STATE OF MINNESOTA

IN SUPREME COURT

A20-1529

Original Jurisdiction	Per Curiam
In re Petition for Disciplinary Action against Peter James Nickitas, a Minnesota Attorney, Registration No. 0212313.	Filed: January 11, 2023 Office of Appellate Courts

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

Mitchell R. Hadler, Law Office of Mitchell R. Hadler, Minneapolis, Minnesota, for respondent.

S Y L L A B U S

A 120-day minimum suspension, after which the lawyer may petition for reinstatement, is the appropriate discipline for an attorney who used profane, abusive, and obscene language while communicating with court staff; made false and disparaging comments about a judge; and attempted to exert improper influence on a judge.

Suspended.

OPINION

PER CURIAM.

The Director of the Office of Lawyers Professional Responsibility (Director) filed a petition for disciplinary action against respondent Peter James Nickitas, alleging that Nickitas violated the Minnesota Rules of Professional Conduct by (1) failing to properly apply for *in forma pauperis* status for his client; (2) using profane and abusive language while communicating with court staff; (3) making false and disparaging comments about a judge; and (4) attempting to exert improper pressure on a judge.

Following a hearing, the referee concluded that Nickitas's conduct violated Minnesota Rules of Professional Conduct 1.1,[1] 1.3,[2] 4.4(a),[3] 8.2(a),[4] and 8.4(d).[5] The referee found that Nickitas's history of prior discipline for similar conduct, his long experience as a lawyer, and his lack of remorse for his misconduct were aggravating

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

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

[3] "In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person, or use methods of obtaining evidence that violate the legal rights of such a person." Minn. R. Prof. Conduct 4.4(a).

[4] "A lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge . . . ." Minn. R. Prof. Conduct 8.2(a).

[5] "It is professional misconduct for a lawyer to . . . engage in conduct that is prejudicial to the administration of justice." Minn. R. Prof. Conduct 8.4(d).

factors. The referee did not find any mitigating factors, but he did state that Nickitas's current work with legal aid was a factor to consider when fashioning discipline.

The referee recommended that Nickitas be suspended from law indefinitely, with no right to petition for reinstatement under Rule 18 until he fulfilled a minimum suspension period of 120 days. The referee proposed that, if practicable, Nickitas should serve his suspension in a series of four discrete 30-day suspensions separated by limited interim periods when he could practice law and represent his legal aid clients. Both parties agree that the staggered suspension is not practical and we concur. We conclude that the referee's recommended discipline of a minimum 120-day suspension with a requirement that Nickitas petition for reinstatement is the appropriate sanction.

FACTS

Nickitas was admitted to practice law in Minnesota in 1990. He has been subject to three prior admonishments and two suspensions. In 1993, Nickitas was admonished for disclosing information related to a former client to the former client's disadvantage. In 1999, Nickitas was admonished again for failing to handle a client's matter with adequate diligence and promptness by failing to send notice of a federal tort claim in a timely manner and failing to pursue filing suit against an entity. In 2003, Nickitas was admonished a third time for directing a sexist epithet to a self-represented opposing party. In 2005, we suspended Nickitas for 90 days for engaging in a consensual sexual relationship with a client; entering into multiple business transactions with the client—including a $9,900 interest-free loan—without making a written disclosure of the potential conflicts and without advising the client to obtain independent counsel; and for failing to file a timely

appeal of a final judgment in a matter. *In re Nickitas*, 702 N.W.2d 727, 728 (Minn. 2005). Lastly, in 2013, we suspended Nickitas for 30 days, followed by 2 years of unsupervised probation, for undertaking representation despite a conflict of interest, engaging in inappropriate conduct toward opposing counsel, and bringing a claim in bad faith and for an improper purpose. *In re Nickitas*, 830 N.W.2d 162, 162 (Minn. 2013).

The current petition for disciplinary action arises from Nickitas's representation of H.B. and L.A. prior to his current employment with a legal aid office and his interactions with court staff and judges related to those matters.

H.B. Matter

In 2016, H.B. filed a suit pro se in Ramsey County and obtained *in forma pauperis* (IFP) status. The IFP order required H.B. to renew his IFP status annually. H.B. did not renew his status in 2017. On April 6, 2017, after the time to renew his IFP status passed, Nickitas filed a notice of appearance as H.B.'s counsel.

In May 2018, Nickitas sought to address H.B.'s lapsed IFP status. Nickitas called Ramsey County court administration and spoke with a court operations supervisor to discuss filing a supplemental IFP order for the matter. The court operations supervisor testified that he likely informed Nickitas that a new IFP application would need to be submitted on H.B.'s behalf before the court could consider an order to proceed IFP. During the phone call, Nickitas became belligerent and used obscene and offensive language while describing his frustrations with the court's process for considering and granting IFP applications and the court's apparent unwillingness to simply approve the supplemental order to proceed IFP.

Nickitas demanded that the court operations supervisor speak to the judge assigned to the case. In response, the court operations supervisor contacted the judge's law clerk, who confirmed that a new application to proceed IFP must be filed on H.B.'s behalf prior to the court considering a new order to proceed IFP. When the court operations supervisor called Nickitas to inform him, Nickitas again used offensive language and abruptly ended the conversation. Nickitas ultimately filed a supplemental application for proceeding IFP on H.B.'s behalf, which the court granted.

L.A. Matter

On March 26, 2019, Nickitas filed a lawsuit on behalf of his client, L.A. He had served the complaint on the defendant nearly a year before and the 1-year deadline for filing the action was soon approaching. *See* Minn. R. Civ. P. 5.04(a) (stating that any action not filed within 1 year of commencement against any party is dismissed with prejudice against all parties).

The same day, Nickitas filed an application on L.A.'s behalf seeking to proceed IFP. L.A. asked Nickitas to submit an incomplete IFP application, answering only one question regarding means-tested public assistance. L.A. stated that he qualified for medical assistance and left the answers to other questions of the form blank. L.A. did not want to provide all of the information on the IFP form because he had not done so on other IFP forms that previous courts had granted.

Nickitas knew that the IFP application process in Ramsey County required more information than just whether an applicant received means-tested public assistance. He told L.A. that information; however, he did not advise L.A. of the importance of having

the IFP application approved in a timely manner due to the 1-year filing deadline. L.A. told Nickitas to file the incomplete application. Nickitas did so. He included with the IFP application a single informal email, dated March 26, 2019, between Nickitas and a "financial worker at Ramsey county [sic] Human Services." The email was not official documentation that L.A. received medical assistance.

A district court judge (Judge) reviewed L.A.'s IFP application. On March 28, 2019, the Judge denied L.A.'s IFP request because the form had not been completed in its entirety and failed to provide sufficient information. The Judge also questioned the legitimacy of the limited evidentiary support for L.A.'s IFP application. The order denying L.A.'s IFP application allowed L.A. until April 11, 2019, to submit additional evidence for the court to consider. Both Nickitas and L.A. testified that neither of them received the March 28, 2019, order by mail or e-service. Neither Nickitas nor L.A. submitted additional evidence on L.A.'s behalf by the deadline.

On or about April 12, 2019, Nickitas called the courthouse to inquire about the status of L.A.'s IFP application and spoke with the civil division lead worker. Nickitas immediately, and without provocation, began speaking to the civil division lead worker in a "heated tone." While on the phone with the civil division lead worker, Nickitas screamed loudly and used the word "fuck" multiple times to express his discontent over the court's denial of L.A.'s IFP application. The civil division lead worker testified that she attempted to explain to Nickitas that a judge made the decision to grant or deny an IFP application, but Nickitas repeatedly and loudly interrupted her, in effect preventing her from speaking. While cutting off her attempts to obtain and provide information, Nickitas told her to "shut

up" because he wanted her to listen to him and he believed she was talking over him. Nickitas also stated, "You people do not know what the fuck you are doing."

Despite the civil division lead worker's calm manner, Nickitas spoke loudly enough that her supervisor, who was seated approximately 10 feet away, heard Nickitas's voice coming from the phone. The supervisor understood, even from that distance, that Nickitas's tone and volume was offensive and abusive. When prompted to rate Nickitas's call on a scale with zero or one as the least intense and ten as the most intense, the civil division lead worker emphatically testified that she categorized the call as a ten and stated that Nickitas's call was "the worst one ever."

The supervisor had the call transferred to him. Nickitas's belligerent and profane statements continued. Nickitas asked which judge made the determination. When he learned which Judge had made the determination, Nickitas began using disparaging, obscene, and profane language toward the Judge, stating, "She doesn't even know what the fuck she's doing" and "she probably barely passed the fucking bar." Nickitas also stated that he should report the Judge to the "board," which the supervisor understood to be the board governing judicial conduct and ethics.

Nickitas insisted that the supervisor immediately address his concerns, stating, "I don't give a shit about the bureaucratic bullshit, I want something done right now." The supervisor calmly and politely informed Nickitas that he would reach out to the Judge and he would then contact Nickitas with an update. After concluding the call with Nickitas, the supervisor spoke with the Judge and the Judge again reviewed the IFP application. The Judge reaffirmed that the form Nickitas submitted did not provide enough information and,

given Nickitas's claim that he had not received a copy of the original denial order, granted Nickitas an additional week to supplement L.A.'s application. Concerned about the allegations of unfairness and Nickitas's behavior, the Judge advised the supervisor to direct the forthcoming supplemental IFP application to the signing judge, rather than route it back to her.

On April 19, 2019, after submitting additional information with L.A.'s IFP application and supplemental application, Nickitas sent the Chief Judge of the Second Judicial District a 3-page letter mostly describing the L.A. matter. Nickitas did not copy the Judge on the letter to the Chief Judge. The Chief Judge interpreted Nickitas's letter as a clear attempt to seek his intervention in a matter Nickitas knew was presently under advisement with another judge who would determine L.A.'s supplemental IFP application.

On April 25, 2019, the signing judge entered an order and supplemental order granting L.A. IFP status and sent the orders via certified mail. The same day, not knowing that the court had approved the amended IFP application, Nickitas filed in the case file a letter addressed to the Judge. The letter described the urgency tied to the L.A. matter and requested that the court grant L.A.'s IFP application. Nickitas testified that the letter was not an attempt to threaten or intimidate the Judge into granting L.A.'s IFP application, but instead a request for leave to move for reconsideration of her earlier decision. The Judge viewed the overall tone and language in Nickitas's letter as aggressive.

On April 29, 2019, still unaware that L.A's IFP petition had been granted, Nickitas e-filed another letter to the Judge about L.A. In the letter, Nickitas accused the Judge of discriminating against L.A. He asserted that she failed to grant L.A.'s IFP application

despite his compliance with what he deemed were the "plain words of the statutes." At the top of the letter, the request was bolded and in red font. The letter contained three pointed questions and statements to the Judge: "Why are you discriminating against [L.A.] because he receives means-tested public assistance?"; "Is this how [L.A.], a disabled, honorably discharged veteran, is thanked by the courts for his service?"; and "Your prejudicial delay is preventing [L.A.] from obtaining his due process and a fair go in court." The Chief Judge, who was copied on the letter, testified that he had never seen a letter as inappropriate or disrespectful. The referee found that Nickitas's allegation of discrimination lacked any evidentiary basis.

ANALYSIS

The sole question before us is the appropriate sanction for Nickitas's conduct. In making this determination, we deem the referee's findings and conclusions to be conclusive because Nickitas did not order a transcript of the proceedings. Rule 14(e), Rules on Lawyers Professional Responsibility (RLPR). As noted, the referee recommended that Nickitas be suspended from the practice of law indefinitely, with no right to petition for reinstatement until he has fulfilled a minimum suspension of 120 days. The referee further recommended that if practicable, the minimum actual suspension from the practice of law be served in a staggered fashion. The recommendation proposed a series of four discrete 30-day suspensions separated by periods when Nickitas could represent clients paired with a requirement that he petition for reinstatement after completion of the full 120 days.

Neither Nickitas nor the Director believes that staggered suspensions are practical. The Director asks us to impose a 120-day suspension, including the condition that Nickitas

seek reinstatement from this court before he practices law again. Nickitas argues that probation is sufficient discipline.

We consider four factors when imposing discipline: the nature of the misconduct; the cumulative weight of the disciplinary violations; the harm to the public; and the harm to the legal profession. *In re Nelson*, 733 N.W.2d 458, 463 (Minn. 2007). We also consider aggravating and mitigating factors. *Id.* at 464. Although we may consider similar cases to impose consistent discipline, we determine the proper discipline on a case-by-case basis after examining the "unique facts and circumstances of each case." *In re Rebeau*, 787 N.W.2d 168, 174 (Minn. 2010). We "place great weight on the referee's recommended discipline," while retaining the "ultimate responsibility for determining the appropriate sanction." *Id.* at 173.

A.

We begin our analysis with the nature of Nickitas's misconduct. Nickitas committed several types of misconduct: incompetently representing a client; using abusive and obscene language and conduct toward court staff; knowingly making false statements about the qualifications or integrity of a judge; and attempting to improperly pressure the court. We address each in turn. As we noted, Nickitas does not challenge the referee's findings of facts or conclusions regarding this misconduct.

The failure of Nickitas to provide competent representation to L.A. by improperly completing L.A.'s IFP application, standing alone, does not warrant serious discipline.[6] But Nickitas's other misconduct warrants more serious discipline.

Nickitas's use of abusive and obscene language and his belligerent behavior to court staff—characterized as the worst the staff ever experienced—is serious. Litigation is a forum where parties will often disagree, sometimes quite profoundly. But there is a line between vigorous and spirited—yet civil—disagreement on the one hand, and impermissible lack of restraint and respect for others and lack of control over one's emotions amounting to harassment of others on the other. *In re Torgerson*, 870 N.W.2d 602, 611 (Minn. 2015); *In re Getty*, 401 N.W.2d 668, 671 (Minn. 1987). Here, Nickitas's actions crossed that line and went far beyond a lack of civility. His interactions with court staff are similar to the conduct of the lawyer in *Torgerson* when we suspended the lawyer for 60 days for yelling at court staff in addition to other misconduct. 870 N.W.2d at 616.

Nickitas's false and derogatory statements about the Judge are also serious misconduct. We have stated that because "[h]onesty and integrity are chief among the virtues the public has a right to expect of lawyers," *In re Ruffenach*, 486 N.W.2d 387, 391 (Minn. 1992), an attorney's "false statements about the judge weigh in favor of serious

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[6] Nickitas draws our attention to a recent court of appeals opinion arising from a Ramsey County case, suggesting that Nickitas's conduct may not have been incompetent at all. *Scheffler v. Costco Wholesale Corp.*, No. A22-0409, 2022 WL 4074802, at *2 (Minn. App. Sept. 6, 2022). We decline to address the merits of this decision because the issues are not before our court.

discipline," *In re MacDonald (MacDonald II)*, 962 N.W.2d 451, 466 (Minn. 2021), *reh'g denied* (Aug. 12, 2021).

Finally, Nickitas attempted to improperly pressure the court into granting L.A. IFP status through the use of grossly aggressive communications with the court and his attempt to get the Chief Judge to intervene in the matter. Using impermissible tactics to influence a judge's decision is serious misconduct because it undermines the judicial system's commitment to the rule of law and fair process.

B.

We next address the cumulative weight of Nickitas's disciplinary violations. A brief lapse in judgment or a single, isolated incident of misconduct is less serious than multiple instances of misconduct occurring over a substantial period of time. *In re Ulanowski*, 834 N.W.2d 697, 703 (Minn. 2013). Nickitas's acts of misconduct were not isolated incidents. It is true that his two abusive interactions with staff in the H.B. matter related to a single issue—H.B.'s IFP status—and occurred no more than a few days apart. Similarly, his interactions with staff and his other misconduct in the L.A. matter all related to the same issue—his position that the court was improperly refusing to grant L.A.'s IFP application—and occurred over a compressed period of about 10 days. On the other hand, Nickitas's conduct in abusing staff in the H.B. matter was similar to his treatment of staff in the L.A. matter, and the H.B. and L.A. matters occurred a year apart. Further, Nickitas's various misconduct in the L.A. matter escalated over the course of 10 days. On this record, it is inaccurate to characterize the misconduct as an isolated incident. But it is also important to note that this court has witnessed misconduct continuing persistently over

much longer periods of time. *See, e.g.*, *In re Wentzel*, 711 N.W.2d 516, 521 (Minn. 2006) ("Here, as the referee found, the severity of Wentzel's misconduct is aggravated by the fact that it lasted over two years, involved 30 instances of misappropriation, and caused a trust account shortage of nearly $88,000."). We weigh the cumulative weight of Nickitas's misconduct accordingly.

C.

Finally, we consider whether Nickitas's misconduct caused harm to the public or the legal profession. Neither of Nickitas's clients suffered any harm as a result of his misconduct but that does not end our inquiry. We have found harm to the public and the legal profession even when the lawyer's clients themselves suffered no harm. *In re Fett*, 790 N.W.2d 840, 851 (Minn. 2010). Here, as in *Torgerson*, Nickitas's unprofessional actions and demeanor " 'reflect adversely on the bar, and are destructive of public confidence in the legal profession.' " 870 N.W.2d at 616 (quoting *In re Shaughnessy*, 467 N.W.2d 620, 621 (Minn. 1991)).

D.

The referee found several aggravating factors including Nickitas's history of private and public discipline, which involved similar past misconduct; his experience as an attorney; and his lack of remorse. *See In re Lennington*, 969 N.W.2d 76, 84–85 (Minn. 2022) (explaining that a lawyer's disciplinary history is an aggravating factor, especially if prior discipline was for similar misconduct); *Torgerson*, 870 N.W.2d at 613–15 (stating that a long-practicing lawyer who engaged in abusive behavior toward others in the court system several times deserved greater discipline than an inexperienced lawyer

who engaged in similar behavior because lawyers should learn to properly regulate their emotions over time and also that lack of remorse may be an aggravating factor). Nickitas does not claim that the referee improperly considered his history of discipline for treating others in the courtroom with disrespect or his more than a quarter century of experience as a lawyer as aggravating factors.

Nickitas does claim, however, that the referee wrongly determined that he lacked remorse for his misconduct. Nickitas asserts that the referee impermissibly found lack of remorse based on Nickitas's insistence in the disciplinary hearing that his legal position on IFP petitions was correct. We disagree. The referee's lack of remorse findings show that he was focused on Nickitas's unprofessional tactics—abusive language, profanity, improperly attempting to pressure a judge, and falsely accusing a judge of bias—and not on Nickitas's incompetence in making his IFP arguments. In other words, the referee did not find lack of remorse based on Nickitas's refusal to back down from his legal position. Rather, the referee found that Nickitas lacked remorse based on Nickitas's failure to appreciate the impact his misconduct had on court staff who were on the receiving end of his profane, insulting, and derogatory language and his failure to demonstrate that he understood why the letters he wrote to the Judge and Chief Judge were inappropriate, threatening, or demonstrated poor judgment. The referee did not err in finding that Nickitas's testimony failed to reflect that he understood the wrongful nature of his misconduct in abusing staff, impermissibly questioning a judge's integrity and qualifications, and attempting to improperly influence a judge. These reasons are sufficient to support the referee's finding of lack of remorse.

E.

Nickitas also challenges the referee's finding that no mitigating factors existed. Nickitas contends that his current work as a lawyer for legal aid should be considered a mitigating factor. Although we understand that lawyers who work for legal aid organizations are often motivated in their choice of career by a sense of public service and perform important work for Minnesotans and our legal system, we will not consider the nature of a lawyer's choice of paid employment to be a mitigating factor in disciplinary matters. It is inappropriate to effectively create a two-tier legal profession; the clients that legal aid lawyers serve deserve the same level of professionalism as any other client.[7] Accordingly, we conclude that the type of work an attorney performs should not be considered for the purposes of mitigation.

F.

Finally, we consider similar cases to "ensure that our disciplinary decision is consistent with prior sanctions." *In re Nathanson*, 812 N.W.2d 70, 80 (Minn. 2012). When

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[7] Nickitas argues that we should consider his legal aid work to be a mitigating factor because the billing pressures that he faced in private practice when he represented H.B. and L.A. precipitated his misconduct in this case. In his current employment as a legal aid lawyer, he does not face those particular pressures. We reject that argument for two reasons. First, we disagree with Nickitas's argument that we would be justified in treating legal aid lawyers differently because they somehow face less pressure in their jobs than other lawyers. Although the types of pressure may be different, lawyers who work for legal aid often face significant pressures—including underfunding and limited resources. Being a lawyer is a stressful job, but we expect professionalism from lawyers despite the reality of such pressures. Second, to the extent that Nickitas is claiming that his new job as a legal aid lawyer means that he is less likely to commit the same misconduct in the future, that is an argument he may make when seeking reinstatement. It does not mitigate his past misconduct.

we do not disagree with the referee's findings and conclusions, we consider whether the recommended discipline is in line with the broad range of discipline we have imposed in prior cases. *In re Nwaneri*, 978 N.W.2d 878, 892 (Minn. 2022). And while we give substantial weight to the referee's recommended discipline, we have final responsibility for imposing discipline and "will ultimately decide the appropriate discipline on a case-by-case basis." *In re Nielsen*, 977 N.W.2d 599, 614 (Minn. 2022).

Here, the referee's recommendation that Nickitas be suspended with no right to petition for reinstatement for a minimum of 120 days is in line with the broad range of discipline we have imposed in prior cases involving abusive behavior toward others in the court system and false denigration of the integrity of the judge before whom the lawyer was appearing. We have suspended lawyers who engaged in such misconduct for periods from 60 to 180 days. *In re Nathan*, 671 N.W.2d 578, 586 (Minn. 2003) (suspending attorney for 180 days); *Torgerson*, 870 N.W.2d at 616 (suspending attorney for 60 days); *In re MacDonald (MacDonald I)*, 906 N.W.2d 238, 250–51 (Minn. 2018) (suspending attorney for 60 days, followed by 2 years of probation); *MacDonald II*, 962 N.W.2d at 470 (suspending attorney with no right to petition for 4 months).

Of course, the facts of each case are unique. Nickitas's conduct in this case was perhaps less extensive and less public than the conduct in *Torgerson*, *MacDonald*, and *Nathan*. The aggravating factors in this case are most similar to those present in the two *MacDonald* cases and more profound than in *Torgerson*. But most significantly, the referee in this case found that Nickitas engaged in improper tactics designed to sway a judicial decision independent of the abusive conduct; a serious violation not present in the

same fashion in other cases. Accordingly, we do not agree with Nickitas that probation will be sufficient to protect the public and discourage Nickitas and other lawyers from engaging in similar behavior. Rather, we conclude that a suspension of no fewer than 120 days along with a requirement that Nickitas apply to this court for reinstatement following his suspension is appropriate in this case.

Accordingly, we order that:

1. Respondent Peter James Nickitas is indefinitely suspended from the practice of law, effective 14 days from the date of this opinion, with no right to petition for reinstatement for 120 days.

2. Respondent may petition for reinstatement pursuant to Rule 18(a)–(d), RLPR. Reinstatement is conditioned on 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 18(e)(2), RLPR; *see also* Rule 4.A.(5), Rules for Admission to the Bar (requiring evidence that an applicant has successfully completed the Multistate Professional Responsibility Examination); and satisfaction of continuing legal education requirements, *see* Rule 18(e)(4), RLPR.

3. Respondent shall comply with the requirements of Rule 26, RLPR (requiring notice of suspension to clients, opposing counsel, and tribunals).

4. Respondent shall pay $900 in costs pursuant to Rule 24, RLPR.

So ordered.