STATE OF MINNESOTA

IN SUPREME COURT

A20-0918

Original Jurisdiction Per Curiam

In re Petition for Disciplinary Action
against William Bernard Butler, a Minnesota
Attorney, Registration No. 0227912.

Filed: June 9, 2021
Office of Appellate Courts

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

William B. Butler, Robbinsdale, Minnesota, pro se.

S Y L L A B U S

1. The referee did not abuse her discretion by reserving the admission of e-mail correspondence that as offered lacked authentication.

2. The record supports the referee's findings of fact and conclusions that respondent violated the Minnesota Rules of Professional Conduct and Rules on Lawyers Professional Responsibility due to his criminal convictions for willful tax evasion, misuse of an attorney trust account, holding himself out as authorized to practice law while suspended, and failure to cooperate with the Director's investigation.

3. Given the aggravating factors present, an indefinite suspension with no right to petition for reinstatement for 4 years is the appropriate discipline for respondent's criminal convictions for willful tax evasion, misuse of an attorney trust account, holding himself as authorized to practice law while suspended, and failure to cooperate with the Director's investigation.

Suspended.

OPINION

PER CURIAM.

The Director of the Office of Lawyers Professional Responsibility filed a petition for disciplinary action and a supplementary petition for disciplinary action against respondent William Bernard Butler. The petitions alleged that Butler was convicted of two felonies for willfully failing to file federal income tax returns, misused a trust account, failed to timely cooperate with the Director's investigation, and held himself out as a licensed attorney while suspended. The referee held a hearing and concluded that Butler had violated the applicable rules, and that aggravating factors warranted disbarment. Butler asserts that, despite his convictions, his failure to file tax returns did not violate the Minnesota Rules of Professional Conduct and Rules on Lawyers Professional Responsibility. He also opposes the Director's other charges on evidentiary grounds. After reviewing the record, we conclude that the referee did not clearly err. We further conclude that the appropriate discipline for Butler's misconduct is an indefinite suspension with no right to petition for reinstatement for 4 years.

FACTS

Butler was admitted to practice in Minnesota in 1992. Butler has been disciplined twice before. On August 12, 2015, we suspended Butler from the practice of law with no right to petition for reinstatement for at least 2 years.[1] *In re Butler*, 868 N.W.2d 243, 252 (Minn. 2015). Butler's 2015 discipline stemmed from a substantial pattern of misconduct including pursuit of frivolous litigation on behalf of 40 clients, fraudulent joinder of parties, refiling of previously dismissed cases, and failure to pay $300,000 in court-ordered sanctions. *Id.* at 247–50. The Director further admonished Butler on January 27, 2017, for identifying himself as "General Counsel" for a company that employed him and providing legal advice while he was suspended from the practice of law.

This matter arises principally out of Butler's March 20, 2019 convictions on two counts of attempting to evade or defeat a tax law by knowingly failing to file a tax return (for tax years 2012 and 2013) when required to do so, in violation of Minnesota Statutes § 289A.63, subd. 1(a) (2020). The district court stayed imposition of the sentences and placed Butler on probation for 3 years.[2] Butler complied with the condition of his probation that he file tax returns from 2012 through 2019.

After Butler was charged with willful tax evasion in 2018, the Director began a disciplinary investigation. On May 16, 2019, the Director sent Butler a letter informing him that his law firm's website, which stated that "William Bernard Butler is a Minnesota

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[1] Butler has not yet petitioned for reinstatement and remains suspended.

[2] If Butler completes his probation, his felony convictions will be deemed to be misdemeanors. Minn. Stat. § 609.13, subd. 1(2) (2020).

Attorney," was misleading given his suspended status at the time. Butler responded on May 30, 2019, that his website was "currently down" but if it went back up that he would change it to state that he "is a non-practicing Minnesota attorney" and include a link to his prior discipline.

The Director also sent Butler a notice of investigation on September 3, 2019, asking him to explain an August 13, 2019 overdraft on his attorney trust account with Wells Fargo. An automatic electronic payment for Butler's personal car lease caused this overdraft. The notice requested Butler's trust account bank statements and other information. This notice was mailed to the Minneapolis address that Butler maintained with the Minnesota Lawyer Registration Office, one that the Director had previously used to successfully communicate with Butler concerning his criminal convictions. The notice was not returned as undeliverable.

After receiving no response, the Director sent Butler another letter on September 18, 2019, to the same address as well as a residential address associated with him. In this second letter, the Director cited Butler's failure to respond to the first notice of investigation. This letter was returned as undeliverable to Butler's Minneapolis address, but not his residential address.

Also on September 18, 2019, the Director requested an investigatory subpoena for Butler's trust account. The subpoena was then approved and served on Wells Fargo. At this point, Butler still had not responded to the Director's requests. After being notified of the subpoena by Wells Fargo, Butler e-mailed the Director on October 19, 2019, explaining that there were no client funds in the trust account and that he was using it for personal

purposes. Butler did not include in this e-mail the bank statements requested by the Director. Butler eventually provided the Director a screenshot of the trust account balance on November 13, 2019.

The subpoenaed bank records showed that Butler had used his attorney trust account to make monthly car lease payments and to pay for car insurance. Butler also used the trust account to deposit personal funds, including a $10,000 personal check, and disbursed payments to himself. This use resulted in five overdrafts, including a $725.35 shortage. Butler did not provide the Director with information showing that he has corrected the overdrafts. There were never any third-party funds in the account during the disputed period, nor any comingling. Butler explained to the Director that he used the trust account for personal purposes because his criminal convictions prevented him from opening a new bank account.

The Director petitioned for disciplinary action against Butler. The Director alleged that Butler's convictions for knowingly failing to file his tax returns violated Minn. R. Prof. Conduct 8.4(b) and (d); his misuse of the trust account violated Minn. R. Prof. Conduct 1.15(a); his holding of himself out as authorized to practice law while suspended violated Minn. R. Prof. Conduct 5.5(b)(2) and 7.1; and his failure to cooperate with the disciplinary investigation violated Minn. R. Prof. Conduct 8.1(b) and Rule 25, Rules on Lawyers Professional Responsibility (RLPR). A hearing was held before the referee.

At the hearing, Butler offered Exhibit 40, which consisted mostly of e-mail communications between him and the Director that occurred after Butler did not respond to the first two notices of investigation. The Director objected primarily on authentication

grounds, because the exhibit was offered with numerous redactions. Butler explained that he did not have access to a printer, and so he forwarded these e-mails to personal friends for them to print off. He claims that the redactions were of the personally identifying information of those friends. The referee reserved receiving Exhibit 40 on authentication grounds and it was ultimately not admitted into evidence.

The Director called Butler to testify; he refused by citing religious beliefs.[3] The referee stated that Butler could affirm the truth of his testimony. Butler rejected that option and said he would not testify. Butler did not call any witnesses on his behalf.

The referee issued her findings of fact, conclusions of law, and recommendation. She made findings consistent with the facts described above. She concluded that Butler violated Minn. R. Prof. Conduct 1.15(a), 5.5(b)(2), 7.1, 8.1(b), and 8.4(b) and (d) and Rule 25, RLPR. The referee also found several aggravating factors. First, Butler had a substantial prior disciplinary history. Second, Butler lacked remorse by maintaining "unreasonable and widely rejected legal positions regarding the government's right to taxation," failing to acknowledge the wrongfulness of his misuse of the trust account and the restrictions placed on him as a suspended attorney, and blaming the Director for failed communication despite him not updating his address with the Lawyer Registration Office. Third, the referee found that Butler failed to cooperate with the disciplinary hearing by refusing to testify, and did so in bad faith. The referee then found that Butler offered no

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[3] For example, Butler cited the Bible verse that states: "But I tell you not to swear at all; neither by heaven, because it is the throne of God; Nor by the earth, because it is the footstool of His feet." *Matthew* 5:34–35 (Recovery Version).

evidence of mitigating factors. In light of this, the referee recommended that Butler be disbarred.

ANALYSIS

Butler challenges the referee's failure to admit the e-mail correspondence, her findings of fact and conclusions, and her recommended discipline. We address each in turn.

I.

At the hearing, Butler sought to admit into evidence Exhibit 40, a series of e-mails between him and the Director that principally occurred after issuance of the Wells Fargo subpoena. The Director objected to admission of Exhibit 40 because the exhibit contained multiple redactions, and several pages contained settlement negotiations. Butler explained that he had no printer and had to forward the e-mails to other persons to print, and so he redacted the identifying information of those persons. The referee was concerned with the redactions and believed that the redactions could be addressed by testimony. Accordingly, the referee reserved decision on the admission of Exhibit 40. Butler, however, did not testify or attempt to authenticate Exhibit 40. Ultimately, Exhibit 40 was not entered into evidence.

Butler claims that the e-mail correspondence in Exhibit 40 rebuts the Director's assertion, and the referee's conclusion, that he failed to respond to the first notice of investigation and failed to cooperate with the disciplinary investigation. The Director asserts that Butler was on notice prior to the hearing that the Director would object to

Exhibit 40 due to the redactions and the referee gave Butler an opportunity to authenticate the exhibit, which he did not do.

A referee's evidentiary rulings will only be reversed for an abuse of discretion. *In re Moulton*, 945 N.W.2d 401, 406 (Minn. 2020). Notably, the referee did not explicitly exclude Exhibit 40, but instead reserved admission of the exhibit. This action provided Butler an opportunity to later offer testimony to authenticate the e-mails. *See* Minn. R. Evid. 901(a). He did not do so; thus, the exhibit was not admitted. As the Director correctly notes, the petition alleged that Butler failed to cooperate based only on his response to the Director's initial inquiries, and these e-mails are not relevant to that count. That is, these e-mails have no bearing on the relevant period of non-cooperation as alleged by the Director; the correspondence raised by Butler that discusses the requested trust account records occurred only after he failed to respond to the initial notice of investigation and subsequent issuance of the investigatory subpoena. The referee therefore did not abuse her discretion by not admitting Exhibit 40 into evidence. *See State v. Larson*, 787 N.W.2d 592, 599 (Minn. 2010) (concluding the district court did not abuse its discretion by declining to admit unauthenticated transcripts into evidence).

II.

We turn now to the referee's findings of fact. Because Butler timely ordered a transcript, the referee's findings of fact are not conclusive. *See* Rule 14(e), RLPR. We defer to the referee and will not reverse the referee's findings when the findings "have evidentiary support in the record and are not clearly erroneous." *Moulton*, 945 N.W.2d at 405 (citation omitted) (internal quotation marks omitted). A finding of fact is clearly

erroneous only if upon review of the entire evidence, we are "left with the definite and firm conviction that a mistake has been made." *Id.* (citation omitted) (internal quotation marks omitted).

Butler asserts that Finding ¶ 7 is false.[4] This finding details that Butler "currently maintains that he is not legally required to file his taxes and that he continues to rely on unreasonable and widely rejected legal positions as the basis for his belief." The finding also observes that because Butler refused to testify at the disciplinary hearing, it is unclear if Butler will file his tax returns after his probation ends. Butler does not explain why this finding is false, but he contends that it cannot serve as the basis for a Rule 8.4 violation because no "act" has occurred. This argument is directed at the legal conclusion of the referee and is therefore discussed below.

Butler argues that Finding ¶ 15 is inconsistent with the record, lacks foundation, or is irrelevant. This finding details the dates on which the car lease payments were processed from Butler's trust account. These details derive from a spreadsheet admitted into evidence as Exhibit 7. Butler originally objected to admission of this document into evidence, but withdrew his objection at the hearing. We have reviewed the record and all of the dates in Finding ¶ 15 and Exhibit 7 directly correspond to Butler's trust account bank records in Exhibit 26. This finding is supported by the record and is not clearly erroneous. *Moulton*, 945 N.W.2d at 405.

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[4] Butler disputes, but provides no argument for, the following findings: ¶¶ 2, 4, 8−12, 16, 18–21, 23–27, 29, 32–36, 39, 40. His challenge to these findings is accordingly forfeited. *See In re Eichhorn-Hicks*, 916 N.W.2d 32, 38 n.9 (Minn. 2018).

III.

Butler next challenges the referee's conclusions that he violated the asserted rules. The referee's conclusion that Butler violated a rule is reviewed for clear error. *In re Ulanowski*, 800 N.W.2d 785, 793 (Minn. 2011). And the referee's interpretation of the rules is reviewed de novo. *Id.* We address each conclusion in turn.

A.

Butler disputes the referee's conclusion that his 2019 convictions for tax evasion are conclusive evidence that he violated Rule 8.4(b) and (d). Butler maintains that his failure to file income taxes is an omission, not an "act" under Rule 8.4(b), and also not "conduct" under Rule 8.4(d).[5] He suggests that the referee was required to make a specific factual finding regarding how his criminal convictions for tax evasion were "prejudicial to the administration of justice" and that this court's decision in *In re Selmer*, 749 N.W.2d 30 (Minn. 2008), precludes such a summary conclusion. Butler cites *Selmer* to argue that his conviction is not conclusive evidence of a Rule 8.4(b) violation because it does not necessarily reflect on his "honesty, trustworthiness, or fitness as a lawyer."

The Director maintains that our precedent has "consistently precluded [such] arguments." She argues that since 1972, we have held that a conviction for tax evasion is a per se violation of Minn. R. Prof. Conduct 8.4(d) or its predecessor rule. She also asserts that we have found a conviction for tax evasion to be a violation of Rule 8.4(b). On Butler's

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[5] "It is professional misconduct for a lawyer to . . . (b) commit a criminal *act* that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects . . . [or] (d) engage in *conduct* that is prejudicial to the administration of justice." Minn. R. Prof. Conduct 8.4(b), (d) (emphasis added).

act versus omission argument, the Director notes that Comment 2 to Rule 8.4 specifically identifies "willful failure to file an income tax return" as a violation of the rule.

The Director is correct. A lawyer's criminal conviction is "conclusive evidence that the lawyer committed the conduct for which the lawyer was convicted," Rule 19(a), RLPR, and conclusive evidence of the lawyer's mental state. *In re Oberhauser*, 679 N.W.2d 153, 159 (Minn. 2004) ("Rule 19(a)'s presumption lends itself to the additional presumption that, as here, when the criminal conduct includes a specific state of mind, the conviction is conclusive evidence that the lawyer acted with that state of mind."). We have specifically and consistently applied Rule 19(a), RLPR, when a lawyer is convicted of tax evasion. *See, e.g.*, *In re Morris*, 827 N.W.2d 427, 429 (Minn. 2013); *In re Peterson*, 718 N.W.2d 849, 855, 859 (Minn. 2006); *In re Barta*, 461 N.W.2d 382, 383 (Minn. 1990). Minnesota attorneys have been on notice since 1972 that intentional violation of tax laws is a per se violation of the Minnesota Rules of Professional Conduct. *In re Bunker*, 199 N.W.2d 628, 632 (Minn. 1972) ("Lawyers in this state should henceforth understand clearly that . . . disciplinary proceedings are mandatory in all cases of failure to file income tax returns."). Butler's act versus omission distinction collapses because Butler's conviction conclusively shows that he affirmatively decided not to file his taxes when he knew he was required to do so. *See* Rule 19(a), RLPR.

Similarly, Butler's *Selmer* argument fails because we noted in *Bunker* that intentional violation of tax laws *necessarily* reflects on a lawyer's honesty, trustworthiness, and fitness to practice law. 199 N.W.2d at 631–32 (citing the predecessor rule of Minn. R. Prof. Conduct 8.4(b), which stated that a lawyer shall not "engage in illegal conduct

involving moral turpitude"). Moreover, the distinction we drew in *Selmer* was based on the lawyer's conviction for fifth-degree assault, not tax evasion. 749 N.W.2d at 39 (concluding "there is no connection between Selmer's fifth-degree assault conviction for punching another man at a basketball game and his practice of law"). Accordingly, the referee's conclusion that Butler's criminal convictions for tax evasion violated Minn. R. Prof. Conduct 8.4(b) and (d) was not clearly erroneous.

B.

Butler next challenges the referee's conclusion that he violated Rule 1.15(a). Butler does not substantively address the merits of the referee's conclusion here, but he suggests that the Director "abandoned" the Rule 1.15(a) claim. His argument is as follows: (1) the Director's original petition contained only an allegation that his convictions for tax evasion violated Rule 8.4(b) and (d); (2) the Director had reason to know at the time of the original petition that he had violated additional rules due to his misuse of a trust account and his misrepresentation on his website; (3) by not including these latter claims in the original petition, the Director abandoned them and thus could not raise them in a supplementary petition, as she did. He cites no authority to support this argument.

The Director maintains that Butler's consistent use of his attorney trust account for personal purposes, including multiple overdrafts, violated Minn. R. Prof. Conduct 1.15(a) and asserts that we have held such personal use to be a violation of the rule. She also rebuts Butler's implicit laches and forfeiture arguments by noting that the initial disciplinary

petition was filed pursuant to Rule 10(c), RLPR, due to Butler's felony convictions.[6] And further investigation revealed additional misconduct, including his misuse of his attorney trust account, thus warranting the supplementary petition.

Butler's summary argument that because the trust account contained no client or third-party funds, he did not violate Rule 1.15(a), is not correct. This rule provides that "[n]o funds belonging to the lawyer or law firm shall be deposited" into an attorney trust account except for sufficient funds to pay service charges associated with the account and funds belonging both in part to the client and lawyer. Minn. R. Prof. Conduct 1.15(a). Personal use of a trust account is a violation of Rule 1.15(a). *See In re Edinger*, 700 N.W.2d 462, 464–67 (Minn. 2005). Butler's argument that no client or third-party harm occurred due to his personal use goes instead to the level of discipline warranted. *See id.* at 468 ("We recognize that the underlying trust account violations presented no risk of harm to clients and, thus, by themselves, might justify lesser discipline.").

Similarly, we have never held that the Director may be barred from petitioning for discipline merely because she may have reason to believe that more than one rule has been violated, but did not bring all allegations in an initial petition. Instead, the attorney must show that the Director's delay resulted in actual and substantial prejudice, *see In re Overboe*, 867 N.W.2d 482, 486 (Minn. 2015), which Butler has not done. In contrast, the rules explicitly permit the Director to file a supplemental petition "to include additional

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[6] Rule 10(c), RLPR, provides that if an attorney is convicted of a felony, then "the Director may either submit the matter to a Panel or, with the approval of the Chair of the Board, file a petition under Rule 12."

charges based upon conduct committed before or after the petition was filed." Rule 10(e), RLPR. Butler's implicit argument is therefore without merit, and the referee's conclusion that his use of the trust account for personal purposes—and the resulting overdrafts—violated Minn. R. Prof. Conduct 1.15(a), was not clearly erroneous.

C.

Butler maintains that his failure to respond to the notices of investigation cannot be a violation of the rules when he never received the notices. The Director responds in three ways. First, she asserts that it was Butler's responsibility under Rule 13(B) of the Rules of the Supreme Court on Lawyer Registration to update his address with the Lawyer Registration Office. Second, she notes that the first notice of investigation sent to his Minneapolis address was not returned as undeliverable, and so she had no actual notice that Butler had not received it, and the second notice, sent to his residential address in Saint Paul, was also not returned as undeliverable. Third, she points out that she had previously successfully communicated with Butler at the Minneapolis address during the investigation of his criminal complaint that same year. The Director also asserts that when Butler finally responded to her, he failed to include the requested trust account records. The Director further maintains that Butler's subsequent cooperation does not negate his initial noncooperation.

By asserting that he never received the notices of investigation, Butler effectively challenges the referee's conclusion that he "knowingly" failed to respond to the Director's request. *See* Minn. R. Prof. Conduct 8.1(b) (stating that "a lawyer . . . in connection with a disciplinary matter, shall not . . . knowingly fail to respond to a lawful demand for

information from [a] . . . disciplinary authority"). We reject the Director's suggestion that because Butler failed to keep an updated address with the Lawyer Registration Office, he could violate Rule 8.1(b) if he never actually received the notices of investigation and therefore had no knowledge that the Director was requesting information from him. That would effectively convert the "knowing" mental state requirement to a "negligent" one. *See In re Anderson*, 759 N.W.2d 892, 897 (Minn. 2009) ("Under the Rules of Professional Conduct, 'knowingly' 'denotes actual knowledge of the fact in question,' which may 'be inferred from circumstances.' " (quoting Minn. R. Prof. Conduct 1.0(g))).

While the referee did not explicitly find that Butler *knowingly* failed to cooperate, such a finding is implicit in, for example, her findings that the Director's notices were sent to addresses that Butler had previously used with the Director and that the relevant notices had not been returned as undeliverable. Accordingly, there is evidence inferred from the circumstances to support the implicit finding that Butler received the relevant notices and thus had actual knowledge as required by Rule 8.1(b). *See In re Mathias*, 495 N.W.2d 413, 414–15 (Minn. 1993) (suggesting that a finding of intentional conduct could be implied from the recommended discipline and other findings made regarding the lawyer's conduct). The Director also correctly notes that noncooperation, even if only partial, is a violation of Minn. R. Prof. Conduct 8.1(b) and Rule 25, RLPR. *See In re Nelson*, 733 N.W.2d 458, 463 (Minn. 2007). Accordingly, we hold that the referee did not clearly err by concluding that Butler violated Minn. R. Prof. Conduct 8.1(b) and Rule 25, RLPR.

D.

The referee concluded that Butler's labelling of himself as "a Minnesota attorney" on his website while suspended violated Rules 5.5(b)(2) and 7.1. Rule 5.5(b)(2) of the Minnesota Rules of Professional Conduct prohibits a lawyer who is not authorized to practice in Minnesota from "hold[ing] out to the public or otherwise represent[ing] that the lawyer is admitted to practice Minnesota law." And Rule 7.1 of the Minnesota Rules of Professional Conduct prohibits a lawyer from making "false or misleading communication[s] about the lawyer or the lawyer's services." A communication is false or misleading if it "omits a fact necessary to make the statement considered as a whole not materially misleading." *Id.* The Director asserts that Butler's website signage, without any means for the public to determine that he was not licensed, violated both rules. Butler makes no argument in response outside of the previously discussed abandonment theory.

We have disciplined a lawyer in part for "displaying signage and utilizing law firm and other designations falsely implying that [the lawyer] continued to be licensed to practice law while he was suspended." *In re Stockman*, 826 N.W.2d 530, 530 (Minn. 2013) (order). The signage and website at issue in *Stockman* labelled him as "Attorney Louis A. Stockman" and an "Attorney at Law" despite his suspended status. Butler's labelling of himself on his law firm's website as "a Minnesota attorney" is substantively identical to Stockman's misconduct in labelling himself an "Attorney." The referee's conclusion that Butler violated Minn. R. Prof. Conduct 5.5(b)(2) and 7.1 was therefore not clearly erroneous.

IV.

After finding that Butler committed the misconduct alleged in the petition and supplementary petition, the referee agreed with the Director and recommended that Butler be disbarred. Butler maintains that his conduct violated no rules and thus does not warrant any discipline.

We retain "ultimate responsibility for determining appropriate discipline" and discipline is imposed "to deter future misconduct, both by the attorney subject to discipline and by other attorneys." *Moulton*, 945 N.W.2d at 408 (citation omitted) (internal quotation marks omitted). But we give "great weight" to the referee's recommended discipline. *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. *Id.* We will also consider aggravating and mitigating factors. *Id.* at 173–74. Appropriate discipline, while unique to each case, should be consistent with that imposed in similar cases. *Id.* at 174.

A.

We first consider the nature of Butler's misconduct. Butler's misconduct consists of: (1) conviction of two felony counts of tax evasion; (2) misuse of an attorney trust account; (3) failure to cooperate with the Director's disciplinary investigation; and (4) misrepresenting himself as a licensed attorney while suspended.

We may consider the severity ranking assigned to a felony offense under the Minnesota Sentencing Guidelines. *See In re Strunk*, 945 N.W.2d 379, 385 (Minn. 2020).

Butler's felony convictions are an offense severity level 3 out of a maximum of 11. Minn. Sent. Guidelines 5.A (2012 and 2013).[7] Other crimes with an offense level 3 include theft crimes of over $5,000. *Id.* And we have consistently treated convictions for tax crimes as serious. *See Bunker*, 199 N.W.2d at 632 (stating that future convictions for tax-related crimes "will consist of either suspension or disbarment"); *Selmer*, 749 N.W.2d at 38 ("We impose harsh discipline when tax violations result in criminal charges . . . [and] the failure to file tax returns altogether is a more serious violation than a mere failure to timely file."); *In re Bonner*, 896 N.W.2d 98, 113–14 (Minn. 2017) ("We have imposed lengthy periods of suspension on lawyers convicted of felonies for filing false tax returns.").

Misuse of an attorney trust account is also serious misconduct, even when the misuse does not result in harm to clients. *In re Schulte*, 869 N.W.2d 674, 678–79 (Minn. 2015). Notably though, Wells Fargo was harmed because the trust account was closed with a negative balance of over $700.[8]

Failure to cooperate is also serious misconduct. *See In re Brooks*, 696 N.W.2d 84, 88 (Minn. 2005) ("We have stressed that failure to cooperate with a disciplinary

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[7] Butler received a stay of imposition of sentence under Minnesota Statutes section 609.13, subdivision 1. Under that statute, if Butler completes his probation, then his convictions will be deemed misdemeanors. We have noted, however, that when a jury finds that an attorney has committed a felony offense beyond a reasonable doubt, then even if the felony is later deemed to be a misdemeanor under section 609.13, we may nevertheless treat the conduct as a felony offense. *In re Bonner*, 896 N.W.2d 98, 113 (Minn. 2017).

[8] At oral argument, Butler asserted that he had attempted to pay off the remaining balance, but that Wells Fargo had written off much of the loss. That evidence, however, is not in the record before us.

investigation, in and of itself, constitutes an act of misconduct that warrants indefinite suspension.”). And holding oneself out as licensed to practice while suspended is similarly serious. *See In re Van Beek*, 887 N.W.2d 31, 32 (Minn. 2016) (order). The nature of Butler’s misconduct thus warrants serious discipline.

B.

We next consider the cumulative weight of Butler’s misconduct. We treat a brief lapse in judgment or a single, isolated incident more leniently. *Bonner*, 896 N.W.2d at 108. Butler’s pattern of misconduct was neither. Instead, his misconduct spread over multiple years. He was convicted of tax evasion for tax years 2012 and 2013, and his more recent misconduct was also extensive. He misused his attorney trust account over a period of at least 5 months. And he recently held himself out as a licensed attorney while suspended and failed to cooperate with the Director’s disciplinary investigation. This factor weighs in favor of heavier discipline.

C.

We next consider the harm to the public and the legal profession. Butler’s misconduct caused some harm to the public. Butler’s misuse of his attorney trust account deprived Wells Fargo of over $700. His misuse of the trust account, however, did not harm any clients. And while Butler did initially deprive the public of tax revenue due to his knowing failure to file income taxes, he did ultimately repay these taxes and subsequently filed income taxes through 2019 consistent with the terms of his criminal probation.

Butler’s criminal convictions for tax evasion caused serious harm to the legal profession. *See Moulton*, 945 N.W.2d at 409 (“[B]ecause Moulton’s violation of tax

regulations is a failure to abide by the rule of law, his conduct harmed the legal profession."). His misuse of his attorney trust account also harmed the legal profession, *Schulte*, 869 N.W.2d at 679, as did his failure to cooperate with the Director's disciplinary investigation, *id.* at 678–79. Butler's misconduct caused some harm to the public and great harm to the legal profession and thus warrants serious discipline.

D.

Having considered the four factors, we now look to the existence of any aggravating or mitigating factors. The referee found three aggravating factors: (1) Butler's prior disciplinary history; (2) his lack of remorse; and (3) his noncooperation during the disciplinary hearing.[9]

"Prior disciplinary history is an aggravating favor, and a particularly weighty one if the prior discipline was for similar misconduct." *In re Quinn*, 946 N.W.2d 583, 592 (Minn. 2020). Butler has been disciplined before and for similar conduct. Butler was previously admonished by the Director for the unauthorized practice of law while suspended and for holding himself out as the general counsel of a corporation. Here, he held himself out to the public as a licensed Minnesota attorney while suspended. His prior, similar misconduct shows that he has not demonstrated a "renewed commitment to comprehensive ethical and

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[9] We commend the referee for her extensive attempts to accommodate Butler's religious objections to providing sworn testimony. We decline, however, to consider Butler's alleged noncooperation at the disciplinary hearing as an aggravating factor because his refusal to testify presents potential First Amendment concerns and because the presence or absence of this particular aggravating factor does not alter our ultimate conclusion concerning the appropriate discipline for him.

professional behavior after a disciplinary proceeding." *Nelson*, 733 N.W.2d at 464 (citation omitted) (internal quotation marks omitted).

Butler also shows no remorse for his misconduct. Indeed, he does not acknowledge any wrongdoing. He instead portrays himself as the victim in these disciplinary proceedings. *See Rebeau*, 787 N.W.2d at 176 (concluding that an attorney's lack of remorse was an aggravating factor).

Butler did not present evidence of mitigating factors, and the referee found none. In sum, these aggravating factors, and the lack of any mitigating factors, warrant more severe discipline.

E.

We now turn to similar cases. The Director asserts that none of our prior cases fully encompass Butler's misconduct and aggravating factors. She suggests that the combination of serious misconduct here, current suspension for similar misconduct, prior admonition, and other significant aggravating factors compel disbarment. The Director offers *In re Albrecht* as an example in which we disbarred an attorney because the attorney had not heeded the message of prior discipline. 845 N.W.2d 184, 193 (Minn. 2014). In *Albrecht*, the attorney had been privately admonished by the Director 13 times, placed on supervised probation by this court three times, and suspended three times, including an indefinite suspension with no right to petition for reinstatement for 2 years. *Id.* at 187. While the most recent indefinite suspension was still in effect, the attorney had a sexual relationship with a client, practiced law while suspended, lied to the Director about a wire transfer, and misled the Director and referee about his petition for reinstatement. *Id.* at

187–91. While Butler's misconduct here is in some respects more serious—Albrecht had not been convicted of any felonies—Butler's disciplinary history is also far less substantial than Albrecht's.

The Director also offers *In re Ray*, in which we disbarred an attorney for the repeated unauthorized practice of law while suspended, including prior discipline for the same. 610 N.W.2d 342, 347 (Minn. 2000). Ray, however, actually practiced law while suspended, *id.* at 344–45, as opposed to Butler, whose relevant misconduct was leaving up a website labelling him as a Minnesota attorney. That said, Butler is like Ray in that he is completely without remorse for his misconduct. *See id.* at 347 (noting that Ray did not "acknowledge that he ha[d] committed any misconduct"). Based on the differences between these two cases and Butler's misconduct and disciplinary history here, we disagree with the Director that these cases support Butler's disbarment.

When a Minnesota attorney simply fails to file tax returns, we ordinarily suspend the attorney within a range of 30 to 180 days. *See In re Green*, 887 N.W.2d 33, 33 (Minn. 2016) (order); *In re Smith*, 852 N.W.2d 253, 253–54 (Minn. 2014) (order); *In re Converse*, 926 N.W.2d 913, 913 (Minn. 2019) (order); *In re Butler*, 915 N.W.2d 754, 754–55 (Minn. 2018) (order).

We recognized in *In re Singer*, however, that when an attorney both fails to file tax returns (even if not criminally charged for it) and commits other serious misconduct, suspension for longer than 1 year is warranted. 541 N.W.2d 313, 316 (Minn. 1996) (collecting cases). Singer failed to file tax returns, failed to keep proper trust account records, failed to deposit advance fees into trust, failed to timely refund unearned fees, and

failed to cooperate in disciplinary proceedings. *Id.* at 314–15. Singer also had prior disciplinary history and had been on probation for similar tax violations. *Id.* at 314. We indefinitely suspended him, with no right to petition for reinstatement for 2 years. *Id.* at 316.

Likewise, when an attorney is actually *convicted* of tax crimes, we have imposed more severe discipline. *See In re Thedens*, 557 N.W.2d 344, 348 (Minn. 1997) ("[T]his court often has imposed harsh sanctions when [tax code] violations have resulted in criminal prosecutions."); *In re Wylde*, 454 N.W.2d 423, 426 (Minn. 1990); *see also Bonner*, 896 N.W.2d at 113–14 (recognizing that conviction warrants greater discipline). While we have said that "[t]he presumptive sanction for a lawyer convicted of a felony is disbarment," we have also said that we "will not automatically disbar attorneys convicted of felonies . . . and will consider the circumstances surrounding the criminal act to determine if any discipline short of disbarment is appropriate." *Strunk*, 945 N.W.2d at 387 (stating that the analysis is "fact intensive" and involves "numerous factors," including "the nature of the criminal conduct, whether the felony was directly related to the practice of law, and whether the crime would seriously diminish public confidence in the legal profession"). For example, we disbarred an attorney who was convicted of federal mail fraud and income tax evasion. *In re Ostfield*, 349 N.W.2d 274, 275 (Minn. 1984) (order) (stating that the attorney, who was also an accountant, admitted that he prepared tax returns for his clients, "received checks from clients to pay their determined tax liability," and then "did not send to taxing authorities [the] correct returns, and . . . converted to his own use proceeds from the checks").

But in *In re McGee*, we suspended an attorney for only 1 year for the same criminal conviction as Butler when that attorney also failed to timely file 4 years of income tax returns, failed to appear at two court hearings, and failed to cooperate with the disciplinary investigation. 856 N.W.2d 97, 98 (Minn. 2014) (order). McGee, however, had no prior disciplinary history. *Id.* We suspended the attorney in *In re Sax* for 1 year because the attorney was convicted for failing to file taxes, then failed to file again. 321 N.W.2d 902, 903–04 (Minn. 1982). We also suspended the attorney in *In re Diesen* for 3 years for a federal conviction of tax evasion when the attorney had no prior disciplinary history. 217 N.W. 356, 356–57 (Minn. 1928). In sum, while we often suspend an attorney for between 1 to 3 years for a conviction such as willful tax evasion, the aggravating factors—including Butler's prior similar misconduct and lack of remorse—warrant more severe discipline.

Accordingly, we order that:

1. Respondent William Bernard Butler remains indefinitely suspended from the practice of law with no right to petition for reinstatement for a minimum of 4 years, effective as of the date of this opinion.

2. Respondent shall pay $900 in costs pursuant to Rule 24(a), RLPR, and comply with the requirements of Rule 26, RLPR (requiring notice of suspension to clients, opposing counsel, and tribunals).

3. Respondent shall timely file his federal and state income tax returns.

4. Respondent may petition for reinstatement pursuant to Rule 18(a)–(d), RLPR. Reinstatement is conditioned on the following:

a. respondent's successful completion of the written examination required for admission to the practice of law by the State Board of Law Examiners on the subject of professional responsibility. *See* Rule 4.A.(5), Rules for Admission to the Bar (requiring evidence that an applicant has successfully completed the Multistate Professional Responsibility Examination);

b. respondent's satisfaction of continuing legal education requirements. *See* Rule 18(e)(4), RLPR;

c. respondent's compliance with the terms of his criminal probation, as set out in the district court's May 8, 2019 sentencing order;

d. respondent's compliance with the terms of his 2015 suspension, *see Butler*, 868 N.W.2d at 252–53; and

e. respondent's demonstration to the Director that he has timely filed his federal and state income tax returns from the date of this opinion and providing to the Director such releases as may be appropriate to permit the Director to obtain verification from the taxing authorities.

Suspended.