STATE OF MINNESOTA

IN SUPREME COURT

A21-0152

Original Jurisdiction — Per Curiam

In re Petition for Disciplinary Action against Geoffrey Robert Colosi, a Minnesota Attorney, Registration No. 0336026.

Filed: July 20, 2022
Office of Appellate Courts

Susan M. Humiston, Director, Nicole S. Frank, Senior Assistant Director, Office of Lawyers Professional Responsibility, Saint Paul, Minnesota, for petitioner.

Benjamin E. Myers, Dallas, Texas, for respondent.

S Y L L A B U S

1. The referee's evidentiary rulings allowing the Director's expert to testify, overruling respondent's privilege objections, and limiting respondent's trial testimony and exhibits to evidence disclosed during discovery were not an abuse of discretion.

2. The referee did not clearly err in making findings of fact and conclusions that respondent engaged in self-dealing, failed to provide a court-ordered accounting, asserted privilege in bad faith and failed to cooperate with the Director's investigation, and that there were no mitigating factors.

3. Disbarment is the appropriate discipline for respondent, who breached his fiduciary duty to a vulnerable adult by draining her estate to enrich himself, attempted to

conceal his misconduct by failing to cooperate with the district court and the Director's investigation, continued to assert privilege in bad faith, and misused his trust account.

Disbarred.

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 Geoffrey Robert Colosi. The petition alleged that Colosi breached his fiduciary duties while serving as trustee and attorney-in-fact for G.C., a vulnerable person, and then attempted to conceal his activities during district court proceedings; failed to cooperate during the Director's investigation; and misused his trust account. After a hearing, the referee concluded that Colosi committed the alleged misconduct and that four aggravating and no mitigating factors were present. The referee recommended that Colosi be disbarred. We conclude that the referee did not abuse his discretion when making evidentiary rulings and that his factual findings and conclusions that Colosi committed misconduct are not clearly erroneous. Based on Colosi's misconduct, we disbar him from the practice of law.

FACTS

Colosi was admitted to practice law in Minnesota in 2004. He has no prior disciplinary history. The Director filed a petition for disciplinary action against Colosi, alleging that he committed professional misconduct in one specific client matter and another general matter. The client matter involved a pattern of dishonesty as a fiduciary to a vulnerable adult and obstruction, bad faith, and noncooperation during the Director's

investigation. The general matter involved Colosi's misuse of his trust account and additional noncooperation.

The client matter involved G.C., who retained Colosi in August 2007 to modify her trust and to act as the trustee and her attorney-in-fact via a statutory short form power of attorney. Colosi and G.C. executed a written fee agreement in which G.C. accepted that Colosi would charge a fee of $175 per hour for performing legal services. The fee agreement did not specify how much Colosi would charge for non-legal services. The fee agreement required Colosi to provide G.C. with monthly billing statements. Additionally, the power of attorney required Colosi to provide quarterly accountings. On August 31, 2007, G.C. signed a trust amendment, naming Colosi as the trustee and Wells Fargo as the successor trustee. On the same day, she sold all her assets to the trust.[1]

Although G.C. lived independently in her Edina home when Colosi first assumed his fiduciary role, this changed after G.C. fell in September 2008. As a result of the fall, G.C. was admitted to the hospital and then into a senior living community. G.C.'s condition worsened over her first year in the senior living community, and by June 2009, she was diagnosed with dementia. In May 2010, she was moved into the memory care unit of a different care center after another fall and hip replacement surgery. G.C.'s condition continued to deteriorate.

[1] The arrangement between Colosi and G.C. effectively replaced G.C.'s former fiduciary, D.R., who had been appointed as trustee and attorney-in-fact for G.C. after the death of her husband in 2001. But D.R. continued to serve as G.C.'s healthcare agent under her healthcare directive until her death.

When Colosi took control of G.C.'s finances in September 2008, she had a checking and a savings account with a combined balance of more than $100,000. G.C. had sold a business property in February 2008 for $337,500. Colosi represented her in that transaction, but he failed to maintain an accounting of where the approximately $300,670 in net proceeds went between the time of sale in February 2008 and the time Colosi took over G.C.'s accounts in September.

In addition to the business property, G.C. owned her home in Edina. Soon after G.C. moved into the senior living community, Colosi hired S.M., an attorney who had an office in the same building as Colosi, to conduct a market analysis on G.C.'s home. The market analysis valued the house at $264,000. Colosi recommended that G.C. rent out the property, and G.C. agreed. Starting in fall 2008, M.J., Colosi's former law school classmate, began renting the house for $800 per month.

On July 1, 2010, Colosi and M.J. entered into a contract for deed for the sale of G.C.'s home for $150,000. The contract required M.J. to make payments of $800 per month toward the purchase price with a closing date in June 2012. It also provided that if the balloon payment was not made, M.J. would not be entitled to the property. The contract provided that the home would be sold as-is.

Despite the contractual requirement that the house was sold in "as-is" condition, Colosi used G.C.'s funds to pay to replace the roof of the house. He hired S.M., the same attorney who conducted the market analysis of the home, to take care of the roof repairs and paid him almost $12,000 for this work. Colosi also paid S.M. $1,750 in April 2012, but the record does not explain what services or goods S.M. provided. In addition, S.M.

received $12,000 in deferred commission and $1,500 in attorney fees when the sale of G.C.'s home closed. In total, Colosi paid S.M. over $25,000 from G.C.'s trust for multiple business dealings related to G.C.'s home.

The sale of the home to M.J. did not close until December 2012, even though the contract terms mandated a June 2012 closing date. At closing, M.J. paid approximately $175,000 for the home, despite it being valued on the loan application at $300,000. The net proceeds from the sale were about $130,000, which Colosi did not deposit into the trust until February 2013.

Throughout the time that Colosi served as G.C.'s trustee and attorney-in-fact, he billed G.C. for time to perform mostly non-legal and non-fiduciary services at his legal services rate of $175 per hour. He paid himself directly from G.C.'s bank accounts via cash or check. In total, Colosi received over $260,000 in payments from G.C. between September 2008 and some time in 2016, when G.C.'s accounts were depleted. Payments to Colosi averaged about $35,000 per year and $3,000 per month. At Colosi's legal services rate, the amount billed would have reflected about 1,500 hours of legal service, averaging over 15 hours per month. But Colosi provided no evidence that he actually did any legal work for G.C. over this time period. Rather, the types of services for which he billed G.C. consisted primarily of his time visiting her at the facility where she was living.[2]

[2] At oral argument, Colosi's counsel suggested that the fee agreement between G.C. and Colosi permitted him to bill her $175 for these types of services as well. The agreement forecloses this argument because it is limited to fees for legal services.

In December 2016, G.C.'s healthcare agent, D.R., discovered that G.C. did not have enough money in her account to pay for a simple haircut. After unsuccessful attempts to contact Colosi, D.R. filed a petition in district court as G.C.'s healthcare agent to compel an accounting of the estate. The district court held a hearing on February 7, 2017, in which the court ordered Colosi to provide, within 30 days, a complete accounting of G.C.'s estate starting from August 2007.

In response to the order, Colosi provided D.R. and G.C.'s court-appointed attorney with his accounting, an inventory of G.C.'s personal property, and his billing narratives, which started in September 2008. The accounting failed to show starting balances, included deposits from unknown sources, and omitted transactions, including the sale of G.C.'s key assets—her business property and residence. The inventory did not thoroughly describe G.C.'s property, nor did it attach any values to the properties. The diary-like billing narratives consistently detailed non-legal services, mostly hours-long social visits with G.C. or errands on behalf of G.C. By February 2009, Colosi stopped typing his narratives, and instead handwrote them until 2016, after which point no entries exist. The narratives do not describe any legal services Colosi performed on G.C.'s behalf.

The repetitive nature of the narratives and the lack of quarterly reconciling of accounts suggest that Colosi completed the accounting after the fact and failed to provide both the invoices required by his retainer agreement with G.C. and the quarterly accounting required by the power of attorney. Colosi failed to provide any bank statements, tax returns, receipts, title transfers, recorded documents, or any other documents to account for G.C.'s estate. After several unsuccessful attempts to communicate with Colosi directly, in

June 2017, G.C.'s court-appointed attorney copied Colosi on a letter to the court requesting documentation of the sale of G.C.'s properties and copies of her tax returns. Colosi never provided these documents.

In October 2017, Integrity Financial Solutions, LLC, a professional fiduciary, petitioned for appointment as G.C.'s guardian and conservator. The petition was granted in February 2018. G.C. died on March 16, 2018. Because the guardian and conservatorship were never formally established, the court subsequently discharged Integrity Financial.

Before its discharge, Integrity Financial filed a complaint against Colosi with the Director. In response, the Director issued a notice of investigation on April 13, 2018. Colosi sent his response on May 14, 2018, denying any misconduct. In his response, Colosi asserted that attorney-client privilege and confidentiality prevented him from responding to the notice and providing any requested documents or information because the complainant was not his client or his client's heir. Colosi offered no legal authority to support his claim.

In the following months, the Director explained to Colosi four times in writing and over the phone why attorney-client privilege and confidentiality did not apply, citing Minn. R. Prof. Conduct 1.6(b)(8) and 8.1(b), and Rule 25(a), Rules on Lawyers Professional Responsibility (RLPR). Colosi responded with continued unsupported claims of attorney-client privilege and by withholding all requested information and documentation. In reaction to Colosi's failure to cooperate, the Director subpoenaed G.C.'s bank records and financial information related to G.C.'s care.

The Director then requested Colosi's financial records, including accounts where he deposited payments to himself from G.C.'s accounts. Colosi again responded with a blanket privilege assertion and failed to provide any documents or information. The Director once again responded, clarifying her position with legal support, but Colosi failed to produce the requested information.

In April 2019, the Director subpoenaed Colosi's accounts, including his trust account and other U.S. Bank accounts. When the Director received the response to the subpoena in October 2019, she discovered that Colosi had closed his trust account and had withdrawn all funds on May 4, 2018—shortly after the Director issued the notice of investigation. The total amount of funds in Colosi's trust account when he withdrew all funds was over $45,000. The records do not show whose funds were in the trust account or whether those funds were income to Colosi's practice.

The Director's investigation of Colosi's trust account revealed that he consistently made electronic transfers from his trust account to pay personal and business expenses unrelated to clients. Colosi also made frequent cash withdrawals from his trust account and kept personal funds in the account. The Director requested that Colosi provide his trust account books and records, including the relevant client subsidiary ledgers. Once again, Colosi—through counsel this time—refused to provide any documents or information under the guise of an unsupported privilege claim.

In February 2021, the Director filed a petition for disciplinary action alleging three counts of misconduct: a pattern of dishonesty as fiduciary to a vulnerable adult, G.C.; willful noncooperation with the Director's investigation; and misuse of his trust account

and additional willful noncooperation. Colosi denied any misconduct and repeated his blanket assertions of attorney-client privilege. We appointed a referee. After the referee granted Colosi's multiple requests for continuances, an evidentiary hearing was held in September 2021.

After the hearing, the referee made findings of fact, conclusions, and a recommendation for discipline. The referee concluded that Colosi's years-long pattern of excessive compensation from the limited funds of a vulnerable adult—and his attempts to avoid detection—constituted dishonesty, in violation of Minn. R. Prof. Conduct 8.4(c);[3] that Colosi breached his fiduciary duty of loyalty, in violation of Minn. R. Prof. Conduct 8.4(d);[4] and that Colosi's bad faith privilege claims constituted willful noncooperation with the Director's investigation, in violation of Minn. R. Prof. Conduct 8.1(b)[5] and 8.4(c), as well as Rule 25, RLPR.[6]

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[3] A lawyer is prohibited from "engag[ing] in conduct involving dishonesty, fraud, deceit, or misrepresentation." Minn. R. Prof. Conduct 8.4(c).

[4] A lawyer is prohibited from "engag[ing] in conduct that is prejudicial to the administration of justice." Minn. R. Prof. Conduct 8.4(d).

[5] A lawyer is prohibited from "knowingly fail[ing] to respond to a lawful demand for information from . . . [a] disciplinary authority." Minn. R. Prof. Conduct 8.1(b).

[6] Rule 25, RLPR, requires attorneys who are the subject of an investigation or proceeding under the rules to cooperate with the Director.

The referee also concluded that Colosi extensively and consistently misused his trust account, in violation of Minn. R. Prof. Conduct 1.15(a) and 1.15(h),[7] and that Colosi's bad faith assertions of attorney-client privilege to withhold relevant information and documents were an attempt to obstruct the Director's investigation, in violation of Minn. R. Prof. Conduct 8.1(b) and 8.4(c), as well as Rule 25, RLPR. Lastly, the referee concluded that the vulnerability of the victim, Colosi's selfish motive, his false testimony and misrepresentations at the hearing, and his lack of remorse were aggravating factors, and that there were no mitigating factors. The referee recommended that we disbar Colosi.[8]

ANALYSIS

On appeal, Colosi challenges several of the referee's evidentiary rulings as an abuse of discretion, several factual findings and conclusions as clear error, and the recommended discipline. We address each of these challenges and determine the appropriate discipline.

I.

Colosi argues that the referee abused his discretion in making several evidentiary rulings; namely, denying Colosi's motions to exclude the Director's expert witness, overruling Colosi's attorney-client privilege objections, and improperly prohibiting him

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[7] A lawyer is required to deposit "funds of clients or third persons held by [the] lawyer . . . in connection with a representation" into a trust account and to keep the lawyer's funds separate. Minn. R. Prof. Conduct 1.15(a). A lawyer must also maintain "books and records" of their finances and preserve them for at least six years. Minn. R. Prof. Conduct 1.15(h).

[8] After the referee recommended that Colosi be disbarred, we temporarily suspended him. *See* Rule 16(e), RLPR.

from testifying or presenting exhibits in his defense. We review a referee's evidentiary rulings for abuse of discretion. *In re Walsh*, 872 N.W.2d 741, 745 (Minn. 2015).

Colosi first asserts that denying his motions to exclude the Director's expert witness was an abuse of discretion. As support, Colosi relies on Minn. R. Civ. P. 26.01(b)(4)(A), which requires disclosure of expert testimony at least 90 days before trial, "[a]bsent a stipulation or a court order" stating otherwise. Colosi argues that the Director's disclosure of her expert and her expert's report were untimely because they were done less than 90 days before the hearing and that he was prejudiced by the late disclosures.

We see no abuse of discretion here. Even if Minn. R. Civ. P. 26.01 applied in the context of attorney discipline cases,[9] that rule expressly authorizes the presiding judicial officer (here, the referee) to determine the appropriate deadline for the disclosure of experts and expert reports.[10] *See TC/Am. Monorail, Inc. v. Custom Conveyor Corp.*, 840 N.W.2d 414, 418 (Minn. 2013) (stating that a court has "broad discretion to impose deadlines to manage its calendar"). Here, the referee's original scheduling order required the disclosure of experts and their reports 5 days after the close of discovery and 33 days before the hearing. The referee issued another scheduling order, extending the discovery deadline and hearing date after Colosi sought a 12-week continuance to accommodate his counsel's

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[9] *See In re Peterson*, 110 N.W.2d 9, 13 (Minn. 1961) ("Although the exercise of disciplinary jurisdiction by the court is not to be encumbered by the technical rules and formal requirements of either criminal or civil procedure . . . it is essential that the requirements of due process of law be observed.").

[10] Attorney discipline matters run on an expedited schedule; we typically set the deadline for a referee to make findings, conclusions, and a recommendation 120 days from the date of the order referring the matter to a referee.

medical leave. The Director then disclosed her expert and expert's report 13 days before the close of discovery and 32 days before the hearing.

The referee properly exercised his discretion by rejecting Colosi's argument that the Director's disclosure was untimely because it was done less than 90 days before the hearing. The referee appropriately balanced Colosi's desire to proceed with his chosen attorney who had specific medical needs and the Director's need to complete discovery to prepare her case. And Colosi did not suffer any prejudice because his preparation time remained consistent between the original scheduling order and the actual disclosure date (33 days before trial versus 32 days before trial).

Next, Colosi contends that the referee abused his discretion when he overruled Colosi's attorney-client privilege objections at the evidentiary hearing because the referee failed to conduct a hearing to resolve "the individual points" of Colosi's privilege claims. Colosi cites as support the Minnesota Rules of Civil Procedure requiring parties that assert privilege claims to expressly make the claim and describe the nature of the documents or communications to enable other parties to assess the applicability of the privilege (that is, to provide a privilege log). Minn. R. Civ. P. 26.02(f)(1).

The referee's handling of the privilege issue was not an abuse of discretion. The referee rejected Colosi's argument that a blanket attorney-client privilege attached to this matter in an April 19 order. Then, in a September 1 order, the referee ordered Colosi to provide privilege logs contemplated by the rule if he intended to continue to rely on claims of privilege to withhold documents or information in discovery. Colosi never provided privilege logs at any point during the disciplinary process and did not make any specific

privilege claims until the hearing. During the hearing, the referee assessed each privilege claim as it came up and determined whether to overrule or sustain the objection based on the facts and legal basis provided. Colosi fails to identify any specific objection the referee overruled as an abuse of discretion.

Last, Colosi asserts both that the referee improperly excluded him from testifying or providing exhibits in his defense and that the referee abused his discretion in allowing the Director to call him as a witness when he was not on the witness list. These claims are based on inaccurate facts. Colosi was the first witness named on the Director's witness list. Additionally, the referee did not exclude Colosi from testifying or offering exhibits in his defense. In a September 1 order compelling Colosi to provide privilege logs, the referee set out that the consequence of failing to provide such logs would be exclusion of any evidence not previously disclosed in discovery. This issue was also discussed at the hearing; the referee specifically allowed Colosi to testify as to the matters that were raised in the exhibits offered by the Director and received into the record but ruled that Colosi could not offer documents in response. When it was Colosi's turn to testify, his counsel stated that she would not be calling him as a witness. In short, the referee did not abuse his discretion in how he handled testimony and evidence from Colosi.

II.

Colosi further contends that several of the referee's findings and conclusions are clearly erroneous. Specifically, Colosi argues that the referee clearly erred in finding that he breached his fiduciary duty through self-dealing, failed to provide a complete accounting, asserted the attorney-client privilege in bad faith, and willfully failed to

cooperate with the Director's investigation. Colosi ordered a transcript for the proceedings. When a transcript is ordered, we review for clear error the referee's findings of fact and conclusions that an attorney violated a rule of professional conduct. *Walsh*, 872 N.W.2d at 747. Findings and conclusions are clearly erroneous when the reviewing court is "left with the definite and firm conviction that a mistake has been made." *In re Strid*, 551 N.W.2d 212, 215 (Minn. 1996) (citation omitted) (internal quotation marks omitted).

With respect to self-dealing, there was no clear error. The referee found that Colosi engaged in self-dealing by paying himself excessively out of G.C.'s accounts, selling G.C.'s home significantly below market value, paying commission on the sale to someone who performed no work to earn a commission, and paying for repairs despite an agreement that the home was sold as-is. Colosi asserts that there were no findings that he derived any personal benefit at G.C.'s expense because all compensation received was in accordance with the retainer's fee arrangements, and he did not benefit from the sale of G.C.'s property.

Self-dealing occurs when a trustee puts himself in a position in which his self-interest and the beneficiaries' interest conflict. *In re Trusts of Kemske*, 305 N.W.2d 755, 760 (Minn. 1981). For example, we have concluded that an attorney engaged in self-dealing by arranging excessive payments from the entity to whom the attorney owed a fiduciary duty. *In re Davis*, 585 N.W.2d 373, 377 (Minn. 1998) (explaining that the attorney violated rules against "self-dealing" by "secur[ing] for himself large transfers of cash and stock interests that were grossly one-sided and intended solely for his own financial benefit" when he was the chief operating officer and general counsel of a corporation). Colosi did just that.

Colosi billed G.C. excessively, both in terms of hours and rates, and freely paid himself from G.C.'s accounts without documentation or oversight over the span of at least 8 years. While trustees can charge reasonable compensation for their services, nothing about Colosi's handling of G.C.'s assets was reasonable. The retainer agreement between Colosi and G.C. established Colosi's $175 hourly rate only for "legal service[s] in [the trust amendment] matter and other matters," but Colosi charged G.C. this rate for all his subsequent time, which mostly included social visits. These facts support the referee's conclusion that Colosi put himself in a position in which his self-interest conflicted with G.C.'s interest and the interest of the trust beneficiaries, which is self-dealing.

Colosi next disputes the referee's finding that he did not provide a complete accounting in response to the district court's February 2017 order. The record supports the referee's conclusion. The district court order required Colosi to provide an accounting of G.C.'s estate starting in August 2007. G.C.'s business property sold in February 2008, and documents associated with the sale listed Colosi as her attorney. Colosi entered into a contract for deed for the sale of G.C.'s residence in July 2010 and the sale closed in December 2012. Colosi's accounting did not include any documentation of the sale of G.C.'s business property, and the only documentation of the sale of G.C.'s home was an unidentified deposit months after closing, but the amount deposited was $15 more than the listed proceeds of the house transaction. These are just two examples of the many errors and omissions in the accounting that Colosi provided in response to the district court order. In short, the referee did not clearly err in concluding that Colosi failed to comply with the district court order.

Colosi also argues that the referee erred in concluding that he acted in bad faith when he withheld documents under the guise of attorney-client privilege and that he failed to cooperate with the Director's investigation. These two claims are related; the referee concluded that Colosi willfully failed to cooperate with the Director's investigation *because of* his bad faith privilege assertions during the investigation.

There is ample support for the referee's findings and conclusions that Colosi acted in bad faith when withholding documents and responses under the guise of attorney-client privilege and that he failed to cooperate with the Director's investigation. Colosi's correspondence with the Director shows that since the beginning of the investigation, he consistently failed to provide any substantive response to the Director. Instead, he continued to make blanket privilege claims without providing any factual or legal support for those claims. Although Colosi mentioned the possibility of a hearing on his privilege claims and offered to sign a protective order, he failed to take any action or substantiate his privilege claims. Moreover, those bad faith privilege claims contributed to the investigation dragging on for years and only moving forward because of subpoenas. Colosi's responses asserting blanket privilege with no legal or factual support effectively failed to respond to the Director's inquiries, which also constitutes willful noncooperation. *See In re Hulstrand*, 910 N.W.2d 436, 441 (Minn. 2018). The referee therefore did not clearly err in his findings and conclusions that Colosi acted in bad faith and failed to cooperate.

III.

Last, Colosi challenges the referee's recommended discipline of disbarment, arguing instead that he should be subject to a 90-day suspension with 2 years of supervised probation for the misuse of his trust account. The Director asks us to disbar Colosi.

When assessing what discipline to impose, we give deference to the referee's recommendation, but we have "the ultimate responsibility for sanctioning an attorney." *In re Montez*, 812 N.W.2d 58, 68 (Minn. 2012) (citation omitted) (internal quotation marks omitted). The purpose of discipline in cases of professional misconduct is not punishment, but rather the protection of the public and the judicial system, as well as to deter future misconduct. *In re Rebeau*, 787 N.W.2d 168, 173 (Minn. 2010). We consider four factors when imposing discipline: "(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 look to similar cases for guidance and consider aggravating or mitigating factors to determine the appropriate discipline. *In re Moe*, 851 N.W.2d 868, 872 (Minn. 2014).

A.

The nature of Colosi's misconduct is serious. Colosi acted dishonestly to pay himself excessively at the expense of his fiduciary, a vulnerable adult, and then to avoid the consequences of his actions. Dishonest conduct is "a particularly serious disciplinary violation" warranting severe discipline. *In re Dedefo*, 752 N.W.2d 523, 531 (Minn. 2008); *see also In re Ruffenach*, 486 N.W.2d 387, 391 (Minn. 1992) ("Honesty and integrity are

chief among the virtues the public has a right to expect of lawyers. Any breach of that trust . . . warrants severe discipline.").

Colosi, acting as G.C.'s trustee and attorney-in-fact, paid himself over $260,000 from G.C.'s trust over the course of 8 years, while G.C. was cognitively impaired. Colosi also entered into business transactions (the sale of and repairs to G.C.'s home) that were favorable to his personal contacts at the expense of G.C., to whom he owed a fiduciary duty. Breach of fiduciary duties while acting as a trustee or attorney-in-fact is a serious disciplinary violation for which we have disbarred attorneys. *See, e.g.*, *In re O'Brien*, 894 N.W.2d 162, 166, 168 (Minn. 2017) (disbarring an attorney for misappropriation as trustee); *Moe*, 851 N.W.2d at 872–73 (same); *In re Blomquist*, 958 N.W.2d 904, 916–17 (Minn. 2021) (disbarring attorney for self-dealing as trustee); *In re Olson*, 358 N.W.2d 662, 663–64 (Minn. 1984) (disbarring an attorney for self-dealing as trustee and attorney-in-fact).

Failure to cooperate with a disciplinary investigation is serious misconduct. *See Nelson*, 733 N.W.2d at 464. Colosi's actions are more than passive failure to cooperate; he actively refused to comply with the district court's order to complete an accounting and used frivolous privilege claims during the Director's investigation to deny and conceal the extent of his misconduct.

Misuse of a trust account is also serious misconduct. Trust records must be maintained properly "to protect the client and avoid even the appearance of professional impropriety." *In re Beal*, 374 N.W.2d 715, 716 (Minn. 1985). Thus, misuse of a trust account "often results in lengthy suspension or disbarment." *Montez*, 812 N.W.2d at 68.

Here, Colosi used his trust account to withdraw cash, pay his personal and business expenses, and hold personal funds. Additionally, he withdrew all funds and closed his trust account shortly after the initiation of the investigation, the timing of which is highly suspect and strongly suggests that Colosi intentionally misused his trust account and was attempting to hide that misconduct.

B.

In terms of the cumulative weight of the violations, we distinguish isolated incidents from those that occur over a long period of time or involve multiple instances of misconduct. *In re Murrin*, 821 N.W.2d 195, 208 (Minn. 2012). Colosi's actions represent continued misconduct in various areas (dishonesty, breach of fiduciary duty, misuse of a trust account, and willful noncooperation) that extended over the course of many years. For this reason, we weigh Colosi's misconduct heavily.

C.

When assessing harm to the public, we consider the number of clients injured and the extent of their injuries, in addition to harm to the public at large. *O'Brien*, 894 N.W.2d at 167. Colosi's misconduct significantly harmed G.C., causing her to be indigent for the last 2 years of her life. Colosi also harmed the beneficiaries of G.C.'s estate by depleting the assets of the estate. The extent of the harm to other clients is unknown because Colosi refused to provide information that would help the Director assess whether the misuse of his trust account resulted in harm to his clients.

Colosi's misconduct also harmed the legal profession. Causing delay to court proceedings, denying courts access to accountings, and improperly accounting for the

management of estates harms the legal profession because attorneys that engage in this conduct violate the duties required of them as officers of the court. *In re Franke*, 345 N.W.2d 224, 229 (Minn. 1984). Additionally, noncooperation with the disciplinary process undermines the attorney discipline system and the public perception that attorneys can self-regulate. *O'Brien*, 894 N.W.2d at 167. Colosi engaged in all these behaviors. This disciplinary investigation has been active for over 3 years because of Colosi's continued failure to cooperate and provide requested documents. To date, Colosi has made no distributions to the beneficiaries of G.C.'s trust, and the value of G.C.'s estate is still unclear because of Colosi's incomplete accounting. These actions significantly harmed the legal profession.

D.

The referee concluded that four aggravating factors and no mitigating factors applied: he vulnerability of the victim, Colosi's selfish motive, his false testimony and misrepresentations at the hearing, and his lack of remorse.[11] That G.C. was a vulnerable, elderly adult with dementia, of which Colosi was aware, is an aggravating factor. *In re Swerine*, 513 N.W.2d 463, 467 (Minn. 1994); *see also Franke*, 345 N.W.2d at 228

[11] Colosi argues that the referee erred in concluding that he had a selfish motive. Selfish motive is generally an aggravating factor, and we recently concluded that selfish motive applied in a self-dealing case. *See Blomquist*, 958 N.W.2d at 916. Although the facts support the conclusion that Colosi acted selfishly for his own economic benefit, we will not count his selfish motive as an aggravating factor because the same conduct underlies the referee's conclusion that he breached his fiduciary duty by putting his interests over those of his client. *See In re McCloud*, 955 N.W.2d 270, 277–78 (Minn. 2021) (warning against double counting "an attorney's conduct as both a violation of the Minnesota Rules of Professional Conduct and as an aggravating factor").

(explaining that attorneys who "exhibit[] callous disregard for the physical and financial well-being of vulnerable, dependent persons" must overcome "a heavy burden" that disbarment is not warranted).

Failure to recognize misconduct or lack of remorse for misconduct is also an aggravating factor. *Walsh*, 872 N.W.2d at 750. Colosi denies any misconduct except for the misuse of his trust account, and he expresses no remorse for any of his actions. He continues to assert that he was entitled to charge the rates he did for the hours he did under his retainer agreement with G.C. and that she continued to agree with this arrangement, despite her declining cognitive function.

The referee concluded that Colosi provided false testimony and made misrepresentations at the hearing, which is an aggravating factor. In the past, when we have held that misrepresentations or false testimony are aggravating factors, the referee has pointed to specific instances to support the conclusion. *See, e.g.*, *In re Ulanowski*, 800 N.W.2d 785, 802 (Minn. 2011) (noting that the referee specifically listed 10 misrepresentations that aggravated the sanction); *In re Kennedy*, 946 N.W.2d 568, 582 (Minn. 2020) (describing the attorney's false statements). The referee did not list specific instances in which Colosi made false statements or misrepresentations, instead generally relying on Colosi's "near total lack of candor and veracity" while testifying. But Colosi's testimony, particularly his testimony about his trust account, is replete with denials that are flatly contradicted by the evidence. For example, Colosi testified that he did not withdraw money in cash from his trust account, despite there being evidence that he withdrew $267,000 in cashier's checks from the account. Because the record supports the conclusion

that Colosi made false statements during his testimony, we conclude that this conduct is an aggravating factor.

Colosi argues that we should consider his lack of prior discipline and the impact on Colosi as a solo practitioner as mitigating factors. Lack of prior discipline is not a mitigating factor. *In re Trombley*, 916 N.W.2d 362, 371 (Minn. 2018); *In re MacDonald*, 906 N.W.2d 238, 249 (Minn. 2018); *In re Klotz*, 909 N.W.2d 327, 339 (Minn. 2018). Although we have noted the impact of suspension on solo practitioners when imposing discipline, we have not considered a practice arrangement as a mitigating factor on its own, and we decline Colosi's invitation to do so here. *See In re Reiter*, 567 N.W.2d 699, 706 (Minn. 1997) (stating that we have "previously recognized that suspension of any length is harsh, particularly for a sole practitioner" after considering mitigating factors and weighing that against the need to protect the legal profession or the public). Here, given Colosi's extensive and serious misconduct, the need to protect the public and the legal profession outweighs any potential mitigation.

E.

Last, we look to our caselaw for guidance as to discipline. We have often disbarred attorneys for self-dealing or misappropriating funds from non-clients to whom the attorney owed a fiduciary duty, in addition to committing other rule violations. *See, e.g.*, *O'Brien*, 894 N.W.2d at 166 (disbarring attorney for misappropriating funds as trustee); *Moe*, 851 N.W.2d at 872 (same); *Blomquist*, 958 N.W.2d at 916 (disbarring attorney for self-dealing as trustee); *Olson*, 358 N.W.2d at 664 (same).

Colosi improperly drained substantial funds from G.C.'s trust by paying himself excessive fees from the trust's assets. His handling of the sale of G.C.'s home lost her over $100,000. Not only is the value of G.C.'s estate still unknown because Colosi failed to provide a complete accounting to the district court or to the Director, that failure also inhibits the ability of the Director to fully evaluate the actions Colosi took on G.C.'s behalf and whether he engaged in additional misconduct. Colosi committed additional misconduct by consistently misusing his trust account and failing to cooperate with the Director's investigation. His misconduct is aggravated by his victim's vulnerability, his lack of remorse, and his false testimony at the hearing.

In sum, Colosi engaged in particularly egregious and wide-ranging misconduct over many years. His misconduct caused extensive harm. Several aggravating factors are present and there are no mitigating factors. Based on Colosi's conduct and our precedent, we conclude that the appropriate discipline is disbarment.

CONCLUSION

For the foregoing reasons, respondent Geoffrey Robert Colosi is disbarred from the practice of law in the State of Minnesota, effective upon the date of this opinion. Respondent shall comply with Rule 26, RLPR (requiring notice of disbarment to clients, opposing counsel, and tribunals), and shall pay $900 in costs, see Rule 24(a), RLPR.

Disbarred.