

STATE OF MINNESOTA

IN SUPREME COURT

A21-0254

Original Jurisdiction

Per Curiam

In re Petition for Disciplinary Action Against
Peter Gilbert Lennington, a Minnesota Attorney,
Registration No. 0223311.

Filed: January 19, 2022
Office of Appellate Courts

Susan M. Humiston, Director, Office of Lawyers Professional Responsibility, Saint Paul,
Minnesota, for petitioner.

Peter Gilbert Lennington, Saint Paul, Minnesota, pro se.

S Y L L A B U S

Disbarment is the appropriate discipline for an attorney who misappropriated client funds, neglected and abandoned several client matters, failed to comply with a previous suspension order, held himself out to practice law while suspended, and failed to cooperate with disciplinary investigations.

Disbarred.

O P I N I O N

PER CURIAM.

The sole issue before us in this case is the appropriate discipline to impose on attorney Peter Gilbert Lennington. The Director of the Office of Lawyers Professional Responsibility filed a petition for disciplinary action, followed by an amended and restated

supplementary petition, collectively alleging that Lennington violated numerous ethical rules in six matters. Lennington's alleged professional misconduct included misappropriation of client funds in two matters, as well as a pattern of neglect and abandonment of five client matters. The Director also alleged that Lennington committed professional misconduct by holding himself out to practice law while suspended, failing to comply with the terms of the suspension order, and failing to cooperate in four disciplinary investigations. Lennington did not file answers to the petitions. We granted the Director's motion for summary relief, deemed the allegations admitted, and allowed the parties to submit written proposals regarding the discipline to be imposed. Lennington did not file a memorandum or appear at oral argument. The Director asks us to disbar Lennington. We agree that the appropriate discipline is disbarment.

FACTS

Lennington was admitted to the practice of law in Minnesota in December 1991. Effective October 6, 2020, we suspended Lennington for 6 months for engaging in a pattern of client-related misconduct impacting eight clients. *In re Lennington*, 948 N.W.2d 685, 685–86 (Minn. 2020) (order). The misconduct at issue involved neglecting client matters, failing to communicate with clients, failing to clarify a fee, failing to deposit advance fee payments and a filing fee into trust, failing to refund or timely refund unearned fees and a filing fee, charging an unreasonable fee, failing to return original documents to clients, and failing to cooperate in disciplinary investigations. *Id.*

On February 16, 2021, the Director served on Lennington a petition for disciplinary action. Having received and investigated additional complaints, the Director filed an

amended and restated supplementary petition for disciplinary action on July 1, 2021. After Lennington did not respond or seek an extension to respond to either petition, we deemed the allegations of the petitions admitted. *See* Rule 13(b), Rules on Lawyers Professional Responsibility (RLPR) (stating that if the respondent fails to file a timely answer, “the allegations” in the petition “shall be deemed admitted”).

Lennington’s misconduct includes six client matters and non-client related misconduct. We summarize the misconduct below.

D.G. Matter

In December 2018, D.G. hired Lennington to amend his estate plan, which included a revocable trust. D.G. paid Lennington a \$6,000 flat fee for the representation. D.G. and Lennington did not sign a written fee agreement. Lennington failed to deposit the fee, which was unearned at the time of his receipt, into a trust account.

In January 2019, a dispute about the trust arose between D.G. and his son. Lennington agreed to represent D.G. in the trust dispute on an hourly basis. The parties reached a mediated settlement agreement, which required D.G. to make certain financial disclosures. Over the next several months, Lennington failed to prepare any disclosures, stopped returning D.G.’s phone calls, and failed to respond to opposing counsel’s communications regarding the required disclosures. In July 2020, D.G. terminated the representation.

F.C. Matter

In September 2018, F.C. and his sister hired Lennington to handle the probate of their father's estate. Lennington e-mailed them an engagement letter that outlined his hourly fees and requested a \$3,500 advance fee retainer. F.C. paid Lennington \$3,500, the majority of which was unearned at the time of receipt. Lennington deposited the unearned fees into his operating account. Lennington's communication with the siblings was sporadic and included months-long periods of noncommunication until approximately mid-July 2020, when he stopped responding to the siblings altogether. During this time, Lennington failed to timely inform the siblings about an offer to purchase some real estate they inherited from their father. Lennington further failed to take any action after the siblings instructed him to finalize a deal for the sale.

In August 2020, the siblings terminated the representation. They retained new counsel to complete the probate of their father's estate and paid a new retainer. The siblings requested a refund. Lennington declined to make any refund or otherwise account for his fees.

R.C. and T.C. Matter

In October 2019, R.C. and T.C. retained Lennington to probate their father's estate. They paid a flat fee of approximately \$3,000, split between cash and credit card, and gave Lennington original documents related to the estate. Lennington deposited the advance unearned fee payments into his business account. He provided T.C. with a receipt for the cash portion of the retainer, but she did not countersign it.

Lennington abandoned the matter and failed to respond to numerous communications over the next several months. In June 2020, the siblings retained a new attorney, who informed them that Lennington had never filed a petition for probate. R.C. then e-mailed Lennington, terminating the representation, and requesting a refund and return of the original documents. Lennington took nearly a month to comply, and he did so only after R.C. threatened to file an ethics complaint.

Z.H. Matter

In March 2020, Z.H. retained Lennington to probate his father's estate for a flat fee of \$3,500. Z.H. did not sign a written fee agreement. Z.H. also gave Lennington original documents, including a will, death certificate, property records, and tax records. Lennington deposited the unearned \$3,500 into his business account. Shortly thereafter, Lennington stopped communicating with Z.H. and performed no legal work on the matter. Lennington did not provide a status update despite Z.H.'s numerous texts, calls, and e-mails over the course of 4 months.

In January 2021, Z.H. left Lennington a voicemail indicating he was terminating the representation. Z.H. then retained new counsel and incurred additional legal fees. Lennington never initiated the probate process for Z.H.'s father's estate, nor did he refund Z.H. the \$3,500 or return any of the original documents.

J.B. Matter

Lennington drafted a family trust for H.B. and J.B. in 2010 and updated the trust in 2017. After H.B.'s death in 2019, J.B. and his daughter met with Lennington in August 2019 about updating the family trust. The same day, J.B. signed a written fee agreement

with Lennington providing for a flat fee of \$7,250 and gave Lennington a check for that amount. Lennington told J.B. and his daughter he would bring the trust documents to J.B.'s house for signature upon completion.

Neither J.B. nor his daughter had contact with Lennington after the August 2019 meeting, despite their numerous requests for information. They requested a refund in January 2021, but Lennington did not return the funds. Nor did Lennington ever provide any trust paperwork, draft or otherwise, to J.B. or his daughter.

D.L. and K.L. Matter

In September 2006, Lennington completed an estate plan for D.L. and K.L. The estate plan included an irrevocable life insurance trust. The trust instrument required Lennington, acting as trustee, to render an annual accounting to the income beneficiaries of the trust upon written request. Additionally, the trust's financial records and documentation were to be available for inspection by the trust beneficiaries and their representatives.

In November 2020, the couple hired a new attorney to update their estate plan. The next month, the new attorney sent Lennington a letter requesting copies of the couple's estate planning documents. The letter also notified Lennington that he was being removed as trustee and requested an accounting of his activities as trustee along with financial records related to the trust. Lennington did not respond, which violated his statutory obligations as trustee to keep beneficiaries "reasonably informed about the administration of the trust and of the material facts necessary to protect their interests." Minn. Stat. § 501C.0813(a) (2020).

In January 2021, the couple’s new attorney again wrote to Lennington requesting the same information. The documents Lennington eventually provided did not include a compliant accounting, which violated Lennington’s statutory obligation to keep adequate records of trust administration. *See* Minn. Stat. § 501C.0810(a) (2020).

Misconduct in Client Matters

Lennington’s conduct in these six matters violated numerous rules of professional conduct. His abandonment or neglect of client matters and failure to communicate in the D.G., F.C., R.C./T.C., Z.H., and J.B. matters violated Minn. R. Prof. Conduct 1.1,¹ 1.3,² and 1.4(a)(3)–(4).³ Lennington’s failure to convey a sales offer on a material asset of the estate in the F.C. matter violated Minn. R. Prof. Conduct 1.4(b).⁴ Lennington’s failure to timely return an unearned fee and original client documents in the R.C./T.C matter and his failure to return original client documents in the Z.H. matter violated Minn. R. Prof.

¹ “A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation.” Minn. R. Prof. Conduct 1.1.

² “A lawyer shall act with reasonable diligence and promptness in representing a client.” Minn. R. Prof. Conduct 1.3.

³ “A lawyer shall . . . keep the client reasonably informed about the status of the matter” and “promptly comply with reasonable requests for information.” Minn. R. Prof. Conduct 1.4(a)(3)–(4).

⁴ “A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.” Minn. R. Prof. Conduct 1.4(b).

Conduct 1.15(c)(4)⁵ and 1.16(d).⁶ Lennington’s failure to deposit a flat fee received in advance of legal services into a trust account absent a compliant flat fee agreement in the D.G., F.C., and Z.H. matters violated Minn. R. Prof. Conduct 1.15(a)⁷ and (c)(5).⁸ In the Z.H and J.B. matters, Lennington misappropriated his clients’ advance fee payments by taking money, performing no work, and failing to make refunds, in violation of Minn. R. Prof. Conduct 1.15(a), (c)(4) and (c)(5), and 8.4(c).⁹ Finally, Lennington’s failure to timely respond to beneficiaries’ request for trust documentation and failure to provide a trustee accounting in compliance with his fiduciary obligations mandated by statute in the D.L./K.L matter violated Minn. R. Prof. Conduct 8.4(d).¹⁰

⁵ “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).

⁶ “Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests,” including “surrendering papers and property to which the client is entitled” and “refunding any advance payment of fees or expenses that has not been earned or incurred.” Minn. R. Prof. Conduct 1.16(d).

⁷ “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).

⁸ “A lawyer shall . . . 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).

⁹ “It is professional misconduct for a lawyer to . . . engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.” Minn. R. Prof. Conduct 8.4(c).

¹⁰ “It is professional misconduct for a lawyer to . . . engage in conduct that is prejudicial to the administration of justice.” Minn. R. Prof. Conduct 8.4(d).

Additional Misconduct Not Involving Clients

In addition to the client-related misconduct detailed above, Lennington engaged in further violations of the rules of professional conduct. First, Lennington did not cooperate with the Director’s investigation of the complaints filed in the R.C./T.C., Z.H., J.B., and D.L./K.L. matters, which violated Minn. R. Prof Conduct 8.1(b)¹¹ and Rule 25, RLPR.¹² Second, Lennington held himself out as authorized to practice law after we suspended him in October 2020. Despite his suspension, Lennington continued to operate his law firm’s website—which contained a portal where prospective clients could submit information to Lennington—without informing visitors of his suspension. Additionally, Lennington continued to operate his law firm’s phone number and voicemail without any indication that he is not authorized to practice law. Lennington’s conduct in holding himself out as authorized to practice law while suspended violated Minn. R. Prof. Conduct 5.5(b)(2)¹³ and 7.1.¹⁴ Third, Lennington failed to notify clients, including Z.H. and J.B., of his

¹¹ “[A] lawyer in connection with . . . a disciplinary matter, shall not . . . fail to respond to a lawful demand for information from an admission or disciplinary authority . . .” Minn. R. Prof. Conduct 8.1(b).

¹² Rule 25, RLPR, requires lawyers who are the subject of an investigation to cooperate with the Director by complying with reasonable requests. It further provides that violation of the Rule is grounds for discipline.

¹³ “A lawyer who is not admitted to practice in Minnesota shall not . . . hold out to the public or otherwise represent that the lawyer is admitted to practice Minnesota law.” Minn. R. Prof. Conduct 5.5(b)(2).

¹⁴ “A lawyer shall not make a false or misleading communication about the lawyer or the lawyer’s services. A communication is false or misleading if it contains a material misrepresentation of fact of law, or omits a fact necessary to make the statement considered as a whole not materially misleading.” Minn. R. Prof. Conduct 7.1.

suspension and also failed to file an affidavit with the Director documenting this notice, as required by Rule 26, RLPR.¹⁵ Fourth, and finally, we ordered Lennington to refund unearned fees to four clients in our suspension order. *See Lennington*, 948 N.W.2d at 686. Lennington did not do so. This failure to make restitution as ordered violated Minn. R. Prof. Conduct 3.4(c),¹⁶ as well as our order.

ANALYSIS

Because we have already deemed the allegations in the petition and amended and restated supplementary petition admitted, the sole issue before us is what discipline we should impose for Lennington’s misconduct. *See In re Gorshteyn*, 931 N.W.2d 762, 765, 769 (Minn. 2019) (considering only the appropriate discipline to impose where attorney failed to respond to Director’s petition). The Director recommends disbarment “for the combination of misappropriation and client abandonment across multiple files, given [Lennington’s] non-participation in [the] proceedings, lack of mitigating evidence and recent disciplinary history.” We agree with the Director that disbarment is the appropriate discipline for the misconduct at issue here.

¹⁵ Lawyers must give notice of their suspension to all clients as of the date of their suspension order. Rule 26(a), RLPR. Within 15 days after the effective date of the court’s order, Rule 26(e), RLPR requires suspended lawyers to file an affidavit with the Director showing compliance with the order and with the other provisions of Rule 26. It also requires suspended lawyers to attach copies of all notices informing clients of the lawyer’s suspension.

¹⁶ “A lawyer shall not . . . knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists.” Minn. R. Prof. Conduct 3.4(c).

We have “the ultimate responsibility for determining what discipline should be imposed for attorney misconduct.” *Id.* at 770. The purpose of imposing discipline “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 Rebeau*, 787 N.W. 2d 168, 173 (Minn. 2010). To determine the appropriate discipline, we consider four factors: (1) the nature of the misconduct; (2) the cumulative weight of the violations; (3) the harm to the public; and (4) the harm to the legal profession. *In re Kleyman*, 960 N.W.2d 566, 572 (Minn. 2021). In addition, we consider aggravating and mitigating circumstances. *Id.* Finally, although we impose discipline according to the unique facts of each case, we look to similar cases for guidance. *In re Capistrant*, 905 N.W.2d 617, 620 (Minn. 2018).

We first consider the nature of Lennington’s misconduct, the most serious of which is misappropriation of client funds. Misappropriation occurs when a lawyer “performs no work on client matters and never returns the funds to the clients.” *Id.* (citation omitted) (internal quotation marks omitted). Misappropriation alone “usually warrants disbarment absent clear and convincing evidence of substantial mitigating factors.” *In re Garcia*, 792 N.W.2d 434, 443 (Minn. 2010) (citation omitted).

Lennington’s conduct in the Z.H. and J.B. matters is clear misappropriation of client funds. In the Z.H. matter, Lennington placed the entire, unearned \$3,500 flat fee in his business account rather than into a trust account, performed no work on the matter, and failed to make a refund. Similarly, in the J.B. matter, Lennington received a \$7,250 flat fee but performed no work on the matter and has not made a refund. In total, Lennington

misappropriated \$10,750 in client funds. In addition to misappropriation, Lennington also failed to safekeep client funds in the D.G., F.C., R.C./T.C., Z.H., and J.B. matters, which we also consider serious misconduct. *See In re Hulstrand*, 910 N.W.2d 436, 442 (Minn. 2018).

Lennington's misconduct did not end there. He also engaged in a pattern of neglect and non-communication in multiple client matters, which we consider serious misconduct. *See In re Brooks*, 696 N.W.2d 84, 88 (Minn. 2005) ("A continuing pattern of client neglect is serious misconduct often warranting indefinite suspension by itself when no evidence of mitigating circumstances is present."). In fact, depending on the severity, we have indicated client neglect alone may also warrant disbarment. *Capistrant*, 905 N.W.2d at 621. Lennington performed no work in the Z.H. and J.B. matters; he abandoned the D.G. and R.C./T.C. matters; he neglected the F.C. matter and D.L./K.L. matters. Moreover, he repeatedly failed to respond to client communications in all six matters, often for months at a time. In the F.C. matter, Lennington also failed to respond to correspondence from opposing counsel and failed to timely convey a proposed offer to his clients.

Additionally, Lennington failed to comply with court orders and rules. This is also serious misconduct. *See Hulstrand*, 910 N.W.2d at 443. Lennington failed to follow court rules and our previous order by not notifying pending clients of his suspension, not paying the restitution we ordered, holding himself out as authorized to practice law despite suspension, and not cooperating with the Director's investigations. *See In re Grzybek*, 567 N.W.2d 259, 264–65 (Minn. 1997) (stating that "repeated failure to comply with court orders" is a "serious violation" that itself is a ground for disbarment); *see also In re Rhodes*,

740 N.W.2d 574, 579 (Minn. 2007) (concluding that failure to cooperate with the Director's investigation was "serious misconduct" that is "separate grounds for discipline").

Having determined that Lennington's misconduct was serious, we next consider the cumulative weight of Lennington's disciplinary violations. "[T]he cumulative weight and severity of multiple disciplinary rule violations may compel severe discipline even when a single act standing alone would not have warranted such discipline." *In re Oberhauser*, 679 N.W.2d 153, 160 (Minn. 2004). We distinguish a "brief lapse in judgment" or a "single, isolated incident" from "multiple instances of mis[conduct] occurring over a substantial amount of time," the latter of which warrants greater discipline. *Capistrant*, 905 N.W.2d at 621 (alteration in original) (citation omitted) (internal quotation marks omitted).

Here, Lennington's misconduct was neither a single, isolated incident nor a brief lapse in judgment. Lennington committed numerous acts of misconduct ranging from misappropriation to client neglect. His misconduct involved six client matters and occurred over a span of more than 2 years. *See In re Hummel*, 839 N.W.2d 78, 82 (Minn. 2013) (holding that misconduct occurring over the course of several months was an "extended period of time"). Lennington also ignored the Director's communications for months and did not comply with the terms of his existing suspension. Lennington's misconduct demonstrates a pattern of misconduct over an extended period of time.

We also consider the harm that Lennington caused to the public. In evaluating such harm, we consider the number of clients harmed and the extent of their injuries. *In re*

Sayaovong, 909 N.W.2d 575, 583 (Minn. 2018). Here, Lennington’s misconduct spanned 6 matters involving 10 clients. Two of these clients were permanently deprived of funds due to Lennington’s misappropriation and failure to return unearned fees. Four clients had to retain new counsel and incur additional legal fees as result of Lennington’s neglect and abandonment. Aside from pecuniary harm, Lennington’s failures caused his clients substantial inconvenience and unnecessary frustration.

The fourth factor we consider is harm to the legal profession. Lennington’s misconduct harmed the legal profession. “Misappropriation and the failure to return unearned fees is a breach of trust that reflects poorly on the entire legal profession and erodes the public’s confidence in lawyers.” *Id.* (citation omitted) (internal quotation marks omitted). Lennington’s neglect of client matters and lack of communication were not only intensely frustrating to the clients, but also reflected adversely on the bar, and were destructive of public confidence in the legal system. *See id.*; *In re O’Brien*, 894 N.W.2d 162, 167 (Minn. 2017). Finally, failure to cooperate with disciplinary investigations “undermin[es] the integrity of the attorney disciplinary system” and “weakens the public’s perception of the legal profession’s ability to self-regulate.” *In re Brost*, 850 N.W.2d 699, 705 (Minn. 2014) (citation omitted) (internal quotation marks omitted). Here, Lennington’s multiple instances of misconduct eroded the public confidence in lawyers and the legal profession.

In addition to the four factors above, we consider any aggravating and mitigating circumstances. Here, there are no mitigating factors for us to consider because Lennington did not respond to the petition or amended and restated supplementary petition. *In re*

Matson, 889 N.W.2d 17, 25 (Minn. 2017) (declining to consider any mitigating circumstances because the attorney did not file an answer to the petition); *In re Ladd*, 463 N.W.2d 281, 283 (Minn. 1990) (“[R]espondent’s failure to answer the petition with any mitigating circumstances bars our consideration of such issues.”).

There are, however, two aggravating factors. The first is Lennington’s disciplinary history. *In re Cutting*, 671 N.W.2d 173, 175 (Minn. 2003) (providing that “previous misconduct of the same type is considered an aggravating factor”). We suspended Lennington, effective in September 2020, for, among other things, neglect, non-communication, failing to safekeep client funds, failing to refund unearned fees, and failing to cooperate in disciplinary investigations—the same type of misconduct involved in this case. *Lennington*, 948 N.W.2d at 685–86. This factor “weighs heavily” because Lennington’s prior discipline was for similar misconduct. *In re Tigue*, 900 N.W.2d 424, 432 (Minn. 2017).

Second, the timing of Lennington’s misconduct—coming directly on the heels of prior discipline—makes Lennington’s history a “serious” aggravating factor. *Rhodes*, 740 N.W.2d at 580 (determining that because “most of [the attorney’s] new misconduct occurred at the same time as, and in the months immediately following, the previous disciplinary proceedings against [the attorney] for similar violations,” the disciplinary history was a “serious” aggravating factor).

Finally, we look to guidance from similar past cases. We have ordered disbarment in factually similar cases involving the constellation of misappropriation of client funds, a pattern of client neglect and abandonment across multiple client matters, and prior

discipline. Indeed, intentional misappropriation alone is generally grounds for disbarment absent substantial mitigating circumstances. *Sayaovong*, 909 N.W.2d at 584. As noted above, Lennington has not alleged *any* mitigating circumstances, much less substantial ones. We have disbarred attorneys who have misappropriated far smaller amounts of money than the \$10,750 at issue here. *See Capistrant*, 905 N.W.2d at 622 (disbarring attorney who misappropriated \$547); *Hulstrand*, 910 N.W.2d at 442 (disbarring attorney who misappropriated \$685); *Gryzbek*, 567 N.W.2d at 265 (disbarring attorney who misappropriated \$750).

And Lennington's misconduct here went beyond misappropriation. *In re Gryzbek*, in particular, is similar to this case. 567 N.W.2d at 265. There, three separate grounds supported disbarment: (1) repeated neglect of client matters and noncooperation with the disciplinary process less than a year after receiving a 6-month suspension for similar misconduct; (2) misappropriation of \$750 in client funds and no attempt to return the money; and (3) repeated lack of compliance with court orders. *Id.* Like the attorney in *Gryzbek*, Lennington has repeatedly neglected client matters—both as part of the misconduct underlying his October 2020 suspension and here—and has failed to cooperate with disciplinary investigations less than a year after receiving a suspension for similar misconduct. Moreover, Lennington misappropriated \$10,750 of client funds—substantially more than the amount of money taken in *Gryzbek*—and has made no attempt to return the funds. And Lennington failed to comply with court rules and our prior order.

In light of all of the relevant factors, we conclude that the appropriate discipline for Lennington is disbarment.

CONCLUSION

For the foregoing reasons, respondent Peter Gilbert Lennington is disbarred from the practice of law in the State of Minnesota, effective on the date of this opinion. Respondent shall comply with Rule 26, RLPR (requiring notice to clients, opposing counsel, and tribunals), and shall pay \$900 in costs under Rule 24(a), RLPR. Finally, to the extent his law firm's website is still active, respondent shall take this website down completely within 7 days of the date of this opinion.

Disbarred.