

STATE OF MINNESOTA

IN SUPREME COURT

A19-0268

Original Jurisdiction

Per Curiam

In re Petition for Disciplinary Action
against Richard C. Mollin, Jr., a Minnesota
Attorney, Registration No. 0074342

Filed: March 18, 2020
Office of Appellate Courts

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

Richard C. Mollin, Jr., Gonvick, Minnesota, pro se.

S Y L L A B U S

A 30-day suspension is the appropriate discipline for respondent who practiced law
while suspended.

O P I N I O N

PER CURIAM.

The Director of the Office of Lawyers Professional Responsibility (Director) filed
a petition for disciplinary action against respondent Richard C. Mollin, Jr., alleging that
Mollin engaged in the unauthorized practice of law and violated Rules 1.1, 3.4(c), 5.5(a),
and 8.4(d) of the Minnesota Rules of Professional Conduct. Following an evidentiary
hearing, the referee concluded that Mollin committed the alleged violations and

recommended that he be suspended for a minimum of 30 days. We conclude that the referee's recommended discipline is the appropriate sanction here.

FACTS

On January 24, 2018, we issued an order suspending Mollin from the practice of law for a minimum of 60 days, effective 14 days from the date of the order. *In re Mollin*, 906 N.W.2d 260, 262 (Minn. 2018) (order). He was suspended for knowingly making false statements in discovery disclosures and responses and for failing to disclose exculpatory evidence to the defense. *Id.* at 260. Mollin's suspension began on February 7, 2018.

Mollin would have been eligible for reinstatement at the end of the 60-day period, on April 8, 2018, had he filed an affidavit 15 days before the end of the suspension period stating that he had complied with all conditions for reinstatement imposed by our court. Rule 18(f), Rules on Lawyers Professional Responsibility (RLPR). He failed to timely file the affidavit to be reinstated at the end of the 60 days. Instead, he filed the required affidavit on April 15, 2018, and was reinstated to the practice of law on April 20, 2018.

Maggert matter

Beginning in August 2017, Mollin represented Maggert in a real estate tax dispute with Koochiching County (County). In November 2017, Maggert and the County reached an agreement. In March 2018, Maggert contacted Mollin because Maggert's tax statement did not reflect the November 2017 agreement between the County and Maggert. This contact occurred while Mollin was suspended. Mollin believed the incorrect tax statement was due to a computer or administrative error. On March 28, 2018, Mollin sent an email

to the Koochiching County Attorney, who had worked on the tax dispute, informing him of the error and requesting that it be fixed.

The County Attorney reviewed the email but, because he knew that Mollin was suspended from the practice of law, did not respond directly to Mollin. Instead, the County Attorney asked his secretary to handle the issue and forwarded the email to the County Assessor. Between April 2 and April 3, 2018, the secretary and Mollin exchanged several emails. During these exchanges, Mollin stated that “he would have contact with Mr. Maggert on April 3, 2018” and he requested that the secretary copy him on the correspondence with the corrected tax statements. On April 4, the County Attorney sent a letter to Maggert, advising that the error was being corrected. Mollin was not copied on that letter.

Two days later, the County Attorney filed a complaint with the Office of Lawyers Professional Responsibility. After a hearing, the referee determined that Mollin’s “actions in contacting the County Attorney’s Office on behalf of the Maggert family violated [Minnesota Rules of Professional Conduct] 3.4(c) and 5.5(a).”¹

R.S. matter

On April 5, 2018, R.S. was served with an Emergency Order for Protection (OFP). A hearing was scheduled for April 10. R.S. contacted Mollin on either April 7 or 8 and told Mollin that he had been “served with papers.” Mollin invited R.S. to his home and

¹ Rule 3.4(c) provides that a lawyer shall not “knowingly disobey an obligation under the rules of a tribunal.” Minn. R. Prof. Conduct 3.4(c). Rule 5.5(a) prohibits the unauthorized practice of law. Minn. R. Prof. Conduct 5.5(a).

reviewed the papers. Mollin told R.S. that he “needed to check if his law license suspension time was done” before he could agree to represent R.S. in the matter.

On April 9, Mollin filed a certificate of representation with Clearwater County District Court to represent R.S. in the OFP proceeding. He also filed a request for a hearing. Later that same day, a court administrator called Mollin and advised him that court records showed that he was suspended. Mollin stated that the “suspension was only for 60 days and he should be okay.”

After the phone call, Mollin reviewed the order for suspension from our court. He realized that he was still suspended because he had not filed an affidavit for reinstatement. He therefore filed a Notice of Withdrawal of Counsel in the R.S. matter on April 10. As a result of not having legal representation at his April 10 hearing, R.S. requested and received a continuance until April 12. The matter was ultimately heard in early May 2018.

The petitioner in the OFP matter filed a complaint with the Director’s office on October 17, 2018. After a hearing, the referee found that the Director had proved by clear and convincing evidence that Mollin’s meeting with R.S. and his filing of a certificate of representation and a request for hearing had violated Minnesota Rules of Professional Conduct 1.1, 3.4(c), 5.5(a), and 8.4(d).²

² Rule 1.1 provides that a lawyer “shall provide competent representation to a client.” Minn. R. Prof. Conduct 1.1. Rule 8.4(d) provides that 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).

ANALYSIS

Mollin did not order a transcript of the proceedings before the referee.

Consequently, under Rule 14(e), RLPR, our standard of review is as follows:

[W]e accept a referee’s factual findings as conclusive. We accept such findings as conclusive because we cannot review the evidence supporting them without a transcript. We must similarly accept as conclusive the conclusions that the referee draws from the facts, such as whether the attorney’s conduct violated the Rules of Professional Conduct, when no transcript has been ordered. We will, however, review the referee’s interpretation of the Rules of Professional Conduct, and other conclusions of law that do not rely on the referee’s factual findings, *de novo*, whether or not a transcript is part of our record on review.

In re Montez, 812 N.W.2d. 58, 66 (Minn. 2012) (citations omitted) (internal quotation marks omitted);³ *see* Rule 14(e), RLPR (“Unless the respondent or Director, within ten days, orders a transcript and so notifies this Court, the findings of fact and conclusions shall be conclusive.”).⁴

Montez arose from a retainer fee dispute. 812 N.W.2d. at 62–63. The lawyer asserted that the retainer was \$5,000 and the client argued that it was much less. *Id.* at 62. When the lawyer refused to refund a portion of the \$5,000 retainer after an arbitrator ordered her to do so, the client filed a complaint with the Office of Lawyers Professional

³ In some cases, we have stated our standard of review more succinctly: “Because no party ordered a transcript from the disciplinary hearing, the referee’s findings of fact and conclusions of law are conclusive, and the only issue before us is the appropriate discipline to impose.” *In re Hulstrand*, 910 N.W.2d 436, 442 (Minn. 2018). We reiterate today that the more nuanced and complete statement in *Montez* states the proper standard of review under Rule 14(e), RLPR.

⁴ The plain directive of Rule 14(e), RLPR, means that, in lawyer discipline cases when a transcript is not ordered, our typical rules of appellate review—findings of fact for clear error and conclusions of law *de novo*—do not apply.

Responsibility. *Id.* at 63. The lawyer argued that the client had to exhaust other remedies for return of the unearned retainer before filing an ethics complaint. *Id.* at 65. We held that the question of whether the Rules of Professional Conduct allowed a client to file a complaint alleging a violation of the rules before taking other legal measures to collect an arbitration award called for interpretation—as opposed to application—of the Rules of Professional Conduct. *Id.* at 66. In short, we review a referee’s interpretation of the Rules of Professional Conduct de novo, even when no transcript has been ordered. *Id.*

We are not called upon to interpret the Rules of Professional Conduct in this case. For instance, Rule 5.5(a) provides that “a lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction.” Minn. R. Prof. Conduct 5.5(a). The rule is clear: A lawyer cannot practice law when he is not authorized to do so (for instance, if he is suspended). There is no dispute that the rule applies if Mollin was, in fact, practicing law while suspended. Accordingly, no interpretation of the rule is needed.⁵ *Cf. In re Nwaneri*, 896 N.W.2d 518, 524 (Minn. 2017) (reviewing de novo and rejecting attorney’s legal assertion that Rules 8.4(c) and (d) do not apply to actions taken during the course of representing a client, but affirming referee’s conclusion that attorney’s filing of a false affidavit of service violated Rules 8.4(c) and (d)). The only question here is whether Mollin in fact was practicing law. Because no transcript was ordered, the

⁵ The other rules that Mollin was found to have violated similarly do not require our interpretation as to their meaning in this case. *See* Minn. R. Prof. Conduct 1.1 (a lawyer must provide competent representation); Minn. R. Prof. Conduct 3.4(c) (a lawyer shall not knowingly disobey an obligation of the rules of a tribunal); Minn. R. Prof. Conduct 8.4(d) (a lawyer shall not engage in conduct that is prejudicial to the administration of justice).

referee's factual finding and conclusion about Mollin's conduct, that Mollin was practicing law, is conclusive, even if we may have reached a different answer to that question. We further must accept the legal conclusion that the referee drew from that determination; namely, that Mollin violated the Rules of Professional Conduct. Thus, the only remaining issue is the appropriate discipline to impose.

When determining the appropriate discipline to impose on an attorney, we consider (1) the nature of the misconduct, (2) the cumulative weight of the rules violations, (3) the harm to the public, and (4) the harm to the legal profession. *In re Day*, 710 N.W.2d 789, 793 (Minn. 2006). We also consider any aggravating and mitigating circumstances. *In re Jaeger*, 834 N.W.2d 705, 708 (Minn. 2013). "Although discipline is ultimately determined based on the unique facts and circumstances of the case, we will look to previous decisions for guidance in enforcing consistent discipline." *Id.* (citation omitted) (internal quotation marks omitted). We give great weight to the sanction recommended by the referee, but "we alone make the final determination as to the appropriate discipline." *In re Murrin*, 821 N.W.2d 195, 206 (Minn. 2012).

We first consider the nature of the misconduct. *Day*, 710 N.W.2d at 793. The referee conclusively found that Mollin practiced law while suspended. "Practicing law in deliberate violation of a suspension order not only constitute[s] unauthorized practice of law[,] it also constitutes contempt of court." *In re Grigsby*, 815 N.W.2d 836, 845 (Minn. 2012) (citations omitted) (internal quotation marks omitted). Indeed, we have applied "severe discipline for the unauthorized practice of law after suspension when suspension was for disciplinary violations rather than for failing to pay attorney registration fees." *In*

re Ray, 610 N.W.2d 342, 346 (Minn. 2000). Mollin was suspended in January 2018 for disciplinary violations, not for fee or CLE violations.

We have been clear that the unauthorized practice of law while suspended for disciplinary violations is conduct that requires a further suspension. For instance, in *In re Kennedy*, we imposed a 30-day suspension on an attorney who had violated a previous suspension order. 873 N.W.2d 133, 134 (Minn. 2016) (order). We reasoned that failing to impose a suspension for an attorney's unauthorized practice of law would make our original suspension "largely meaningless." *Id.* at 133; *see also In re Ruffing*, 883 N.W.2d 222, 222–23 (Minn. 2016) (order) (rejecting the recommended discipline of a public reprimand and imposing a 30-day suspension where the attorney engaged in a variety of misconduct, including the unauthorized practice of law while suspended, and expressing particular concern that the attorney had twice defied our disciplinary suspension orders).

But we also consider the specific circumstances of the unauthorized practice of law, including the fact that a lawyer was acting in the best interests of his client. *Grigsby*, 815 N.W.2d at 845. In one matter, Mollin acted to correct an administrative error that was affecting a former client. In another matter, he met with an acquaintance confronting a legal issue and filed papers in court to represent that acquaintance. In the second matter, Mollin withdrew the next day after determining that he was not yet permitted to practice.

Mollin's acts of misconduct could have been avoided had he acted more cautiously and more carefully reviewed our suspension order. This circumstance supports the referee's conclusion that his violations were intentional. After reviewing the referee's

conclusive findings of fact, however, we conclude that Mollin's misconduct, "while serious, is less serious than that in cases where we have ordered harsh discipline." *Id.*

Next, we consider the cumulative weight of the violations. *Day*, 710 N.W.2d at 793. We distinguish a brief lapse in judgment or a single isolated incident from multiple instances of misconduct occurring over a substantial amount of time. *See Grigsby*, 815 N.W.2d at 845; *In re Severson*, 860 N.W.2d 658, 673 (Minn. 2015). "[T]he cumulative weight and severity of multiple disciplinary rule violations may compel severe discipline even when a single act standing alone would not have warranted such discipline." *In re Oberhauser*, 679 N.W.2d 153, 160 (Minn. 2004). When multiple rules have been violated through one course of conduct, however, we have chosen not to apply enhanced discipline. *See Grigsby*, 815 N.W.2d at 845 (noting that the attorney's conduct violated several rules, "but the violations all resulted from an attempt to act, on one occasion, in the best interests of the one client").

The referee found that Mollin's unauthorized practice of law violated multiple rules. But each of the rule violations turns on the fact that he was practicing law while suspended. Further, his actions are better characterized as isolated and brief lapses in judgment rather than as misconduct that persists over time. Enhanced discipline is less appropriate under these circumstances.

We next consider the harm to the public. *Day*, 710 N.W.2d at 793. When determining whether harm to the public has occurred, we consider the number of persons harmed and the extent of the injuries suffered. *In re Stoneburner*, 882 N.W.2d 200, 206 (Minn. 2016). Mollin's misconduct did not harm Maggert. Indeed, he assisted him in

rectifying a tax error. The referee found that Mollin's conduct harmed R.S. and the petitioner in the OFP matter. Because Mollin attempted to represent R.S. while still suspended and then withdrew his representation the next day, the OFP proceedings were delayed. Although the delay was short, the referee concluded that it disadvantaged R.S. and the OFP petitioner.

We also consider the harm to the legal profession. *In re Greenman*, 860 N.W.2d 368, 377 (Minn. 2015). Misconduct that “undermine[s] the public’s confidence in the ability of attorneys to abide by the rule of law” harms the legal profession. *In re Brost*, 850 N.W.2d 699, 704 (Minn. 2014). When attorneys fail to carefully review and abide by orders from our court, or from any court, they fail to perform one of the core functions of an attorney. Although Mollin quickly remedied his error in the R.S. matter, his initial disregard for our court’s order shows that he failed to take his suspension seriously enough.

Lastly, we consider the aggravating and mitigating circumstances. *Day*, 710 N.W.2d at 793. The referee found that Mollin’s disciplinary history, the fact that the instant misconduct occurred during his suspension, his lack of recognition of the seriousness of his conduct, and the intentionality of his conduct were aggravating factors. The referee found no mitigating factors present. Because no transcript was ordered, these findings are conclusive.

Although we consider Mullin’s disciplinary history as an aggravating factor, we do not rely on any of the remaining aggravating factors in our assessment of the appropriate discipline because they are duplicative. We expressly considered that the misconduct occurred during a suspension and the intentionality of Mollin’s conduct when we assessed

the nature of the misconduct. *See In re O'Brien*, 809 N.W.2d 463, 466 n.9 (Minn. 2012) (“We caution referees not to rely on the *same* acts . . . to support both a finding of attorney misconduct and the existence of an aggravating factor.”).

We will not consider the referee’s conclusion that Mollin should face harsher discipline because he lacked recognition of the seriousness of his conduct. That conclusion was based on Mollin’s assertions in defending himself in the disciplinary hearing that his conduct was “non-serious” and a “mistake.” We took that factor into account when considering the nature of Mollin’s conduct, deciding that the conduct, although serious, is less serious than that in cases where we have ordered harsh discipline, and in considering the harm to the public.

We look to “similar cases to ensure that our disciplinary decision is consistent with prior sanctions.” *In re Nathanson*, 812 N.W.2d 70, 80 (Minn. 2012). We find that *In re Kennedy*, 873 N.W.2d 133 (Minn. 2016), and *In re Ruffing*, 883 N.W.2d 222 (Minn. 2016), are the most relevant cases. In each, an attorney who violated a suspension order received a 30-day suspension. We conclude that a suspension is necessary here as well. When this court suspends an attorney for a disciplinary violation, we expect that the suspension will be honored and that attorneys will pay close attention to the terms of the suspension order. In cases where we imposed a longer suspension or disbarment for the unauthorized practice of law while suspended, the attorney engaged in much more serious misconduct.

Accordingly, we order that:

1. Respondent Richard C. Mollin, Jr. is suspended from the practice of law for a minimum of 30 days, effective 14 days after the date of the filing of this opinion.

2. The reinstatement hearing provided for in Rule 18, RLPR, is waived.
3. Mollin shall comply with Rule 26, RLPR, and shall pay \$900 in costs, *see* Rule 24(a), RLPR.
4. Mollin shall be eligible for reinstatement to the practice of law following the expiration of the suspension period provided that, not less than 15 days before the end of the suspension period, Mollin files with the Clerk of the Appellate Courts and serves upon the Director an affidavit establishing that he is current in continuing legal education requirements, has complied with Rules 24 and 26, RLPR, and has complied with any other conditions for reinstatement imposed by our court.
5. Within 1 year of the date of the filing of this order, Mollin shall file with the Clerk of the Appellate Courts and serve upon the Director proof of 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. Failure to timely file the required documentation shall result in automatic suspension, as provided in Rule 18(e)(3), RLPR.