respondent was not impaired: Respondent discussed no symptoms of depression; his radiologist, did not see any behavior or cognitive

problems; Respondent made no indication of mental health issues; Respondent was able to navigate through a bankruptcy and rebuild a law practice; Respondent had no history of depressive symptoms, homicidal or suicidal ideation, anxiety, psychotic symptoms, paranoia, fixed false beliefs, imagined thought readings, or auditory or visual hallucinations; Respondent ran a complicated business that included gold trading; and Respondent was fully capable and treated by everyone as being fully capable of making important complex decisions including international travel and medical choices regarding eye surgery and cancer treatments and all the releases and related decisions they entail.

We also base our findings that Respondent did not suffer a disability on the lack of a single area in which he has claimed to be impaired other than in managing an escrow. Indeed, he readily admitted to Dr. Candilis that he was never good at these financial portions of his business, that in his first career they were done for him, and that he probably should have taken a course on them earlier. In fact, he did not blame his conduct on any disability. Instead, he said it was a result of the rules regarding escrows being less clear than traffic regulations. For all of these reasons, we find that Respondent has failed to prove by clear and convincing evidence he suffered a disability as required for a *Kersey* mitigation.

For many of the same reasons, we find that the condition Respondent cites as a disability did not cause the conduct of which he has been accused and has herein been found to have committed. We note the similarity between the *Kersey* causation necessary for mitigation and what Dr. Candilis so ably described as the "connection" necessary to prove a disabling impairment. We find credible his opinion's reliance on the absence of any outside evidence of impairment, the failure to show impairment anywhere other than one specific narrow area, and the absence of general dysfunction or any noticeable manifestations of impairment. We are especially persuaded

in our finding of no causation by Respondent's admission that he did not know his escrow obligations well and that he should have taken a class in them sooner; by the wholly one-way nature of his transfer of funds; by the fact that he usually committed the misappropriations when he needed money, and by Dr. Tellefsen's own admission that there was no impairment before 2018.

For all of the foregoing reasons, we find that our recommendation that Respondent be disbarred should not be mitigated under *Kersey*.[20]

V. CONCLUSION

For the foregoing reasons, the Committee finds that Respondent committed the rule violations as set forth above, and that he therefore should be disbarred. 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).

HEARING COMMITTEE NUMBER SEVEN

Leonard J Marsico

Leonard Marsico, Chair

David Bernstein

David Bernstein, Public Member

Pamela Soncini

Pamela Soncini, Attorney Member

[20] We make no findings regarding the rehabilitation of Respondent under *Kersey*, in that we do not find there to have been clear and convincing evidence of a disability from which to have been rehabilitated.