STATE OF MINNESOTA

IN SUPREME COURT

A19-1461

Original Jurisdiction

Per Curiam
Took no part, Chutich, J.

In re Petition for Disciplinary Action against
Barry L. Blomquist, Jr., a Minnesota Attorney,
Registration No. 12090X

Filed: May 5, 2021
Office of Appellate Courts

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

Barry L. Blomquist, Jr., Paynesville, Minnesota, pro se.

S Y L L A B U S

Disbarment is the appropriate discipline for an attorney who misappropriated and converted trust assets for his personal use in violation of his fiduciary duties as trustee, refused to comply with court orders, and failed to cooperate with the Director's investigation.

O P I N I O N

PER CURIAM.

The Director of the Office of Lawyers Professional Responsibility filed a petition for disciplinary action against respondent Barry L. Blomquist, Jr. The petition alleged Blomquist misappropriated trust assets by investing in five start-up companies he owned, in breach of his fiduciary duty as trustee; refused to comply with court orders from three different judges; and failed to cooperate with the Director's investigation into his misconduct. After an evidentiary hearing, a referee found the Director had proven Blomquist committed the alleged misconduct and recommended Blomquist be disbarred. Based on Blomquist's misconduct, we agree with the referee and, therefore, we disbar Blomquist from the practice of law.

FACTS

Blomquist was admitted to practice law in Minnesota on October 24, 1980. His only history of prior discipline is an admonition in 2012 for falsely notarizing a mortgage deed conveying property from a seller to an entity he co-owned, in violation of Minn. R. Prof. Conduct 8.4(c)–(d). Blomquist has also been administratively suspended for failing to pay his annual registration dues since 2009. *See* Rule 14(A), Sup. Ct. R. Lawyer Registration; *see also In re Knutson*, 405 N.W.2d 234, 236 (Minn. 1987) (explaining that a lawyer's "[f]ailure to pay attorney registration fees results in automatic suspension").

The present proceeding arises from Blomquist's actions as trustee of a trust created by a then-client with whom he had developed a close personal relationship, R.N. In May 2003, R.N. executed a will creating a trust for the benefit of his daughter, D.H., and his two

sons. R.N. insisted on naming Blomquist in the will as personal representative of R.N.'s estate and trustee, despite Blomquist's personal objection to serving in these roles.[1]

In October 2003, R.N. passed away. Blomquist accordingly became the personal representative of the estate and trustee of the corresponding trust. After R.N.'s estate was settled, the estate was valued at approximately $2,000,000 which was divided into three trusts; one for each of his children.

Under the provisions of the will and trust, D.H. was entitled to receive portions of the trust at pre-determined intervals. She was to receive one-third of the principal in her trust in 2006, one-half in 2010, and the remainder in 2013.

In 2006, Blomquist, in his role as trustee, gave D.H. only $100,000, which was less than one-third of the principal in the trust to which she was entitled by the express language of the trust document. D.H. requested the remainder of her 2006 disbursement. Her request went unanswered and Blomquist never provided the additional money to which she was entitled.

In 2007, D.H. received an estate summary, which included a description of the remaining trust assets, her share of those assets, and how the assets were to be distributed. After this, Blomquist did not provide D.H. with any information or accounting related to the trust until 2011.

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[1] R.N. named Blomquist the trustee of both a testamentary trust and a life insurance trust, and D.H. was a beneficiary of both trusts. The two trusts were eventually merged, so we will refer to them as a single trust.

In 2010, D.H. was entitled to another distribution from the trust. She did not receive that distribution, however, until March 2011, and she believed the amount she received was less than the amount to which she was entitled.

In 2011, D.H. received "a Trustee Summary Report" from Blomquist. This report indicated Blomquist had invested significant sums of money from the trust principal in five recently created, start-up, green-energy companies, which were all partially owned by Blomquist. Throughout 2009 and 2010, unbeknownst to D.H., Blomquist signed seven promissory notes on behalf of these companies to obtain loans from R.N.'s trust totaling $799,000.00. In these notes, he held himself out as the "chief manager," "Chief Executive Officer," and "trustee" of the companies. The companies made no payments to the trust on any of the promissory notes and Blomquist failed to provide any information about these companies to D.H. despite his personal interest in them. Further, these companies were neither in existence when R.N. created his trust nor were they active at the date of his death.

In February 2011, D.H. filed a petition in Hennepin County Probate Court seeking an accounting of the trust assets and court supervision of the trustee. In May of the same year, the district court ordered Blomquist to appear at a June hearing. Blomquist knowingly failed to appear. The probate court subsequently ordered Blomquist to appear at a hearing in July 2011 to show cause as to why he failed to appear at the June hearing and to explain why he had not provided required trust documentation. The show cause order also required Blomquist to appear at the July hearing with documents related to the trust and the five companies in which he had invested trust assets.

Blomquist appeared in court as directed, but failed to bring all the court-ordered documents and information. The probate court subsequently removed Blomquist as trustee, finding Blomquist failed to act as a prudent investor[2] and violated Minnesota's prohibition against trustee self-dealing.[3] The court found "especially troubling" Blomquist's "cavalier attitude . . . about the obvious self-dealing he engaged in by using trust assets to fund his own businesses." The court observed that "[Blomquist] believes that since he sees his business ventures as promising significant returns upon (what he believes is) their inevitable success, he has satisfied his fiduciary duties to the Trust and to [D.H.]. Unfortunately, nothing could be further from the truth in the eyes of the law."

D.H. later filed a motion to enter judgment against Blomquist for trust money owed to her in both his personal capacity and in his role as trustee. The probate court granted summary judgment for D.H. in March 2012, finding Blomquist had breached his fiduciary duties and engaged in self-dealing by investing a substantial amount of trust assets in the five start-up companies. The court further determined D.H. would have been entitled to receive $400,000 under the trust if Blomquist had not breached his fiduciary duties. It ordered Blomquist to pay $400,000 directly to D.H. and produce documents about what was done with the trust assets. Blomquist did not move for amended findings of fact or appeal this ruling.

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[2] Minn. Stat. § 501C.0901 (2020) (previously codified as Minn. Stat. § 501B.151 (2010)).

[3] Minn. Stat. § 501C.0802(a) (2020) (previously codified as Minn. Stat. § 501B.14, subd. 1(2) (2010)).

D.H. docketed the judgment. She sought information about the trust's assets from Blomquist through post-judgment discovery. Blomquist still did not produce the necessary documentation. This forced D.H. to pursue additional judicial enforcement actions. In November 2012, the probate court ordered Blomquist to appear at a hearing later that month to answer questions concerning his personal property and transactions related to the trust property. Blomquist, however, engaged in a series of delay tactics including a claimed illness, which resulted in repeated continuation motions and a general lack of responsiveness. In June 2013, after over 6 months of delays, D.H. filed a motion for an order to show cause why Blomquist should not be held in contempt.

In July 2013, the probate court held a hearing on the show cause motion. Blomquist appeared at the hearing and provided inconsistent testimony regarding how much of the trust was invested into his five companies. Based on this proceeding and Blomquist's failure to produce documentation, the probate court issued an order taking under advisement whether Blomquist was in civil contempt of court and requiring Blomquist to surrender his passport or else he would be deemed to have committed constructive civil contempt. A week later, the probate court issued a subsequent order requiring Blomquist to produce numerous documents within 30 days, most of which he had been previously ordered to produce. The court also scheduled a review hearing in August 2013, after the deadline. If Blomquist failed to produce the documents by that date, he would be held in contempt.

Blomquist did not appear at the August review hearing. Blomquist never produced his passport to the probate court and he falsely represented to D.H.'s attorney he had done

so at the July hearing. Blomquist also provided D.H.'s counsel a photocopy of his alleged passport that misspelled his last name as "Blomguist." The court accordingly found Blomquist in civil contempt and issued a bench warrant for his arrest. At the hearing before the referee, Blomquist insisted he did not know about these probate court hearings, but the referee found this claim to be without merit and unsupported by the evidence.

In October 2013, to avoid arrest, Blomquist submitted his actual passport and presented a box of documents to the probate court. These documents were also incomplete. In the end, D.H. was unable to trace the assets Blomquist took from the trust and invested in his companies. Blomquist was unable to account for trust assets he supposedly invested in various companies through the promissory notes.

Every company Blomquist allegedly invested trust assets in has since dissolved. None of the companies generated any income or revenue. They made no payments on the promissory notes granted in favor of the trust.

By the time the trust dissolved, the balance was only $20,000. Blomquist only paid approximately $100,000 of the $400,000 judgment that D.H. obtained against him. But that payment was not voluntary and D.H. only received this money because her attorney located various properties Blomquist owned and sold them off at auction.

Blomquist's actions caused D.H. monetary and emotional harm. She spent many hours and substantial funds to get Blomquist to simply account for the trust assets. As the referee summarized, Blomquist misappropriated trust assets for his personal use and acted in bad faith, in violation of his fiduciary duty as trustee by "investing" trust assets in five risky and speculative companies in which he had a personal interest.

On March 8, 2018, D.H. filed a complaint with the Director. Two weeks later, the Director issued a notice of investigation directing Blomquist to respond to D.H.'s complaint. Over the next year, Blomquist failed to fully respond to the Director's requests for information and provided evasive, non-responsive answers to the Director's outstanding questions.

In February and March 2019, the Director tried to schedule a meeting with Blomquist, but he did not respond to two telephone calls and a letter from the Director. In March 2019, the Director wrote a second letter to Blomquist about the meeting and asked him to send the Director a list of available meeting dates within 10 days.

Two days after the requested response date, Blomquist told the Director that the documents requested were no longer available. Blomquist did not send the Director a list of meeting dates as was requested; instead, he told the Director that any questions she had should be submitted in writing.

In early April 2019, the Director told Blomquist via letter that she still wanted to meet, and set a meeting date for two weeks later. Blomquist failed to appear at the meeting. He wrote a letter to the Director on the same day and offered again to answer only questions posed in writing.

On June 24, 2019, the Director served charges of unprofessional conduct on Blomquist. He did not provide an answer to the charges or otherwise communicate with the Director about the charges.

In September 2019, the Director filed an amended petition for disciplinary action against Blomquist. We appointed a referee. Following an evidentiary hearing, the referee

made factual findings consistent with the facts we just described. The referee found that Blomquist's disciplinary history, failure to accept responsibility, denial that his actions were wrong, selfish motives, and failure to meaningfully make D.H. whole were aggravating factors. He found testimony from Blomquist about his desire to pay D.H. back in full to be "a minimal mitigating factor."

The referee also made the following conclusions. First, the referee concluded Blomquist violated Minn. R. Prof. Conduct 3.4(c) and 8.4(d) by "willingly and knowingly" failing to comply with three different court orders, "leading to an order finding [Blomquist] in contempt of court."[4] Second, the referee concluded Blomquist misappropriated or used the trust assets in bad faith, which constituted a breach of his fiduciary duties as trustee, in violation of Minn. R. Prof. Conduct 8.4(d). Third, the referee concluded Blomquist violated Minn. R. Prof. Conduct 8.4(c) by engaging in dishonest conduct through his conversion of "trust assets for his personal use and failing to account for those assets."[5] Fourth, the referee concluded Blomquist "failed to fully cooperate with the Director's investigation and respond to the charges" in violation of Minn. R. Prof Conduct 8.1(b) and

[4] A lawyer is prohibited from "knowingly disobey[ing] an obligation under the rules of a tribunal." Minn. R. Prof. Conduct 3.4(c). A lawyer may not "engage in conduct that is prejudicial to the administration of justice." Minn. R. Prof. Conduct 8.4(d).

[5] A lawyer may not "engage in conduct involving dishonesty, fraud, deceit, or misrepresentation." Minn. R. Prof. Conduct 8.4(c).

Rule 25, Rules on Lawyers Professional Responsibility (RLPR).[6] The referee recommended that Blomquist be disbarred.

ANALYSIS

We begin with two preliminary procedural issues raised by Blomquist. Blomquist first claims this disciplinary proceeding is moot because he wishes to voluntarily disassociate from the bar. Second, Blomquist challenges the factual record in this case and alleges the Director was obligated to order a transcript of the evidentiary hearing. We address these issues in turn. And then we turn to the question of the proper discipline.

I.

Blomquist argues this proceeding is moot because he wants to voluntarily disassociate from the bar. Lawyers may resign from the bar. *See* Rule 11, RLPR. We, however, "do[] not allow a lawyer to resign with charges pending." *In re Perez*, 688 N.W.2d 562, 567 (Minn. 2004). We do not allow resignation when allegations of serious misconduct are pending because to do so "would not serve the ends of justice nor deter others from legal misconduct." *In re McCoy*, 447 N.W.2d 887, 891 (Minn. 1989). Blomquist fails to present any reason to depart from our general prohibition on resignation when charges of serious misconduct are pending and we decline to do so.

II.

Blomquist also attempts to challenge the referee's factual findings notwithstanding his failure to order a transcript of the proceeding. The applicable rule provides: "Unless

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[6] A lawyer "shall not . . . fail to respond to a lawful demand for information from a[] . . . disciplinary authority." Minn. R. Prof. Conduct 8.1(b); *see* Rule 25(a), RLPR.

the respondent or Director, within ten days, orders a transcript and so notifies this Court, the [referee's] findings of fact and conclusions shall be conclusive." Rule 14(e), RLPR. When no transcript has been ordered, we view "a referee's factual findings as conclusive" because reviewing factual findings is impossible "without a transcript." *In re Montez*, 812 N.W.2d 58, 66 (Minn. 2012). We "similarly accept as conclusive the conclusions that the referee draws from the facts, such as whether the attorney's conduct violated the Rules of Professional Conduct, when no transcript has been ordered." *Id.*[7]

Neither party ordered a transcript in this case. Blomquist, however, alleges the facts in this case required the Director to order a transcript of the proceedings before the referee. We disagree.

Under the plain language of Rule 14(e), RLPR, both the Director and the attorney facing discipline are permitted to order a transcript of the referee's evidentiary hearing. There is, however, no language in the rule obligating the Director to order a transcript in

[7] Although we are bound by the referee's findings regarding misappropriation and conversion, we note the Director's concession at oral argument that the record supporting the referee's findings that Blomquist engaged in misrepresentation and conduct involving dishonesty lack specificity regarding the amount of trust assets involved in that behavior. The referee's findings are primarily based on the probate court orders in the R.N. trust case, but those orders do not definitively find that Blomquist acted dishonestly, fraudulently, deceitfully, or engaged in misrepresentation with regard to a particular amount of trust assets. Rather, the court found that Blomquist breached his fiduciary duties as trustee based on Blomquist's conversion and investment of an uncertain amount of the trust assets into businesses owned by Blomquist. We agree with the Director that the referee's ultimate conclusions that Blomquist's conduct was both prejudicial to the administration of justice in violation of Rule 8.4(d) and involved dishonesty in violation of Rule 8.4(c) are supported by the district court's determination that Blomquist breached his duty of loyalty as a trustee by engaging in self-dealing with trust assets. This conclusion is bolstered by Blomquist's concession to the entry of a $400,000 judgment against him.

any given case. Nor has Blomquist cited to a single case where we have placed such a duty upon the Director. Instead, we have repeatedly said that when neither party orders a transcript, the referee's findings of fact and conclusions drawn from those facts are "conclusive." *See, e.g.*, *In re Fru*, 829 N.W.2d 379, 387 (Minn. 2013); *Montez*, 812 N.W.2d at 66; *In re Dedefo*, 781 N.W.2d 1, 7 (Minn. 2010); *In re Moore*, 692 N.W.2d 446, 449 (Minn. 2005). Based on the plain language of Rule 14(e) and our precedent, we decline to place an obligation on the Director to order a transcript of the referee's evidentiary hearing. Therefore, the referee's factual findings and conclusions that Blomquist violated various rules of professional conduct are deemed to be conclusive.[8]

[8] In particular, Blomquist argued to the referee that the "unusual terms" in R.N.'s trust instrument pertaining to the power of the trustee eliminated application of the prudent investor rule and the rule against self-dealing, and granted him immunity against the Director's claims regarding his actions as trustee. The referee rejected Blomquist's defense and determined that the facts established by clear and convincing evidence that Blomquist converted trust assets, misappropriated trust assets, and acted in bad faith in contravention of the language of the trust. Although Blomquist is not permitted on appeal to contest these findings, having not ordered a transcript, we agree with and reiterate the ultimate conclusion reached by the referee that "[d]espite any language in the trust instrument, the trustee is still a fiduciary and owes some level of care, loyalty, and reasonableness in the administration of trust assets for the benefit of the beneficiary." *See Thomas. B. Olson & Assocs., P.A. v. Leffert, Jay & Polglaze, P.A.*, 756 N.W.2d 907, 914 (Minn. App. 2008) ("A trustee-beneficiary relationship necessarily gives rise to a fiduciary duty in the trustee toward the beneficiary."), *rev. denied* (Minn. Jan. 20, 2009). We have repeatedly emphasized that "no rule is more fully settled than 'that which forbids a trustee's dealing with himself in respect to trust property; that no fraud, in fact, need be shown by the beneficiaries, and no excuse can be offered by the trustee to justify such transactions. The fact established, the result inevitably follows." *St. Paul Tr. Co. v. Strong,* 88 N.W. 256, 257 (Minn. 1901) (quoting *Baldwin v. Allison,* 4 Minn. 25 (4 Gil. 11) (1860)).

III.

The only remaining issue in this case is what discipline is appropriate for Blomquist's misconduct. The referee recommended Blomquist be disbarred, and the Director agrees, arguing that disbarment is the only appropriate level of discipline. Blomquist does not address whether disbarment is appropriate; rather, he argues that he should not be subject to discipline at all.

We alone are the ultimate arbiter of the appropriate discipline for any attorney, but we give the referee's recommendation "great weight." *In re Nelson*, 733 N.W.2d 458, 463 (Minn. 2007). In determining the appropriate discipline, we consider four factors: "(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." *Id.* We also consider any aggravating and mitigating factors and look to "similar cases for guidance." *Id.* at 463–64.

A.

The nature of Blomquist's misconduct is divisible into three categories: (1) misconduct as trustee; (2) non-compliance with court orders; and (3) failure to cooperate with the Director's investigation. All three are serious misconduct.

We begin with Blomquist's misconduct as trustee. Blomquist misappropriated trust assets in breach of his fiduciary duty as trustee, acted in bad faith, converted trust assets for his personal use by investing trust assets in five speculative start-up companies in which he had an ownership interest, and failed to account for those assets to a trust beneficiary. "Misappropriation of trust funds is serious misconduct . . . that has resulted in the disbarment of attorneys who breached the fiduciary duty owed to a non-client beneficiary

of a trust." *In re O'Brien*, 894 N.W.2d 162, 166 (Minn. 2017). In determining the appropriate sanction for an attorney who has misappropriated funds, "the amount of misappropriation is an appropriate consideration." *In re Grzybek*, 567 N.W.2d 259, 264 n.1 (Minn. 1997).

We have repeatedly disbarred attorneys who misappropriated trust assets, in breach of their fiduciary duty to a trust beneficiary. *O'Brien*, 894 N.W.2d at 168 (disbarring an attorney who misappropriated $300,000 of trust assets and failed to cooperate with attorney disciplinary proceedings); *In re Moe*, 851 N.W.2d 868, 873 (Minn. 2014) (disbarring an attorney who misappropriated trust funds set up for a disabled adult); *In re Amundson*, 643 N.W.2d 280, 281 (Minn. 2002) (disbarring an attorney who misappropriated slightly over $400,000 in trust assets). The misappropriation of trust assets is "sufficiently serious to warrant severe discipline" even without the aggravating factors present in this case. *O'Brien*, 894 N.W.2d at 166; *In re Stroble*, 487 N.W.2d 869, 870 (Minn. 1992) (noting "disbarment is often ordered in misappropriation cases").

We now turn to Blomquist's repeated failure to comply with various court orders. Over the course of D.H.'s litigation to reclaim trust assets to which she was entitled, Blomquist failed to appear for multiple court hearings, repeatedly failed to produce required documents, lied to opposing counsel about forfeiting his passport to the court, produced a fake passport, was found in civil contempt, and had a bench warrant issued for his arrest as a result. "[F]ailure to comply with court orders is a 'serious violation' and . . . 'repeated failure to comply with court orders' is itself a ground for disbarment." *In re Lundeen*, 811 N.W.2d 602, 608 (Minn. 2012) (quoting *Grzybek*, 567 N.W.2d at 264–65).

Blomquist's misconduct, however, does not end there. After misappropriating D.H.'s trust assets and willfully ignoring court orders, Blomquist failed to cooperate with the Director in her investigation. He provided non-responsive answers to questions, did not provide requested documentation, failed to appear for a required meeting, insisted the Director could only submit written questions to him, and failed to respond to the charges of unprofessional conduct.

"[N]oncooperation with the disciplinary process, by itself, may warrant indefinite suspension and, when it exists in connection with other misconduct, noncooperation increases the severity of the disciplinary sanction." *Nelson*, 733 N.W.2d at 464. We have "long recognized that it is imperative that an attorney cooperate with disciplinary authorities in their investigation and resolution of complaints against the lawyer." *In re Engel*, 538 N.W.2d 906, 907 (Minn. 1995). Blomquist's noncooperation combined with other misconduct supports more severe discipline under our precedent.

B.

We now turn to the cumulative weight of Blomquist's actions. When determining the severity of an attorney's misconduct, we distinguish between a "brief lapse in judgment" and "multiple instances of mis[conduct] occurring over a substantial amount of time." *In re Fairbairn*, 802 N.W.2d 734, 743 (Minn. 2011) (citation omitted) (internal quotation marks omitted). When an attorney commits multiple instances of misconduct rather than one single incident of misconduct, more serious discipline is called for. *Id.*; *see In re Oberhauser*, 679 N.W.2d 153, 160 (Minn. 2004) ("[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.").

Blomquist committed multiple instances of misconduct over a period of many years. He repeatedly misappropriated trust assets by investing those assets in five different risky, start-up companies in which he had a personal interest and then repeatedly failed to account for those assets. He repeatedly and knowingly disobeyed court orders by three different district court judges. Additionally, he was consistently non-cooperative with the Director in her investigation. This factor weighs heavily in favor of more serious discipline.

C.

We also find Blomquist's misconduct caused serious harm to the public. "In assessing the harm to the public caused by misconduct," we look at the number of people harmed and the extent of their injuries. *In re Stoneburner*, 882 N.W.2d 200, 206 (Minn. 2016). Additionally, "conduct that is detrimental to the administration of justice harms the public, because it increases the public costs of administering justice." *Id.* (citation omitted) (internal quotations marks omitted).

Blomquist's misconduct has primarily injured D.H. He depleted her trust through his breach of fiduciary duties and refused to pay her back. D.H. incurred serious emotional harm and monetary injury totaling hundreds of thousands of dollars. *See O'Brien*, 894 N.W.2d at 167 (referring to the harm to a trust beneficiary when an attorney misappropriated trust assets as "obvious and significant"). Blomquist has, however, also harmed the public by refusing to cooperate with various court orders and with the

disciplinary proceedings. *Stoneburner*, 882 N.W.2d at 206. We find Blomquist's harm to the public to be significant and to weigh in favor of severe discipline.

D.

Fourth, we find Blomquist's actions to be detrimental to the legal profession. "[T]he misuse of funds entrusted to an attorney . . . is a breach of trust that reflects poorly on the entire legal profession and erodes the public's confidence in lawyers." *In re Harrigan*, 841 N.W.2d 624, 630 (Minn. 2014) (citation omitted) (internal quotation marks omitted). Blomquist's failure to comply with court orders has wasted both the time and resources of the court system and undermined the "public confidence in the legal profession." *Lundeen*, 811 N.W.2d at 609. And "[f]ailure to cooperate with the disciplinary investigation also harm[s] the legal profession by undermining the integrity of the attorney disciplinary system." *In re Ulanowski*, 834 N.W.2d 697, 703 (Minn. 2013); *see also In re Brooks*, 696 N.W.2d 84, 88 (Minn. 2005) (noting our concern with an attorney's failure "to respond to the Director's requests for more than one year" and that "failure to cooperate with the disciplinary process hurts . . . the legal profession as a whole"). We find Blomquist's actions reflect poorly on our profession and that this factor weighs in favor of more heavy discipline.

E.

Before coming to our final disciplinary conclusion, we are required to evaluate the aggravating factors, mitigating factors, and the punishment imposed in similar disciplinary cases.

The first aggravating factor in this case is Blomquist's previous admonition for falsely notarizing a mortgage deed. "Attorneys with a disciplinary history are 'expected to show a renewed commitment to ethical behavior.' " *In re Kurzman*, 871 N.W.2d 753, 758 (Minn. 2015) (quoting *In re Coleman*, 793 N.W.2d 296, 308 (Minn. 2011)). We look "closely at prior misconduct" and have consistently held that prior misconduct is an aggravating factor. *In re Milloy*, 571 N.W.2d 39, 46 (Minn. 1997).

The second aggravating factor is Blomquist's failure to accept responsibility for his actions or to acknowledge that his actions were wrong.[9] "Because one purpose of attorney discipline is to protect the public, an attorney's remorse or lack of it is an important factor." *In re Nora*, 450 N.W.2d 328, 330 (Minn. 1990) (citation omitted). We are concerned about attorneys who do not acknowledge committing any misconduct because they "might engage in similar conduct in the future unless" they are "appropriately sanctioned." *In re Westby*, 639 N.W.2d 358, 371 (Minn. 2002); *In re Ray*, 610 N.W.2d 342, 347 (Minn. 2000).

The third aggravating factor is that Blomquist's abuse of the trust was self-serving and selfish.[10] "An attorney's selfish motive may be an aggravating factor." *In re Severson*,

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[9] At oral argument, Blomquist was asked specifically if he acknowledged any wrongdoing in this case. His response: "None whatsoever."

[10] The referee found Blomquist's failure to meaningfully make D.H. whole was an aggravating factor. Lack of restitution to D.H., however, is not an aggravating factor because we have already considered the harm Blomquist caused D.H. when evaluating the harm to the public. *See In re Udeani*, 945 N.W.2d 389, 399 (Minn. 2020) ("Our case law does not support an aggravating factor based on [an attorney's] indifference toward restitution because we have already considered his failure to make restitution to clients when analyzing the harm caused to his clients.").

860 N.W.2d 658, 671 (Minn. 2015); *see also Fairbairn*, 802 N.W.2d at 747. Here, Blomquist invested trust assets in five companies that he owned and lost all of it. And a district court found he engaged in self-serving actions. This is an aggravating factor under our case law.

The referee found one minimal mitigating factor—Blomquist testified he wants to pay D.H. in full as soon as possible. Because a transcript has not been ordered, we accept this mitigating factor and agree that it is minimal. *See In re Mayne*, 783 N.W.2d 153, 162 (Minn. 2010) (concluding referee did not clearly err in finding attorney entitled to mitigation, based in part, on her statement that she wanted to pay restitution as soon as she could).

Finally, we examine "similar cases to impose consistent discipline." *In re Albrecht*, 779 N.W.2d 530, 540 (Minn. 2010). There are few cases identical to Blomquist's. The most similar are cases involving lawyers who misappropriated a substantial amount of assets from a trust, in breach of a fiduciary duty to a trust beneficiary. We disbarred these lawyers. *O'Brien*, 894 N.W.2d at 168; *Moe*, 851 N.W.2d at 873; *In re Amundson*, 643 N.W.2d at 281 (Minn. 2002); *see also Mayne*, 783 N.W.2d at 164 (disbarring attorney who misappropriated assets while acting as an attorney in fact for a vulnerable adult). And in misappropriation cases involving substantial sums of money, we impose discipline less than disbarment only when there were substantial mitigating factors. *Compare Fairbairn*, 802 N.W.2d at 744–48 (suspending an attorney for 18 months who misappropriated $144,000 in client assets, but with five mitigating factors and no aggravating factors), *with Mayne*, 783 N.W.2d at 163–64 (disbarring attorney for misappropriating assets while

acting as an attorney in fact for a vulnerable adult when "the mitigating factors proven . . . fall short of what is required for us to deviate from the sanctions we generally impose for similar misconduct").

Blomquist misappropriated and converted trust assets for his personal use, in violation of his fiduciary duty as trustee, by investing thousands of dollars in five risky and speculative start-up companies in which he had a personal interest. None of these companies generated any revenue, or made any payment to the trust on the promissory notes that Blomquist signed. Blomquist repeatedly failed to comply with court orders and failed to cooperate with the Director's investigation. His behavior was selfish, he acknowledges no wrongdoing, and he was previously disciplined for dishonest conduct. Based on this behavior and our precedent, we conclude that the appropriate discipline is disbarment.

CONCLUSION

For the foregoing reasons, respondent Barry L. Blomquist, Jr. 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 (notice of disbarment to clients, opposing counsel, and tribunals), and shall pay $900 in costs pursuant to Rule 24(a), RLPR.

Disbarred.

CHUTICH, J., took no part in the consideration or decision of this case.