STATE OF MINNESOTA

IN SUPREME COURT

A19-0048

Original Jurisdiction — Per Curiam

In re Petition for Disciplinary Action
against Daniel Martin Lieber, a Minnesota
Attorney, Registration No. 0207731.

Filed: February 19, 2020
Office of Appellate Courts

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

Eric T. Cooperstein, Minneapolis, Minnesota, for respondent attorney.

S Y L L A B U S

In light of substantial mitigation, a stayed disbarment is the appropriate discipline for an attorney who, having previously been disbarred, negligently misappropriated client funds, commingled his own funds with client funds, willfully failed to maintain his trust account books and records, and violated advertising rules.

Stayed disbarment.

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 Daniel Martin Lieber. We appointed a referee. After a hearing, the referee determined that Lieber had negligently misappropriated client funds, commingled his own funds with client funds, willfully failed to maintain proper trust account books and records, and violated advertising rules. The referee found several aggravating factors, including that we had previously disbarred Lieber for, among other things, similar trust account related misconduct. The referee also found that Lieber's personal stress, resulting from his daughter's health problems, the health problems of other family members, and the death of his father-in-law, is a mitigating factor. The referee concluded, however, that this factor is insufficient to mitigate against the need for a suspension, and he recommended an 18-month suspension. Lieber challenges some of the referee's findings and conclusions regarding mitigating and aggravating factors, and asserts that a 90-day stayed suspension is the appropriate discipline. The Director asks us to impose a suspension of at least 3 years. We conclude that in light of the substantial mitigation, the appropriate discipline for Lieber's misconduct is a stayed disbarment.

FACTS

Lieber was admitted to practice law in Minnesota in 1990. Lieber has a significant disciplinary history. In 2002, Lieber received an admonition for causing a client's

signature on a release to be notarized when, in fact, the client had not appeared before the notary, in violation of Minn. R. Prof. Conduct 5.3 and 8.4(c) and (d).

Roughly 3 years later, we disbarred Lieber. *In re Lieber*, 699 N.W.2d 722, 722 (Minn. 2005) (order). Lieber was disbarred, in part, for conduct similar to the misconduct he committed in this case. Lieber temporarily misappropriated client funds, commingled personal and client funds in his trust account, failed to maintain proper trust account books and records, and "falsely certified that he maintained the required trust account books and records." *Id.* Lieber also "made improper financial advances to clients," charged an interest rate of 15 percent per month on the advanced sums, "failed to disclose his conflict of interest in the transactions, lied about his involvement in the transactions both before and during the disciplinary investigation, made false statements under oath about his involvement in the transactions, [and] ratified the false sworn testimony of one of his employees[.]" *Id.*

We reinstated Lieber to the practice of law on July 31, 2013, and placed him on probation for 3 years. *In re Lieber*, 834 N.W.2d 200, 210 (Minn. 2013). As a condition of his probation, we required Lieber to "ensure that he, and the law firm at which he practices, maintain law office and trust account books and records in compliance with Minn. R. Prof. Conduct 1.15 and Appendix 1 thereto." *Id.* at 210–11. Lieber's probation ended on July 31, 2016.

The record establishes the following facts with respect to Lieber's current misconduct. Before Lieber was disbarred, he owned a law firm and was solely responsible for the firm's trust account books and records. He used QuickBooks, an accounting

software, to assist with his trust account books and records. Following the referee's recommendation that he be disbarred, Lieber incorporated the law firm as Metro Law Offices and sold it to R.P., his employee at the time.

After Lieber was disbarred, he continued to work at Metro Law as a claims coordinator. He also assisted R.P. with managing the firm's trust account. No other Metro Law employee helped with the trust account.

Lieber continued working at Metro Law following his reinstatement to the practice of law in July 2013. Lieber and R.P. were the only two lawyers that worked at the firm, and Lieber continued to assist R.P. with the firm's trust account. In November 2013, Lieber closed Metro Law's trust account because some checks had been stolen, and he opened a new account.

During 2014 and 2015, R.P. had health issues and was in the office "a couple of times a week." Lieber was the only lawyer regularly present at the office from December 2014 through April 2016.

Lieber became primarily responsible for Metro Law's trust account in December 2015. Lieber claimed he took over the trust account "because of his concerns about errors that [R.P.] was making in managing the account." During the hearing before the referee, Lieber testified that R.P. would handwrite trust account checks, sometimes out of numerical order, without telling Lieber. As a result, Lieber sometimes would not know that R.P. had written a check until Lieber received the monthly bank statement. And because there was no electronic record of the handwritten check, he often would not know who the client was and on which account the check was written. To correct these errors,

Lieber closed the account he had opened in November 2013 and opened another new trust account. Lieber noted that in January or February 2016, he intended to go back and correct the errors in the old trust account's records, but he did not have time to fix them.

Lieber was discharged from probation on July 31, 2016. The next day, Lieber purchased Metro Law from R.P. By then, R.P. was "semi-retired" from legal practice. Following his purchase of the firm, Lieber continued to use QuickBooks to maintain Metro Law's trust account.

The Director began investigating Lieber's management of his trust account in June 2017 after receiving a complaint about Lieber.[1] The Director requested complete trust account books and records for the period of January 2013 through June 2017. Lieber responded but provided only the subsidiary ledger of one client settlement account. The Director again requested complete trust account books and records, this time for the period of June 2013 through August 2017. Lieber responded, through counsel, by providing some records from his current account for the months of December 2015 through August 2017. But he failed to provide all of the additional information the Director requested, such as client subsidiary ledgers and monthly reconciliation reports. Lieber explained that a sewage backup in Metro Law's building during the summer of 2016 had destroyed the paper records and that his computer had crashed in August 2016, destroying the

[1] Count two of the petition for disciplinary action related to this complaint. The referee dismissed this count because the referee concluded that the Director had not proven that Lieber's conduct violated any rule of professional conduct. Because the Director has not challenged the referee's findings and conclusions regarding count two, these allegations are not relevant to our decision.

QuickBooks records.[2] He had also failed to electronically back up his QuickBooks trust account file, as required by Minn. R. Prof. Conduct 1.15(h), as interpreted by Appendix 1(I)(7). And although Lieber claimed that he generated a trial balance report each month and compared it to the adjusted bank and register balance, he admitted that he did not print out the reports, as Minn. R. Prof. Conduct 1.15(h), as interpreted by Appendix 1(I)(7), requires.[3] He therefore could not provide all the information the Director requested.

In an audit of Lieber's trust account records, the Director found that Lieber made numerous errors in his current trust account's check register. The errors included failing to list funds received from clients and listing incorrect amounts for clients' portions of checks. The Director also identified several negative client ledger balances and an overall shortage in Lieber's trust account. The Director further determined that Lieber had commingled a significant balance of his own funds in the account. The Director requested that Lieber provide his complete books and records for his current trust account for the period of September 2017 through March 2018.

Lieber deposited funds into his trust account to correct the shortage the Director identified, and again, provided only some of the materials the Director requested. In a letter

---

[2] As a result, the Director was unable to audit Metro Law's trust account for the period before December 2015.

[3] A trial balance report "shows each client matter for which the attorney is holding funds in a trust account, the balance of funds held on behalf of each client matter as of the date of the monthly bank statement, and a total of all such client balances." Minn. R. Prof. Conduct app. 1(I)(4).

dated May 11, 2018, Lieber acknowledged that he had made numerous errors in his trust account books and records. He also admitted that he had grouped the trust activity of clients with the same last name, even though the clients had unrelated matters. Because the combined subsidiary ledger never accurately reflected an individual client's balance, Lieber could not prepare accurate trust account records. Lieber admitted that grouping clients in this manner had been his practice since before his disbarment.

In the same letter, Lieber also acknowledged that he did not have the requisite knowledge of QuickBooks to comply with his trust account bookkeeping obligations. He admitted that he did not know how to generate all of the reports he needed to run each month. Lieber informed the Director that he had retained a bookkeeper with expertise in QuickBooks.

The Director's later audit of Lieber's trust account records showed that Lieber had several additional negative client balances and trust account shortages. As a result, the Director asked Lieber to provide his complete trust account books and records for the period of April to July 2018. Lieber finally provided client subsidiary ledgers to the Director on September 19, 2018, 15 months after the Director first requested them in June 2017. The records Lieber did provide showed that while Lieber had attempted to correct some of the errors the Director had identified during the first audit, he had done so incorrectly, and that he had failed to correct numerous other errors that had also been identified.

In the end, the Director's audit of Lieber's trust account for the period of December 2015 through September 2018 showed periods of commingling and shortages. During the periods of December 21, 2015, to November 22, 2016, and November 30, 2016,

to June 19, 2017, Lieber maintained a commingled balance of his own funds in Metro Law's trust account ranging from $1,100 to $8,596.13. In addition, during the periods of November 22 to November 30, 2016, and June 19, 2017, to April 6, 2018, the balance in Lieber's trust account was continuously short of funds necessary to cover aggregate client balances. The trust account shortages ranged from $1,273.98 to $5,803.96.

The referee determined that it would have been impossible for Lieber to reconcile his current trust account at any time between December 2015 and September 2018 because of the errors in Lieber's trust account records. The referee concluded, and Lieber admitted, that Lieber had negligently misappropriated client funds, commingled his own funds with client funds in his trust account, and willfully failed to maintain his trust account books and records in the required manner, in violation of Minn. R. Prof. Conduct 1.1[4] and 1.15(a),[5]

[4] "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.

[5] "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).

(b),[6] (c)(3),[7] and (h),[8] and our July 31, 2013 reinstatement order.

Separate from the trust account violations, Lieber also sent an improper advertisement to A.H.W. In 2015, A.H.W. was in an accident. Lieber sent her an unsolicited postcard, referencing the accident and seeking her as a client. Instead of clearly and conspicuously displaying the words "Advertising Material," the postcard contained the words "Advertisement Material," in a much smaller font than the rest of the text on the postcard. The referee concluded that Lieber violated Minn. R. Prof. Conduct 7.3(c).[9]

Following a hearing, the referee issued findings of fact, conclusions of law, and a recommendation for discipline. The referee considered only the trust account violations—

---

[6] "A lawyer must withdraw earned fees and any other funds belonging to the lawyer or the law firm from the trust account within a reasonable time after the fees have been earned or entitlement to the funds has been established . . . ." Minn. R. Prof. Conduct 1.15(b).

[7] "A lawyer shall . . . maintain complete records of all funds, securities, and other properties of a client or third person coming into the possession of the lawyer and render appropriate accounts to the client or third person regarding them[.]" Minn. R. Prof. Conduct 1.15(c)(3).

[8] "Every lawyer engaged in private practice of law shall maintain or cause to be maintained on a current basis books and records sufficient to demonstrate income derived from, and expenses related to, the lawyer's private practice of law, and to establish compliance with paragraphs (a) through (f). . . . The books and records shall be preserved for at least six years following the end of the taxable year to which they relate or, as to books and records relating to funds or property of clients or third persons, for at least six years after completion of the employment to which they relate." Minn. R. Prof. Conduct 1.15(h).

[9] "Every written, recorded, or electronic communication from a lawyer soliciting professional employment from anyone known to be in need of legal services in a particular matter shall clearly and conspicuously include the words 'Advertising Material' on the outside envelope, if any, and within any written, recorded, or electronic communication . . . ." Minn. R. Prof. Conduct 7.3(c).

not the advertising rule violation—in recommending discipline. The referee found that Lieber's disciplinary history is an aggravating factor and that this aggravating factor is heightened because his prior discipline included similar trust account violations. The referee further found that lack of remorse and substantial experience in the practice of law are aggravating factors. The referee also concluded that Lieber's personal stress due to his daughter's health problems, as well as health problems of other family members and the death of his father-in-law, is a mitigating factor, but it is insufficient to mitigate against the need for a suspension. The referee recommended that we suspend Lieber from the practice of law for a minimum of 18 months.

ANALYSIS

Lieber and the Director do not challenge the referee's findings and conclusions that Lieber committed the misconduct described above. Instead, they dispute the appropriate discipline. Lieber urges us to impose a stayed 90-day suspension, while the Director contends that we should impose a 3-year minimum suspension. As part of his challenge to the appropriate discipline, Lieber disputes the referee's findings and conclusions about certain aggravating and mitigating factors. We consider the challenged findings and conclusions as part of our analysis on the appropriate discipline for Lieber's misconduct.

The purpose of disciplining an attorney 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 Rebeau*, 787 N.W.2d 168, 173 (Minn. 2010). We give "great weight" to the referee's recommended discipline, but "retain ultimate responsibility for determining the appropriate

sanction." *Id.* We consider four factors in determining the appropriate disciplinary sanction: "(1) the nature of the misconduct; (2) the cumulative weight of the disciplinary violations; (3) the harm to the public; and (4) the harm to the legal profession." *In re Nelson*, 733 N.W.2d 458, 463 (Minn. 2007). We also weigh aggravating and mitigating circumstances and examine "similar cases in an effort to impose consistent discipline." *In re Albrecht*, 779 N.W.2d 530, 540 (Minn. 2010).

As noted above, Lieber challenges the referee's evaluation of certain aggravating and mitigating factors. Because Lieber ordered a transcript of the disciplinary hearing, the referee's findings of fact and conclusions regarding the aggravating and mitigating factors are not conclusive, Rule 14(e), Rules on Lawyers Professional Responsibility. But "we give great deference to the referee's findings and conclusions and will uphold them if they have evidentiary support in the record and are not clearly erroneous." *In re Paul*, 809 N.W.2d 693, 702 (Minn. 2012). A referee's findings and conclusions are clearly erroneous when they leave us " 'with the definite and firm conviction that a mistake has been made.' " *In re Strid*, 551 N.W.2d 212, 215 (Minn. 1996) (quoting *Gjovik v. Strope*, 401 N.W.2d 664, 667 (Minn. 1987)).

A.

We first examine the nature of Lieber's misconduct. Lieber's misconduct includes commingling his own funds with client funds in his trust account, willfully failing to maintain his trust account records, and negligently misappropriating client funds.[10] We

[10] The referee concluded that, while Lieber technically violated the advertising rules, his violation of Minn. R. Prof. Conduct 7.3(c) "should not be considered in the disposition

consider " 'unintentional misappropriation' of client funds and the failure to maintain the required trust account books and records a serious violation of the rules." *In re Tigue*, 843 N.W.2d 583, 587 (Minn. 2014). In the past, "[w]e have suspended attorneys for trust account violations even when there was no evidence they intended to deceive their clients or that their trust account violations harmed any clients." *In re Schulte*, 869 N.W.2d 674, 677–78 (Minn. 2015). And "[a]n attorney's commingling of personal and client funds warrants serious professional discipline." *In re Beal*, 374 N.W.2d 715, 716 (Minn. 1985). Accordingly, Lieber's misconduct is serious.

B.

We next determine the cumulative effect of Lieber's misconduct. Our precedent recognizes "that the 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). In determining the cumulative weight of the violations, "we distinguish 'a brief lapse in judgment or a single, isolated incident' from 'multiple instances of mis[conduct] occurring

---

of this case." Although the parties do not challenge this conclusion, it appears to be contrary to our case law, which requires the consideration of the cumulative effect of an attorney's misconduct when determining the appropriate discipline. *See In re Oberhauser*, 679 N.W.2d 153, 160 (Minn. 2004) (stating that the "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"). But, because including Lieber's violation of Rule 7.3(c) would not change any of our conclusions when determining the appropriate discipline in this case, we limit our analysis of the appropriate discipline to Lieber's trust account related misconduct.

over a substantial amount of time.' " *In re Stoneburner*, 882 N.W.2d 200, 206 (Minn. 2016) (alteration in original) (quoting *In re Severson*, 860 N.W.2d 658, 673 (Minn. 2015)).

Lieber's misconduct occurred over the course of 34 months. He violated several rules of professional conduct multiple times. Taken together, Lieber's acts were not isolated, but a pattern of continuing behavior.

C.

Next, we must determine whether, and to what extent, Lieber's misconduct harmed the public or the legal profession. We have held that "[m]isappropriation of any kind, by its very nature, harms the public at large." *In re Fairbairn*, 802 N.W.2d 734, 743 (Minn. 2011); *see also In re Klotz*, 909 N.W.2d 327, 337–38 (Minn. 2018) (stating that misappropriation of client funds "erode[s] the public's trust in lawyers and reflects poorly on the profession"). In addition, "[t]he maintenance of proper trust account records is vital to the practice of the legal profession, since it serves to protect the client and avoid even the appearance of professional impropriety." *Beal*, 374 N.W.2d at 716. By misappropriating client funds, commingling his own funds with client funds in his trust account, and failing to maintain trust account books and records, Lieber harmed the public and the legal profession.

But, when assessing harm, we also consider " 'the number of clients harmed [and] the extent of the clients' injuries.' " *In re Coleman*, 793 N.W.2d 296, 308 (Minn. 2011) (alteration in original) (quoting *In re Randall*, 562 N.W.2d 679, 683 (Minn. 1997)). Here, the referee did not find that Lieber's misconduct harmed any of his clients; no client complained about Lieber's misconduct, nor did any clients lose their funds. Accordingly,

while Lieber's misconduct, by its very nature, caused harm to the public and the legal profession, Lieber did not inflict any direct harm on any of his clients.

D.

Once we have evaluated the four factors described above, we weigh aggravating and mitigating factors to determine the appropriate sanction to impose. *See Fairbairn*, 802 N.W.2d at 742. The parties dispute the way in which the referee evaluated aggravating and mitigating factors. The referee found several aggravating factors: Lieber's disciplinary history, his substantial experience in the practice of law, and his lack of remorse. The referee found Lieber's extreme stress due to the health issues of Lieber's family members to be a mitigating factor but concluded it is insufficient to mitigate against the need for a suspension. The referee, however, did not address Lieber's claim that he lacked a selfish motive.

Lieber challenges the referee's findings that Lieber lacked remorse and that Lieber's extreme stress is insufficient to mitigate against suspension. Lieber further contends that the referee erred in failing to evaluate whether his lack of selfish motive is a mitigating factor. We address each aggravating factor before turning to mitigating factors.

1.

The referee found two aggravating factors that Lieber does not dispute. Lieber's disciplinary history is an aggravating factor. Not only has Lieber previously received the most serious discipline possible—disbarment—he also, while still on probation, committed some of the same misconduct that led to his disbarment. *See In re Brooks*, 696 N.W.2d 84, 88 (Minn. 2005) ("We generally impose more severe sanctions when the current

misconduct is similar to misconduct for which the attorney has already been disciplined."). Lieber's more than 20 years of experience in the practice of law is also an aggravating factor. *See, e.g.*, *In re Eichhorn-Hicks*, 916 N.W.2d 32, 40 (Minn. 2018) ("Substantial experience is an aggravating factor.").

2.

We now turn to the aggravating factors in dispute. Lieber argues that the referee erred in determining that Lieber lacked genuine remorse. He asserts that, because some of the referee's findings regarding lack of remorse are not supported by substantial evidence, we should determine that remorse is neither a mitigating nor an aggravating factor in this case.

Our precedent recognizes that "whether an attorney is remorseful 'is an important issue in an attorney discipline case.' " *Klotz*, 909 N.W.2d at 340 (quoting *Fairbairn*, 802 N.W.2d at 745). And an attorney's "lack of remorse is an aggravating factor." *In re Ulanowski*, 800 N.W.2d 785, 803 (Minn. 2011). We look to whether the attorney expresses genuine remorse for the misconduct, and whether the attorney acknowledges the wrongful nature of the conduct and the harm it caused others. *Severson*, 860 N.W.2d at 670.

The referee based his conclusion that Lieber lacked remorse on several factors. The referee found that Lieber's generic apology for his misconduct lacked credibility and that Lieber did not "demonstrate a credible recognition of the wrongfulness of his misconduct." We "give[] great deference to referee determinations of [an attorney]'s credibility, demeanor, or sincerity" about whether the attorney expressed genuine remorse. *In re Kalla*, 811 N.W.2d 576, 581 (Minn. 2012).

The referee further found that Lieber blamed others or made up excuses for his misconduct. The referee then gave five specific examples of Lieber's lack of remorse. Lieber challenges the referee's findings regarding only two of these examples—that Lieber repeatedly blamed R.P. for the errors in the trust account and that Lieber blamed his trust account mismanagement on his inability to use QuickBooks properly. We address each challenged finding in turn.

Lieber asserts that the referee erred in finding that Lieber blamed R.P. for the errors in his trust account. But the record supports the referee's conclusion that Lieber blamed R.P. When asked why he did not comply with the condition of his probation requiring him to ensure that Metro Law maintained compliant trust account books and records, Lieber responded, "I could not. I wasn't solely responsible. And despite my best efforts, I couldn't get it all cleaned up." Yet, Lieber also testified that he was the only lawyer regularly present at Metro Law for almost 17 months of his probation and was therefore primarily responsible for the trust account during that time. Lieber's testimony attempted to limit his role in maintaining compliant trust account records when the evidence shows that he was primarily responsible for those records. Accordingly, the referee's conclusion that Lieber blamed R.P. for the errors in the trust account is not clearly erroneous.

Lieber also argues that the referee incorrectly concluded that he blamed his trust account mismanagement on his lack of knowledge regarding QuickBooks; rather, he asserts, he was merely explaining that he did not know how to use QuickBooks properly. We agree. Lieber testified that his lack of knowledge was the source for many of the trust account errors but he did not use it to excuse his mismanagement. Although the record

shows that Lieber failed to educate himself about QuickBooks, the record does not support the referee's conclusion that Lieber blamed his trust account mismanagement on his lack of knowledge about the software. We therefore conclude that this finding is clearly erroneous.

Even so, record evidence supports the referee's conclusion that Lieber lacked remorse. Lieber does not challenge the referee's findings that Lieber failed to adjust his bookkeeping practice after noticing significant accounting errors, failed to hire a bookkeeper, and lacked credibility in claiming he reconciled trust account bank statements each month. Each of these findings demonstrate that Lieber knew about the errors and did not care enough to remedy them. And, as previously discussed, the record supports the referee's conclusion that Lieber blamed R.P. for his failure to maintain proper trust account records. We therefore conclude that the referee did not clearly err in finding that Lieber's lack of remorse is an aggravating factor.

3.

We now turn to potential mitigating factors. Lieber argues that the referee erred by not determining whether Lieber had a selfish motive. Lieber argues that, because he had sufficient funds in his business account to offset the shortages in his trust account, he did not have a selfish motive in mismanaging his trust account. The Director, in response, asserts that a lack of selfish motive is not a separate mitigating factor for negligent misappropriation because, by its very nature, negligent misappropriation does not require intent. We agree with the Director.

We have previously clarified that some factors "are a part of the initial analysis of the appropriate discipline" and should not also be considered as mitigation. *In re Upin*, 904 N.W.2d 645, 645 (Minn. 2017) (order); *see also In re Bonner*, 896 N.W.2d 98, 110 (Minn. 2017) (noting that lack of harm to clients should not be counted as a mitigating factor because it overlaps with the court's consideration of the harm the misconduct has caused to the public and the legal profession). We distinguish between negligent and intentional misappropriation in our initial assessment of the nature of the attorney misconduct. *See Klotz*, 909 N.W.2d at 336–37 (explaining that intentional misappropriation often results in disbarment, while negligent misappropriation typically results in a short suspension or lesser discipline). In order to commit negligent misappropriation, an attorney must lack awareness that the attorney has misappropriated funds, and the attorney therefore necessarily lacks a selfish motive. *See id.* at 337 ("Negligent misappropriation occurs when an attorney places a client's funds into a trust account but later removes those funds . . . to pay an obligation incurred on behalf of another client because of the attorney's failure to maintain proper trust account books and records."). Accordingly, lack of selfish motive is not a mitigating factor for an attorney who has negligently misappropriated funds.[11] We therefore conclude that lack of selfish motive is not a mitigating factor in this case.

[11] Lack of selfish motive can be a mitigating factor for intentional misappropriation. *See, e.g.*, *Klotz*, 909 N.W.2d at 340 (determining that the attorney's lack of selfish motivation in intentionally misappropriating client funds was a mitigating factor); *In re Eskola*, 891 N.W.2d 294, 301 (Minn. 2017) (concluding that the attorney's lack of intent to permanently deprive clients of their funds mitigated his intentional misappropriation); *In re Rooney*, 709 N.W.2d 263, 272 (Minn. 2006) (discussing the attorney's intent to

4.

Lieber asserts that the referee erred in concluding that his extreme stress is insufficient to mitigate the need for suspension. The referee found that Lieber experienced personal stress arising from his daughter's health problems, as well as from the health problems of other family members and the death of his father-in-law. The referee, however, downplayed the impact of this mitigating factor because the referee found that the personal stress did not cause Lieber's trust account related misconduct.

We "recognize[] that extreme or extraordinary stress can be a mitigating factor." *Id.* at 338. Both the serious illness and death of a family member may cause an attorney to suffer extraordinary stress. *In re Trombley*, 916 N.W.2d 362, 371 (Minn. 2018) (loss of a loved one); *In re Rooney*, 709 N.W.2d 263, 272 (Minn. 2006) (serious illness).

The record establishes that Lieber experienced extreme stress due to his family members' health issues. The referee acknowledged the seriousness of these heath issues, finding "[i]t was difficult to listen to the descriptions of [Lieber's] daughter's health experience and [Lieber]'s involvement in her daily care." Lieber's daughter was diagnosed in June 2015 with acute myeloid leukemia, after recovering from another type of cancer, Ewing's sarcoma, just 2 years earlier. She spent significant time in the hospital, first undergoing additional chemotherapy and then a bone marrow transplant. She suffered severe complications following the transplant, and, after returning home for a short time, was hospitalized again in December 2015. During this time, Lieber would visit her in the

---

temporarily borrow client funds, rather than defraud clients, when evaluating mitigating factors).

hospital after working half a day at the office and would not return home until 1:30 a.m. or 2 a.m.

Lieber's father-in-law, with whom he had a close relationship, was also diagnosed with cancer in December 2015. After his diagnosis, Lieber regularly went to his home to help care for him.

Lieber's daughter was in and out of the hospital beginning in January 2016. Lieber was heavily involved in his daughter's care due to her inability to walk and her extensive medication regime. Although her medication regime became less intensive in July 2016, Lieber's daughter still faced setbacks. She lost her eyesight as a result of cataracts, another side effect of the bone marrow transplant, which required surgery, and was hospitalized again toward the end of 2016.

Lieber's other family members also experienced health issues. Lieber's mother was diagnosed with dementia in January 2016 and moved into assisted living. Lieber's father was diagnosed with melanoma in the spring of 2016. Because Lieber's father required surgery, Lieber helped care for him too during his recovery. And Lieber's father-in-law died in May 2016.

Lieber testified about his family's health issues, and their effect on him, during the hearing before the referee. The referee, however, minimized this mitigating factor.[12] The referee reasoned that Lieber's failure to understand his trust account obligations, not

[12] Specifically, the referee found that Lieber's personal stress is insufficient to mitigate against the need for a suspension. This conclusion goes to the ultimate issue of what is the appropriate discipline to impose in this case, which is our sole responsibility. *See In re Montez*, 812 N.W.2d 58, 68 (Minn. 2012).

Lieber's sleep deprivation due to his family members' medical issues, was the sole cause of his trust account mismanagement. The referee further determined that, because the stress did not affect Lieber's legal work or business, it could not have affected his bookkeeping.

The referee's reasoning is flawed. The referee confused causation of misconduct with mitigation of discipline. The correct inquiry is not whether the extreme stress caused the misconduct, but whether the extreme stress affected Lieber. *Rooney*, 709 N.W.2d at 272 ("Turmoil in an attorney's personal life has been considered a mitigating factor even without proof that the turmoil caused the misconduct."). Lieber was not required to prove that this extreme stress caused his misconduct in order for it to be considered a mitigating factor.

We conclude that the referee clearly erred in determining that, because Lieber's extreme stress was not the cause of his misconduct, it was not a substantial mitigating factor. *See State v. Roberts*, 876 N.W.2d 863, 868 (Minn. 2016) ("A factual finding is clearly erroneous . . . if it was induced by an erroneous view of the law."). The record shows that Lieber was under exceptional stress due to the illness of his daughter, the illness and death of his father-in-law, and the diagnoses of his parents. Accordingly, we weigh Lieber's extreme stress as a substantial mitigating factor.

E.

After evaluating mitigating and aggravating factors, we look to similar cases for guidance. *Albrecht*, 779 N.W.2d at 540. Ultimately, we determine the proper discipline "based on the unique facts and circumstances of each case[.]" *Rebeau*, 787 N.W.2d at 174.

Lieber's disciplinary history makes direct comparisons to other cases difficult. *See In re Kurzman*, 871 N.W.2d 753, 759 (Minn. 2015) (declining to refer to other cases because "[t]he variety of [the attorney]'s misconduct and the extent of his disciplinary history are unusual and make direct comparisons difficult"). We have not reinstated many disbarred attorneys. *In re Ramirez*, 719 N.W.2d 920, 924 (Minn. 2006) ("While reinstatement after disbarment is the rare exception to the rule, a disbarred attorney who meets the heavy burden of demonstrating her rehabilitation will be reinstated." (footnote omitted)). Lieber is the first such attorney to have committed misconduct after reinstatement.

We acknowledge that if Lieber had no—or a minimal—disciplinary history, he would likely receive a public reprimand and probation for similar trust account related misconduct. *See, e.g.*, *In re Carlson*, 917 N.W.2d 774 (Minn. 2018) (order) (ordering a public reprimand and 2 years of probation for an attorney who negligently misappropriated client funds and commingled earned fees in his trust account); *In re Hackert*, 915 N.W.2d 755, 755–56 (Minn. 2018) (order) (ordering a public reprimand and 2 years of probation for an attorney who failed to maintain proper trust account records and negligently misappropriated client funds); *In re Wiegert*, 900 N.W.2d 715, 715 (Minn. 2017) (order) (ordering a public reprimand and 2 years of probation for an attorney who failed to maintain trust account records, negligently misappropriated client funds, and commingled client funds with earned fees); *In re Fogel*, 812 N.W.2d 81, 82 (Minn. 2011) (order) (ordering a public reprimand and 2 years of probation for an attorney who failed to maintain required trust account books and negligently misappropriated client funds).

But Lieber's disciplinary history is an aggravating factor of the highest magnitude. Lieber's disciplinary history is extraordinary, in the worst sense. His prior misconduct was so substantial that we imposed the most serious discipline possible: disbarment. We have long noted that "[a]fter a disciplinary proceeding, [we] expect[] a renewed commitment to comprehensive ethical and professional behavior." *In re Simonson*, 420 N.W.2d 903, 906 (Minn. 1988). This expectation is even higher when attorneys have been disbarred and subsequently reinstated. Lieber, however, began committing some of the same misconduct that led to his disbarment shortly after he was reinstated. *See Brooks*, 696 N.W.2d at 88 ("We generally impose more severe sanctions when the current misconduct is similar to misconduct for which the attorney has already been disciplined."). Lieber acknowledges the significance of his disciplinary history, admitting that for a lawyer who we have previously disbarred, to "again fac[e] discipline for trust account violations similar to misconduct he previously committed is deeply disconcerting." Without substantial mitigation, the appropriate discipline for Lieber, given his disciplinary record, would be disbarment.

We find, however, that the extreme stress Lieber endured due to the health issues of his family members is a substantial mitigating circumstance that weighs against disbarment. We therefore conclude that a stayed disbarment is the appropriate discipline for Lieber. A stayed disbarment will adequately protect the public and the legal profession and operate to deter future misconduct.

Stayed discipline is unusual but this is an unusual case.[13] Indeed, we anticipate that it is the only one of its kind. We expect not to see again a disbarred attorney who, after reinstatement, commits further misconduct. Under our inherent authority to regulate the practice of law, we conclude that if we later determine that Lieber has committed other misconduct, no matter how minor, he can expect that the stay will end and he will be disbarred without the opportunity to apply for reinstatement.

Accordingly, we order that:

1. Respondent Daniel Martin Lieber is hereby disbarred. Respondent's disbarment shall be stayed subject to the following conditions:

> a. Respondent shall cooperate fully with the Director's Office in its efforts to monitor compliance with the terms of his stayed disbarment, set out here and below. Respondent shall promptly respond to the Director's correspondence by the due date. Respondent shall provide to the Director a current mailing address and shall immediately notify the Director of any change in address. Respondent shall cooperate with the Director's investigation of any allegations of unprofessional conduct that may come to the Director's attention. Upon the Director's request, respondent shall authorize the release of information and documentation to verify compliance with the terms of his stayed disbarment.
>
> b. Respondent shall abide by the Minnesota Rules of Professional Conduct.
>
> c. If the Director becomes aware of any allegation or information that respondent has committed any unprofessional conduct or failed to comply with the terms of his stayed disbarment, the Director may immediately file a petition asking that respondent be temporarily suspended pending the completion of an investigation by the Director and resolution of a petition for disciplinary action.

[13] We recognize that, except in cases involving reciprocal discipline, we have not imposed stayed discipline in many years. Nothing in this opinion should be read to indicate that we are in any way inclined to impose stayed discipline as a matter of course. Rather, we are doing so only in this case because of these unique circumstances.

d. Respondent shall retain an accountant, approved by the Director, to maintain proper law office and trust account books and records in accordance with the Minnesota Rules of Professional Conduct. Respondent shall provide the Director with the name of this accountant within 14 days of the date of this opinion.

e. Respondent shall not be an authorized signer on a client trust account, effective 30 days from the date of this opinion. Respondent shall provide the Director with the name of all attorneys who are authorized signers on his trust account within 30 days of the date of this opinion, along with an explanation of how he has arranged his practice to associate with these attorneys.

f. Respondent shall maintain law office and trust account books and records in compliance with Minn. R. Prof. Conduct 1.15 and Appendix 1 to the Minnesota Rules of Professional Conduct. These books and records shall include the following: client subsidiary ledgers; checkbook registers; monthly trial balance reports; monthly reconciliation reports; bank statements; canceled checks (if they are provided with the bank statements); duplicate deposit slips; bank reports of interest, service charges, and interest payments to the Minnesota IOLTA Program; and bank wire, electronic, or telephone transfer confirmations. Such books and records shall be made available to the Director within 30 days of the date of this opinion and thereafter on a monthly basis. After 1 year of providing compliant books and records, the Director may ask the court to change the frequency with which respondent provides the Director with copies of these books and records. After 2 years of providing compliant books and records, the Director may ask the court to end the requirement that respondent provide the Director with copies of these books and records.

2. Respondent shall pay $900 in costs pursuant to Rule 24, Rules on Lawyers Professional Responsibility.