STATE OF MINNESOTA

IN SUPREME COURT

A18-1890

Original Jurisdiction

Per Curiam
Concurring in part, dissenting in part, Thissen, Anderson, JJ.

In re Petition for Disciplinary Action against Michael J. Quinn, a Minnesota Attorney, Registration No. 0089011.

Filed: July 22, 2020
Office of Appellate Courts

Susan M. Humiston, Director, Binh T. Tuong, Senior Assistant Director, Office of Lawyers Professional Responsibility, Saint Paul, Minnesota, for petitioner.

Michael J. Quinn, Rochester, Minnesota, pro se.

S Y L L A B U S

1. The referee's findings that respondent attorney misappropriated client funds and committed other misconduct are not clearly erroneous.

2. Based on the circumstances of this case, the appropriate discipline for an attorney who misappropriated a client's filing fee, failed to safeguard the filing fee, failed to promptly return the filing fee to the client, failed to adequately communicate with two clients, and failed to fully cooperate with the Director's investigations is an indefinite suspension with no right to petition for reinstatement for 18 months.

Suspended.

O P I N I O N

PER CURIAM.

The Director of the Office of Lawyers Professional Responsibility (Director) filed a petition for disciplinary action against respondent Michael J. Quinn. The Director alleged that Quinn misappropriated client funds, failed to safeguard client funds, failed to promptly return client funds, failed to communicate with his clients, and failed to cooperate with the Director's investigations. We appointed a referee, who concluded that Quinn committed the alleged misconduct and recommended an indefinite suspension with no right to petition for reinstatement for 18 months.

Quinn challenges the referee's findings of fact and conclusions that he committed misconduct. The Director agrees with the referee's findings and recommendation. We conclude that the referee did not clearly err in her findings of fact or conclusions that Quinn committed misconduct. We further conclude that the appropriate discipline for Quinn's misconduct is an indefinite suspension with no right to petition for reinstatement for 18 months.

FACTS

Quinn was admitted to practice law in Minnesota in 1973. He had two past episodes of discipline before this matter. In 2000, Quinn received a public reprimand for engaging in the unauthorized practice of law while his license was suspended for failing to comply with continuing legal education requirements and failing to pay his attorney registration fees. *In re Quinn*, 605 N.W.2d 396, 396 (Minn. 2000) (order). In 2008, he received an

admonition for failing to clearly communicate the basis or rate of his fee and expenses to a client.

The misconduct here stems from two client matters and the Director's disciplinary investigations into those matters. In November 2012, R.F. asked Quinn to represent him in a bankruptcy matter. Quinn and R.F. orally agreed to a flat fee arrangement for $2,106: $1,800 for legal fees[1] and $306 for the bankruptcy filing fee. R.F. felt pressured by a judgment for nearly $40,000 that Capital One had against him and told Quinn that he wanted to file a bankruptcy petition as soon as possible. R.F. gave Quinn a check for $2,106 at that first meeting, which Quinn deposited into his Wells Fargo business account.

Given R.F.'s urgent request, Quinn intended to prepare the bankruptcy petition over the weekend while R.F. completed his credit counseling—a necessary step to filing the bankruptcy petition—so that Quinn could file the petition the next business day. Quinn completed the 50-page petition, but R.F. never returned to Quinn's office; nor did R.F. complete his credit counseling.

On February 11, 2013, R.F. contacted Quinn to notify him that he was interested in negotiating a settlement of his debt with Capital One, rather than continuing with the bankruptcy proceedings. Quinn agreed to pursue a settlement, but the parties never discussed or memorialized a fee arrangement for this additional work.

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[1] The legal fees here were to include meeting with the client, preparing the petition, attending a hearing, and any other action that would be required. Quinn stated before the referee that preparing the petition is the "main legal work" for a representation like the one that R.F. sought here.

During 2013, R.F. sent a number of emails to check on the status of the settlement. Quinn replied to some of these emails, but not all of them. In October 2013, R.F. sent an email stating, "If you do not anticipate being successful [in settling with Capital One], maybe we should just cancel our agreement and you can refund what I paid you less any fees accrued."

Then, in January 2014, R.F. sent another email suggesting that they "just pull the plug on it," and asked Quinn to refund any amounts owed and send an expense record. Quinn replied, noting that he had completed the bankruptcy petition. Quinn also said he would "pull the file" to check the records and follow up regarding the amount owed to R.F., but Quinn never did so.

In January 2016, R.F. again emailed Quinn, this time stating that it had been "two years" since Quinn stated that he would check his file and discuss a refund. R.F. offered to settle the matter in exchange for a full refund. Quinn replied that he thought that he had followed up with R.F. and offered to refund the filing fee.

By January 2017, Quinn still had not refunded the filing fee, so R.F. filed a complaint with the Office of Lawyers Professional Responsibility. In June 2018, after the investigation had been ongoing and the Director had reminded Quinn to place the filing fee in trust, Quinn refunded the filing fee to R.F. by check with "[r]eturn filing fee" on the memo line.

The referee concluded that Quinn failed to safeguard client funds, failed to follow up with R.F. as promised, misappropriated client funds, and failed to refund fees after the termination of representation. According to the referee, this conduct violated Minnesota

Rules of Professional Conduct 1.4(a)(4),[2] 1.15(a),[3] 1.15(c)(4),[4] 1.15(c)(5),[5] 1.16(d),[6] and 8.4(c).[7]

In another client matter, C.L. retained Quinn to assist her in filing for bankruptcy in 2014. C.L. testified that, after the bankruptcy petition was filed, she did not hear from Quinn for 19 months. During that time, Quinn received the final report prepared by the trustee and the notice that the discharge of debtors was granted in C.L.'s bankruptcy case, but he never sent a copy of these documents to C.L. or communicated with her about her matter. A sworn copy of the service lists from the United States Bankruptcy Court for each document showed that C.L. received the documents. Quinn admits to relying on the trustee

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[2] "A lawyer shall . . . promptly comply with reasonable requests for information . . . ." Minn. R. Prof. Conduct 1.4(a)(4).

[3] "All funds of clients or third persons held by a lawyer or law firm in connection with a representation shall be deposited in one or more identifiable trust accounts . . . ." Minn. R. Prof. Conduct 1.15(a).

[4] "A lawyer shall . . . promptly pay or deliver to the client or third person as requested the funds, securities, or other properties in the possession of the lawyer which the client or third person is entitled to receive . . . ." Minn. R. Prof. Conduct 1.15(c)(4).

[5] "A lawyer shall . . . except as specified in Rule 1.5(b)(1) and (2), deposit all fees received in advance of the legal services being performed into a trust account and withdraw the fees as earned." Minn. R. Prof. Conduct 1.15(c)(5).

[6] "Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as . . . refunding any advance payment of fees or expenses that has not been earned or incurred." Minn. R. Prof. Conduct 1.16(d).

[7] "It is professional misconduct for a lawyer to . . . engage in conduct involving dishonesty, fraud, deceit, or misrepresentation . . . ." Minn. R. Prof. Conduct 8.4(c).

and the bankruptcy court to send the necessary materials to C.L. The referee concluded that this conduct violated Minnesota Rule of Professional Conduct 1.4(a)(3).[8]

Finally, Quinn failed to cooperate with the Director's investigations into these two matters. Between December 2017 and May 2018, the Director made four different requests for Quinn's bank statements concerning the R.F. matter. Each time, Quinn either failed to respond or replied that he was still searching for the bank statements.

In June, the Director set up a meeting to discuss the investigation. The Director asked Quinn to bring the relevant bank records or bank information so that Quinn could sign an authorization form to release the records. Quinn brought some information concerning his account, but not the statements. At the meeting, he also declined to sign an authorization to release the records.

The Director sent another letter to remind Quinn of his obligations to provide his bank statements, but Quinn again failed to reply. The Director renewed her request, but Quinn did not respond. The Director ultimately sought a subpoena to acquire the bank records necessary to continue the investigation. The bank produced the records on August 8, 2018, more than 8 months after the Director had originally requested the records from Quinn.

Quinn also failed to timely and substantively reply to an April 25, 2018 letter from the Director's office concerning the C.L. matter. Then, after Quinn met with the Director

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[8] "A lawyer shall . . . keep the client reasonably informed about the status of the matter . . . ." Minn. R. Prof. Conduct 1.4(a)(3).

in June concerning his misconduct, he failed to timely respond to requests for follow-up information about the C.L. matter.

The referee concluded that Quinn violated Minnesota Rule of Professional Conduct 8.1(b)[9] and Rule 25, Rules on Lawyers Professional Responsibility (RLPR).[10]

The referee found that four factors aggravated Quinn's misconduct: (1) his history of prior discipline; (2) his failure to exhibit remorse; (3) his substantial experience practicing law; and (4) his failure to cooperate with the public disciplinary proceedings. The referee found no mitigating factors. Based on these conclusions, the referee recommended that Quinn be indefinitely suspended with no right to petition for reinstatement for 18 months.

ANALYSIS

I.

When a party orders a transcript—as Quinn did here—"the referee's findings of fact and conclusions of law are not binding." *In re Glasser*, 831 N.W.2d 644, 646 (Minn. 2013). Even so, we give deference to the referee's factual findings and will only reverse them if they are clearly erroneous. *Id.* A referee's findings are clearly erroneous only

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[9] "[A] lawyer . . . in connection with a disciplinary matter, shall not . . . knowingly fail to respond to a lawful demand for information from a[]. . . disciplinary authority . . . ." Minn. R. Prof. Conduct 8.1(b).

[10] "It shall be the duty of any lawyer who is the subject of an investigation or proceeding under these Rules to cooperate with the District Committee, the Director, or the Director's staff, the Board, or a Panel, by complying with reasonable requests . . . ." Rule 25(a), RLPR.

when we are left " 'with the definite and firm conviction that a mistake has been made.' " *Id.* (quoting *In re Albrecht*, 779 N.W.2d 530, 535 (Minn. 2010)).

Quinn contests some of the specific factual findings of the referee and her conclusion that he misappropriated client funds. Taken as a whole, Quinn principally asserts that he did not misappropriate R.F.'s funds for at least three reasons. First, he argues that because he anticipated filing the bankruptcy petition the next business day, he needed to deposit the filing fee funds into his business account because he pays the fee with his personal credit card. Second, he maintains that he had enough earned fees in his trust account to cover the filing fee from the time he received it until he returned it. Third, he asserts that he and R.F. discussed using the filing fee for the extra work performed in negotiating a settlement with Capital One. The Director disagrees and argues that the record fully supports the referee's findings.

A lawyer misappropriates funds when "funds are not kept in trust and are used for a purpose other than one specified by the client." *In re Taplin*, 837 N.W.2d 306, 311 (Minn. 2013) (citation omitted) (internal quotation marks omitted). Here, the record shows that, without a written fee agreement, Quinn took a flat fee for a bankruptcy matter, which included advanced legal fees and $306 for a filing fee, and deposited these funds into his business account. Quinn prepared but never filed a bankruptcy petition for R.F. And on many occasions between January 2013 and June 2018, the balance in Quinn's business account dropped below $306. Quinn therefore used the advanced filing fee for other

purposes, which we have held amounts to misappropriation.[11] *See In re Hulstrand*, 910 N.W.2d 436, 439 (Minn. 2018) (finding that an attorney misappropriated funds when he deposited filing fees into a business account and used the "filing fees for his own expenses and purposes other than filing [the] bankruptcy actions"). Quinn's claim that this conduct is not misappropriation because he always had sufficient earned fees in his trust account to cover R.F.'s filing fee is unsupported by any evidence in the record and contrary to the legal definition of misappropriation.[12]

Quinn's argument that he earned the filing fee by doing extra work for R.F. in negotiating a settlement with Capital One is also unsupported by the record and our case law. Although Quinn asserts that he and R.F. discussed using the filing fee to pay for the additional work involving the settlement, he cited no record evidence that supports his contention. In fact, the record contains an unsigned standard consultation agreement that states that Quinn charges $100 per hour for extra work. Quinn's attempt to shift the

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[11] The dissent contends that we should not view misappropriation so technically and instead determine that Quinn's actions only amount to one act of misappropriation. Important here, however, is that each time the shortage occurred, R.F.'s money was at risk. Of course the risks are much higher when more money is involved, but in any event, "[b]orrowing from client funds, no matter how temporary or no matter how seemingly safe, is misappropriation and is not to be countenanced." *In re Fairbairn*, 802 N.W.2d 734, 743 (Minn. 2011) (citation omitted) (internal quotation marks omitted).

[12] Quinn's argument that he deposited the filing fee into his business account because he anticipated using the money the next business day to pay the bankruptcy filing fee, which required him to use his personal credit card, is also unavailing. When filing fees must be paid by credit card, "the better way to safeguard client funds [is] to pay the filing fee from the attorney's . . . business account with a debit card, and then use trust account funds to reimburse the attorney for that payment." *In re Tigue*, 900 N.W.2d 424, 430 n.7 (Minn. 2017).

responsibility to R.F.—specifically, that R.F. agreed to the extra fees in a phone conversation—is also unpersuasive. R.F. testified that the parties did not discuss a payment of additional fees for trying to reach a settlement with Capital One, and the referee was free to credit this testimony. *See In re Walsh*, 872 N.W.2d 741, 749 (Minn. 2015) ("We defer to a referee's findings on such matters as 'credibility, demeanor, and sincerity.' " (quoting *In re Murrin*, 821 N.W.2d 195, 207 (Minn. 2012))).

Moreover, we have previously rejected the argument that an attorney should be allowed to keep an advanced filing fee based upon *quantum meruit*. *See In re Tigue*, 900 N.W.2d 424, 430 (Minn. 2017) ("[A]lthough Tigue may have believed that he was entitled to keep the $400 filing fee under the *quantum meruit* provisions of his retainer agreement, his testimony to that effect does not render the referee's finding clearly erroneous."). The record shows no signed retainer agreement and the referee did not clearly err in finding that the parties did not agree to an additional payment for Quinn's work in negotiating a settlement for R.F. The referee's finding that Quinn misappropriated R.F.'s funds therefore was not clearly erroneous.

To the extent that Quinn asserts other arguments related to C.L. and his noncooperation with the Director, we find those unpersuasive and unsupported by the record. Instead, the record supports the referee's findings and conclusions concerning the C.L. matter and Quinn's noncooperation. We therefore conclude that the referee did not clearly err in any of her remaining findings of fact or conclusions that Quinn violated various rules of professional conduct.

II.

The parties disagree as to the appropriate discipline here. Quinn asserted at oral argument that he should receive "something less than 90 days," but the Director agrees with the referee's recommendation to indefinitely suspend Quinn for at least 18 months.

"The purpose of discipline for professional misconduct is not to punish the attorney but rather to protect the public, to protect the judicial system, and to deter future misconduct by the disciplined attorney as well as by other attorneys." *In re Bonner*, 896 N.W.2d 98, 107 (Minn. 2017) (citations omitted) (internal quotation marks omitted). We consider four factors in determining the appropriate discipline: "1) the nature of the misconduct, 2) the cumulative weight of the violations of the rules of professional conduct, 3) the harm to the public, and 4) the harm to the legal profession." *Id.* (citation omitted) (internal quotation marks omitted). To impose consistent discipline, we also consider aggravating and mitigating factors, as well as similar cases. *Id.*

"Although we give significant weight to the referee's recommendation for discipline, we are the sole arbiter of the discipline to be imposed." *In re Fairbairn*, 802 N.W.2d 734, 742 (Minn. 2011) (citations omitted) (internal quotation marks omitted).

A.

We first consider the nature of Quinn's misconduct. Misappropriation is "particularly serious misconduct and usually warrants disbarment absent clear and convincing evidence of substantial mitigating factors." *Hulstrand*, 910 N.W.2d at 442 (citation omitted) (internal quotation marks omitted). Although "the misappropriation of small amounts of money is [not] somehow defensible," we have said that "the amount of

the misappropriation is an appropriate consideration in determining sanctions." *In re Grzybek*, 567 N.W.2d 259, 264 n.1 (Minn. 1997). Here, Quinn misappropriated a small amount—$306—but his misconduct is serious nonetheless.[13]

Quinn also failed to communicate with his clients and failed to cooperate with the Director's investigation. Each instance is serious misconduct that independently warrants discipline. *See Hulstrand*, 910 N.W.2d at 443; *In re Capistrant*, 905 N.W.2d 617, 620–21 (Minn. 2018). Particularly serious here was Quinn's lack of response to the Director's request for his bank statements. The Director made four requests for Quinn's bank statements and requested that Quinn sign an authorization to release his bank information, which he refused to sign. In fact, Quinn never provided the bank statements—the Director only acquired them after issuing a subpoena to his bank. Quinn also repeatedly failed to timely and substantively reply to the Director's requests concerning information about the C.L. matter.

B.

Next, we consider the cumulative weight of Quinn's disciplinary violations. *Hulstrand*, 910 N.W.2d at 443. We distinguish between "a brief lapse in judgment or a single, isolated incident and multiple instances of mis[conduct] occurring over a substantial amount of time." *Id.* (alteration in original) (citation omitted) (internal quotation marks omitted).

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[13] Quinn also failed to safeguard R.F.'s funds by placing the filing fee into his business account, rather than his trust account. The dissent does not recognize that this misconduct is also serious. *See In re Eskola*, 891 N.W.2d 294, 299 (Minn. 2017) (noting that the failure to safeguard client property is serious misconduct).

Here, although Quinn's misconduct concerned only two clients, he committed many instances of misconduct over a substantial amount of time. His misappropriation of the filing fee occurred over more than 4 years and happened each time his business account dropped below $306. During that time, he also failed to respond to several requests from R.F. to refund the filing fee. In addition, Quinn failed to communicate adequately with C.L., and he repeatedly failed to cooperate with the Director's two investigations over the course of 8 months.

C.

We next consider the harm that Quinn caused to the public and to the legal profession. In doing so, we look to the number of the clients harmed and the extent of their injuries. *Id.* Here, two clients were affected by Quinn's behavior. R.F. was financially harmed by Quinn's misconduct. Although a relatively small amount of money was involved and R.F. was not permanently deprived of his funds, it took the filing of a disciplinary complaint and more than 4 years before Quinn refunded the filing fee. Quinn's harm to C.L., however, was minimal. His lack of communication did not affect the substantive merits of her claim, and the record shows that she did receive notice of her bankruptcy discharge from the court.

The harm to the public in general and to the legal profession was substantial. "[M]isappropriation of client funds by its nature harms the public at large and the legal profession, because it betrays the trust the client places in an attorney." *Tigue*, 900 N.W.2d at 432. Moreover, failing to cooperate with the Director's investigation "undermin[es] the integrity of the attorney disciplinary system and weakens the public's perception of the

legal profession's ability to self-regulate." *Hulstrand*, 910 N.W.2d at 443–44 (alteration in original) (citation omitted) (internal quotation marks omitted).

D.

In arriving at the appropriate discipline, we must examine whether any aggravating or mitigating factors are present. *See Fairbairn*, 802 N.W.2d at 744. The referee found four aggravating factors and no mitigating factors.

The referee first concluded that Quinn's disciplinary history was an aggravating factor. Prior disciplinary history is an aggravating favor, and a particularly weighty one if the prior discipline was for similar misconduct. *See In re Tigue*, 843 N.W.2d 583, 587 (Minn. 2014). Quinn's prior disciplinary history consists of a public reprimand in 2000 for the unauthorized practice of law while fee-suspended and failing to comply with continuing legal education requirements, and a 2008 admonition for failing to clearly communicate the basis and rate of Quinn's fee and expenses to his client. Because Quinn's disciplinary history is not for similar misconduct, and because it is not recent, we do not weigh this factor heavily.

Second, the referee found that Quinn "declined to acknowledge the wrongfulness of his misconduct and exhibited no remorse." Before the referee, Quinn did not acknowledge the wrongful nature of his conduct or the impact that it had on others, nor did he express regret for it. Instead, Quinn attempted to explain his actions, and he shifted responsibility

to others, blaming R.F., for example, for how long it took to refund the filing fee.[14] *See In re Voss*, 830 N.W.2d 867, 876 (Minn. 2013) (recognizing lack of remorse and the shifting of responsibility as an aggravating factor). We therefore consider his lack of remorse an aggravating factor.

Third, the referee found that Quinn's failure to cooperate with the disciplinary proceedings after the Director filed her petition aggravated Quinn's misconduct. An attorney's noncooperation with the public disciplinary proceedings is an aggravating factor. *Hulstrand*, 910 N.W.2d at 444 ("Although we cannot 'double count' the same acts of noncooperation as both substantive misconduct and an aggravating factor, we may consider a lawyer's failure to cooperate in the disciplinary proceedings before the referee as an aggravating factor."). Quinn failed to reply to the Director's petition and motion to deem the allegations admitted. It was only after we deemed the allegations admitted and the Director had filed a memorandum on the appropriate discipline that Quinn then obtained counsel and filed a motion to reopen and to appoint a referee. But because Quinn has since participated in the proceedings, we do not give this aggravating factor great weight.

Finally, the referee considered Quinn's substantial experience in the practice of law as an aggravating factor. This determination is appropriate. *See Tigue*, 900 N.W.2d at 432

[14] Before us, Quinn continued to state that others were responsible for his misconduct. At one point during oral argument, he claimed that he thought a "girl" in his office had taken care of the accounting for the R.F. matter.

(finding that the attorney's 40 years of practice was an aggravating factor). Quinn has practiced law for over 45 years, the last 20 of which involve bankruptcy work.

The referee found no mitigating factors. Although Quinn now asserts that he is "very remorseful," has changed his practices, and prides himself on "doing a good job for clients," Quinn offers no record evidence to support these statements. No factors exist that mitigate Quinn's misconduct.

E.

Finally, we look to other similar disciplinary cases to ensure consistency in our decisions. *In re Eskola*, 891 N.W.2d 294, 301 (Minn. 2017). We recognize that, unless evidence of substantial mitigating factors exists, misappropriation typically warrants disbarment because of its serious nature. *Hulstrand*, 910 N.W.2d at 442 (citation omitted) (internal quotation marks omitted). But we have also acknowledged that in "a few instances [we have] imposed discipline less than disbarment in a misappropriation case when the record does not reveal substantial mitigating factors." *In re Matson*, 889 N.W.2d 17, 26 (Minn. 2017).

In *Tigue*, we imposed an indefinite suspension with no right to petition for reinstatement for 2 years on an attorney who intentionally misappropriated a $400 filing fee. 900 N.W.2d at 430, 434. Tigue's misconduct also included negligently misappropriating the funds of six clients and was aggravated by four factors: having a disciplinary history for similar misconduct; committing misconduct while on probation; lacking remorse; and having substantial experience practicing law. *Id.* at 432. We considered but did not place great weight upon two mitigating factors. *Id.* at 433.

In *Brooks*, we imposed an indefinite suspension with no right to petition for reinstatement for 2 years on an attorney who converted a $200 filing fee for her own use, neglected two clients, failed to maintain trust-account books and records, and failed to cooperate with the Director. *In re Brooks*, 696 N.W.2d 84, 86–87, 89 (Minn. 2005). Brooks had also been disciplined on five prior occasions, three of which involved trust account violations. *Id.* at 87. In deciding that disbarment was not the appropriate discipline, we noted the lack of evidence of harm to clients. *Id.* at 89.

These cases are similar to Quinn's. As in *Tigue* and *Brooks*, Quinn misappropriated a single filing fee and committed other misconduct, and several factors aggravated the misconduct. But in *Tigue* and *Brooks*, the aggravating factors were more serious. Tigue had been disciplined twice for similar misconduct and also committed his misconduct while on probation, and Brooks had a more lengthy disciplinary history, including being disciplined three times for similar misconduct. Tigue and Brooks each received 2-year suspensions, 6 months more than the recommended discipline here.

Here, Quinn misappropriated only a small amount of money, which he eventually repaid to the client—although he took over 4 years to do so—and no other client was harmed by his misconduct. Considering the nature and extent of Quinn's misconduct and the aggravating factors present, we conclude that the appropriate discipline is an indefinite suspension with no right to petition for reinstatement for 18 months.

Accordingly, we order that:

1. Respondent Michael J. Quinn is indefinitely suspended from the practice of law, effective 14 days from the date of this opinion, with no right to petition for reinstatement for a period of 18 months.

2. Quinn may petition for reinstatement under Rule 18(a)–(d), RLPR. Reinstatement is conditioned on successful completion of the written examination required for admission to the practice of law by the State Board of Law Examiners on the subject of professional responsibility and satisfaction of continuing legal education requirements. *See* Rule 18(e)–(f), RLPR.

3. Quinn shall comply with Rule 26, RLPR (requiring notice of suspension to clients, opposing counsel, and tribunals), and shall pay $900 in costs, *see* Rule 24(a), RLPR.

Suspended.

C O N C U R R E N C E & D I S S E N T

THISSEN, Justice (concurring in part and dissenting in part).

I agree with the court that the referee's findings that respondent Michael J. Quinn misappropriated R.F.'s $306 filing fee, failed to communicate with C.L., and failed to cooperate with the Director's investigation are not clearly erroneous. I disagree that an 18-month suspension is the appropriate discipline in this case. I would impose a suspension of 6 months.

The purpose of attorney discipline is "to protect the public, protect the judicial system, and to deter future misconduct by the disciplined attorney as well as other attorneys." *In re Bonner*, 896 N.W.2d 98, 107 (Minn. 2017) (citations omitted) (internal quotation marks omitted). Quinn is being disciplined for his failure to (1) return $306 advanced to him as a filing fee to accompany a 50-page bankruptcy petition that Quinn prepared over a single weekend but that the client decided not to file;[1] (2) send a client a copy of a notice of bankruptcy discharge that the bankruptcy court also sent to the client; and (3) respond to several investigatory requests from the Director to provide a copy of his bank statements. After reviewing the record, I conclude that an 18-month suspension is excessive and not necessary to either protect the public from this attorney or deter future misconduct which is highly unlikely to recur. I further do not see how Quinn's conduct seriously threatens the functioning of the judicial system. Rather, such a lengthy

[1] There is no allegation that Quinn did not earn the $1,800 fee to prepare the bankruptcy petition. In addition, there is no dispute that Quinn later pursued a settlement of the client's debts with the creditor at the client's request. Several years later, Quinn refunded the $306 filing fee after the client filed a complaint with the Director.

suspension is punitive and that is not a proper purpose for imposing discipline. *See id.* (acknowledging that punishing the attorney is not the purpose of discipline for professional misconduct).

Nature of the Misconduct

Certainly, misappropriating client funds is serious—and the 6-month suspension I support is serious discipline. Quinn was foolish for not simply returning the $306 filing fee when first asked, even if he had thought he earned it for the time he spent pursuing a settlement with the client's creditor. This whole imbroglio could have been avoided. But fairly viewed, this was not a nefarious scheme to defraud his client out of $306. As to the failure to send another client a notice of bankruptcy discharge, which was also sent to the client by the bankruptcy court, even the Director acknowledges that the violation, standing alone, would unlikely warrant any suspension. It cannot be enough for us to say that a failure to communicate is serious without looking at the actual facts of the case and the facts here point to a minor violation of the rule on client communication. The most concerning violation here was Quinn's repeated failure to provide the Director with bank records. This violation suggests that some discipline is necessary, but I am unconvinced that these violations warrant an 18-month suspension.

Cumulative Weight of the Violations

Quinn accepted one $306 filing fee from one client and failed to return it for several years. That is one act of misappropriation. The Director, however, wants us to transform that one act into many instances of misconduct over a substantial amount of time because the balance in Quinn's bank account dropped below $306 on several occasions. That is an

example of the kind of formalistic reasoning that makes the public dislike lawyers. But I agree with the court that we should consider Quinn's repeated failure to cooperate with the Director over an 8-month period of time.

Harm to the Public and the Legal Profession

One of Quinn's clients was harmed because, for several years, the client was left without $306. In assessing discipline, it is appropriate to consider that harm, including a realistic assessment of the impact that the missing $306 had on Quinn's client. As the court notes, Quinn's other client was not harmed by the failure to forward the notice of bankruptcy discharge.

The court considers the failure to return the $306 filing fee "substantial harm" to the public and the legal profession. While I agree that we cannot overturn the referee's findings of misappropriation here as clearly erroneous, I also submit that if you told a Minnesotan sitting in a café or paddling across a lake the story of what happened here, she would not characterize the misconduct as substantial and it would likely not change her trust in the legal profession. On the other hand, failing to cooperate with the Director's investigation undermines the ability of the legal profession to self-regulate.

Aggravating Factors

I agree with the court that Quinn's disciplinary history is relevant but does not weigh heavily. I also agree that Quinn's long experience in the area of bankruptcy work is a relevant aggravating factor on the facts of this case. But I disagree that Quinn's failure to file an answer to the Director's petition and a response to the Director's motion to deem the allegations in the petition admitted may be used to enhance discipline for the reasons

stated in my concurrence in *In re Nelson*, 933 N.W.2d 73, 76–77 (Minn. 2019) (order) (Thissen, J., concurring).

I also disagree with the referee's legal conclusion that Quinn's discipline should be enhanced because he "declined to acknowledge the wrongfulness of his misconduct and exhibited no remorse." The court reasons that we should discipline Quinn more harshly than other lawyers who may have engaged in the same misconduct because Quinn did not concede that he violated the Rules in the disciplinary proceeding but rather attempted to explain his actions and apportion responsibility to others while defending himself.

We live in a nuanced world and it is basic human nature to want to explain oneself. Indeed, it is one of the reasons we hold hearings. We are disciplining Quinn for what the referee ultimately determined to be violations of the Rules of Professional Responsibility. Should his discipline for those violations also be enhanced because Quinn tried to defend himself?

> I find it troubling from a due-process perspective that the court is imposing a harsher sanction on a lawyer for asserting in an official pleading a good-faith defense. We should not abide by a system that disciplines a person more harshly for defending himself against the power of a State actor, but should put the burden where it properly rests.

In re Sea, 932 N.W.2d 28, 45 (Minn. 2019) (Thissen, J., concurring in part and dissenting in part).

ANDERSON, Justice (concurring in part and dissenting in part).

I join in the concurrence and dissent of Justice Thissen.