

STATE OF MINNESOTA

IN SUPREME COURT

A21-0242

Original Jurisdiction

Per Curiam
Dissenting, Thissen, J.

In re Petition for Disciplinary Action against
B. Joseph Majors, II, a Minnesota Attorney,
Registration No. 0066734.

Filed: May 4, 2022
Office of Appellate Courts

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

B. Joseph Majors, II, Park Rapids, Minnesota, pro se.

S Y L L A B U S

1. The referee's finding that respondent attorney did not intentionally misappropriate client funds was clearly erroneous.

2. Based on the unique circumstances of this case, the appropriate discipline for an attorney who misappropriated a client's funds, failed to safeguard those funds, and used an improper fee agreement is a suspension for 90 days.

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 B. Joseph Majors, II. The Director alleged that Majors misappropriated client funds, failed to safeguard client funds, and used an improper

fee agreement. We appointed a referee, who concluded that Majors failed to safeguard client funds and used an improper fee agreement, but that the Director failed to show by clear and convincing evidence that Majors misappropriated client funds. The referee recommended that Majors receive a public reprimand and a two-year term of supervised probation.

The Director challenged the referee's findings of fact and conclusion that Majors did not misappropriate client funds. Majors agrees with the referee's findings and conclusion. We conclude that the referee erred in finding that Majors did not misappropriate client funds. We further conclude that, given the unique facts of this case, the appropriate discipline is a suspension for 90 days.

FACTS

B. Joseph Majors, II, was admitted to practice law in Minnesota in 1973. For most of his career, he practiced law as an Assistant Wadena County Attorney or the Wadena County Attorney; since 2011, he has maintained a solo practice in Park Rapids. Majors has been admonished or warned seven times over his career for misconduct unlike and unrelated to the conduct in this matter. All but one of these disciplinary actions took place over twenty-five years ago. The misconduct here arises from two more recent client matters and the Director's disciplinary investigations into those matters. For the first matter, involving the client C.L., the Director alleged that Majors misappropriated client funds and failed to safeguard client funds. In the second matter, involving the client A.C., the Director alleged the use of an improper fee agreement. Each matter is addressed below.

In January 2020, Majors agreed to represent C.L. in domestic-abuse and divorce matters under an hourly fee arrangement with no written fee agreement. That same month, on January 23, 2020, we filed an order placing Majors on involuntary restricted status because he had not complied with continuing legal education requirements. One week later, although Majors remained on restricted status, C.L. paid Majors a \$1,500 advance fee, including a \$380 filing fee advance. Majors deposited the funds into his business operating account instead of his trust account. He had not yet earned any part of the fee.

On February 26, 2020, Majors was reinstated to active status. Between March 3 and March 26, Majors billed C.L. \$990 and paid a cost on C.L.'s behalf totaling \$54.82, leaving \$455.18 of C.L.'s unearned funds in his business account. Although C.L.'s advanced funds were not depleted, on March 27, 2020, C.L. paid Majors another unearned \$1,000 advance fee. Majors deposited the funds into his business account. On May 7, 2020, C.L. paid Majors a final \$300 advance fee, which Majors again deposited into his business account. At this time, Majors held \$894.18 of C.L.'s funds in the account, portions of which remained unearned, and which included the filing fee advance.

Throughout his representation of C.L., Majors continued to withdraw from his business account to pay business expenses. These withdrawals led to repeated shortages, during which the account balance did not cover C.L.'s advanced and unearned funds. The largest shortages exceeded \$1,000, but they were sometimes as small as \$29.03. Majors paid general business expenses from the account, including cleaning services, payroll, and rent. He noted at his disciplinary hearing and at oral argument, however, that he always had enough funds available in his other accounts to protect C.L.'s financial interests.

In May 2020, the Director wrote to Majors advising him of the ongoing investigation into this matter¹ and that, absent a compliant written flat-fee agreement, all unearned fees must be deposited into a trust account and withdrawn when earned under Minnesota Rule of Professional Conduct 1.15(c)(5). The Director also asked Majors to provide documents showing that any unearned fees were transferred to a trust account or refunded to C.L. Almost a month later, Majors responded to the Director. He provided a copy of a written retainer agreement with C.L. dated June 7, 2020. He also said that he would continue holding the unearned balance of \$38.68 from C.L. in his business account—not his trust account—until the next billing period, at which point he would have earned the remaining balance. One month later, on July 8, 2020, Majors earned the \$38.68 balance.

In the second client matter, A.C. retained Majors to represent him in defense of felony-controlled substance charges in April 2016. In their fee agreement, A.C. agreed to pay a flat legal fee of \$7,500. The agreement further stated that the legal fees would not be held in trust and would not be refunded if A.C. terminated the agreement. The agreement did not provide the five notifications for nonrefundable fee agreements required by Minnesota Rule of Professional Conduct 1.5(b)(1).

At the July 6, 2021 disciplinary hearing, Majors admitted to all the facts presented by the Director. Majors also admitted that the fee agreement with A.C. violated Minnesota

¹ The Director first reached out to Majors to confirm that he was not actively representing C.L. while on involuntary restricted status. After Majors's responses to those initial inquiries revealed that he was not following other unrelated professional rules, the Office of Lawyers Professional Responsibility began its investigation in this matter.

Rule of Professional Conduct 1.5(b)(1). He testified, however, that he had C.L.'s permission to keep money in the operating account so that he could pay the court filing fee as soon as he located and served C.L.'s wife, and that he had sufficient funds to safeguard C.L.'s advances should expenditure of the unearned funds become necessary. Majors further testified that he no longer uses non-compliant fee agreements, his misconduct caused neither A.C. nor C.L. any harm, he understood that he must stay abreast of professional ethics rules, and he was no longer accepting new clients.

Finding Majors's testimony to be credible, the referee found that Majors failed to safeguard client funds and used an improper fee agreement, violating Minnesota Rules of Professional Conduct 1.15(a),² 1.15(c)(5),³ and 1.5(b)(1)–(3).⁴ Although the referee

² “All funds of clients or third persons held by a lawyer or law firm in connection with a representation shall be deposited in one or more identifiable trust accounts as set forth in paragraphs (d) through (g) and as defined in paragraph (o).” Minn. R. Prof. Conduct 1.15(a).

³ “A lawyer shall: [...] (5) except as specified in Rule 1.5(b)(1) and (2), deposit all fees received in advance of the legal services being performed into a trust account and withdraw the fees as earned.” Minn. R. Prof. Conduct 1.15(c)(5).

⁴ Minn. R. Prof. Conduct 1.5(b)(1)–(3) provides that:

(1) A lawyer may charge a flat fee for specified legal services, which constitutes complete payment for those services and may be paid in whole or in part in advance of the lawyer providing the services. If agreed to in advance in a written fee agreement signed by the client, a flat fee shall be considered to be the lawyer's property upon payment of the fee, subject to refund as described in Rule 1.5(b)(3). Such a written fee agreement shall notify the client:

(i) of the nature and scope of the services to be provided;

(ii) of the total amount of the fee and the terms of payment;

implied that Majors may have accidentally misappropriated client funds, she noted that Majors did not defraud or deceive C.L., and that Majors ultimately earned all the advanced fees. The referee therefore found that the Director failed to present clear and convincing evidence that Majors intentionally misappropriated client funds in violation of Minnesota Rule of Professional Conduct 8.4(c).⁵ The referee ultimately recommended that Majors receive a public reprimand and two years of supervised probation.

(iii) that the fee will not be held in a trust account until earned;

(iv) that the client has the right to terminate the client-lawyer relationship;
and

(v) that the client will be entitled to a refund of all or a portion of the fee if the agreed-upon legal services are not provided.

(2) A lawyer may charge a fee to ensure the lawyer's availability to the client during a specified period or on a specified matter in addition to and apart from any compensation for legal services performed. Such an availability fee shall be reasonable in amount and communicated in a writing signed by the client. The writing shall clearly state that the fee is for availability only and that fees for legal services will be charged separately. An availability fee may be considered to be the lawyer's property upon payment of the fee, subject to refund in whole or in part should the lawyer not be available as promised.

(3) Fee agreements may not describe any fee as nonrefundable or earned upon receipt but may describe the advance fee payment as the lawyer's property subject to refund. Whenever a client has paid a flat fee or an availability fee pursuant to Rule 1.5(b)(1) or (2) and the lawyer-client relationship is terminated before the fee is fully earned, the lawyer shall refund to the client the unearned portion of the fee. If a client disputes the amount of the fee that has been earned, the lawyer shall take reasonable and prompt action to resolve the dispute.

⁵ “It is professional misconduct for a lawyer to: [...] (c) engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.” Minn. R. Prof. Conduct 8.4(c).

The Director asks this court to impose a higher level of discipline to reflect the serious nature of misappropriation. Majors maintains that he did not misappropriate client funds.

ANALYSIS

I.

When one of the parties in a disciplinary matter timely orders a transcript, as the Director did here, the referee's findings of fact and conclusions of law are not binding. Rule 14(e), Minnesota Rules on Lawyers Professional Responsibility (RLPR). We nevertheless extend "great deference" to those findings and conclusions, *In re MacDonald*, 906 N.W.2d 238, 243 (Minn. 2018), and review the referee's application of the Minnesota Rules of Professional Conduct to the facts of the case for clear error, *In re Aitken*, 787 N.W.2d 152, 158 (Minn. 2010). The clearly erroneous standard is met "when we are left with the definite and firm conviction that a mistake has been made." *In re Quinn*, 946 N.W.2d 583, 589 (Minn. 2020) (citation omitted) (internal quotation marks omitted).

The Director challenges the referee's findings and conclusion that Majors did not misappropriate client funds in the C.L. matter. Accordingly, the Director asks this court to impose more extensive discipline—a minimum suspension of 18 months—than the public reprimand and two-year supervised probation recommended by the referee.

"A lawyer [intentionally] misappropriates funds when funds are not kept in trust and are used for a purpose other than one specified by the client." *Quinn*, 946 N.W.2d at 589 (Minn. 2020) (citation omitted) (internal quotations omitted). Conduct is intentional misappropriation when the balance in a business account is "repeatedly less than the total

amount of client funds” that should have been held. *In re Eskola*, 891 N.W.2d 294, 297 (Minn. 2017). Even “borrowing” funds that the attorney later replaces is considered to be intentional misappropriation—it does not matter that the attorney did not intend to permanently deprive the client of those funds. *Id.* at 299 (quoting *In re Fairbairn*, 802 N.W.2d 734, 743 (Minn. 2011)).⁶

In short, when an attorney holds client funds in a business account and spends them for any purpose not intended by the client, and the account balance dips below the amount of the client’s money that should be present in the account, the attorney intentionally misappropriates those funds in violation of Minnesota Rules of Professional Conduct 1.15(a) and 8.4(c). *See Eskola*, 891 N.W.2d at 299 (observing that an attorney’s “most serious misconduct was the intentional misappropriation of client funds,” which he did “by depositing these funds into his business account and then using those funds for purposes other than those specified by the client”).

Here, it is uncontested that Majors kept C.L.’s funds, including unearned fees and an advanced filing fee, in his business account rather than his trust account. It is also uncontested that he used those funds for non-client expenses, including his office rent,

⁶ Misappropriation can be intentional, but it can also be negligent. *See, e.g., In re Tigue*, 900 N.W.2d 424, 429–31 (Minn. 2017) (holding that negligent, unintentional misuse of client funds was still misappropriation). Negligent misappropriation cases have typically involved a lawyer who properly placed client funds in a trust account, but mismanaged their book-keeping, resulting in shortages. *See, e.g., In re Wiegert*, 900 N.W.2d 715, 715 (Minn. 2017) (order) (failing to maintain required trust-account books and records, negligently misappropriating client funds, and commingling client funds with earned fees in a trust account).

payroll, and cleaning service.⁷ Majors’s withdrawals led to shortages in the account, including periods when the account balance was insufficient to cover the full advanced filing fee and unearned attorney’s fees. *See In re Klotz*, 909 N.W.2d 327, 331, 336–37 (Minn. 2018) (finding the attorney misappropriated funds when he deposited advanced client funds and filing fee advances into his business account, which he used for non-client purposes). We therefore conclude that the referee clearly erred in finding that Majors did not intentionally misappropriate client funds.

II.

The parties disagree regarding the appropriate discipline in this matter. Majors argued at oral argument that he should receive the discipline recommended by the referee, noting that he is no longer taking new clients and would appreciate resolving the matters of his few remaining and long-standing clients. The Director disagrees and asks us to suspend Majors consistent with the discipline that we typically give in misappropriation cases.

⁷ Majors also contends that because his business account withdrawals were business-related, they were not personal expenses and do not therefore amount to misappropriation. This argument draws the wrong distinction. Misappropriation concerns the use of client funds for non-client-related expenses, whether for the attorney’s business expenses—as was the case here—or for personal expenses. *See In re Hulstrand*, 910 N.W.2d 436, 442 (Minn. 2018) (holding that misappropriation occurred when the attorney used client funds “for purposes other than the purpose specified by his clients”). To be sure, intentionally using a client’s money for personal purposes, such as paying personal debts or buying personal items, like a boat or a car, amplifies the wrongfulness of the lawyer’s conduct. *See, e.g., In re Trombley*, 916 N.W.2d 362, 364–65 (Minn. 2018) (suspending for six months an attorney who used misappropriated funds to purchase a car and jewelry and to pay off credit card debt); *In re Blomquist*, 958 N.W.2d 904, 907 (Minn. 2021) (disbarring an attorney who used misappropriated trust assets to invest in five start-up companies that he owned).

We generally give “great weight” to the referee’s recommendation, *In re Butler*, 960 N.W.2d 540, 552 (Minn. 2021), and do so in deference to the referee’s determinations of credibility, *In re Sea*, 932 N.W.2d 28, 34 (Minn. 2019). But we retain the “ultimate responsibility for determining appropriate discipline,” *In re Montez*, 812 N.W.2d 58, 66 (Minn. 2012). The purpose of disciplinary sanctions is to protect the public and judicial system, and to deter future misconduct by attorneys—not to punish the attorney. *In re Vaught*, 693 N.W.2d 886, 890 (Minn. 2005).

We consider four factors when imposing discipline: (1) the nature of the misconduct; (2) the cumulative weight of the disciplinary violation; (3) the harm to the public; and (4) the harm to the legal profession. *Butler*, 960 N.W.2d at 552. “To impose consistent discipline, we also consider aggravating and mitigating factors, as well as similar cases.” *Quinn*, 946 N.W.2d at 591.

A.

First, we consider the nature of Majors’s misconduct. “Misappropriation is particularly serious misconduct.” *Id.* (citation omitted) (internal quotation marks omitted). And unlike the other forms of misconduct Majors committed, intentional misappropriation of funds “usually warrants disbarment absent clear and convincing evidence of substantial mitigating factors.” *Id.* (citation omitted) (internal quotation marks omitted).⁸

⁸ When the misappropriation was negligent, we have concluded that the misconduct warrants reduced discipline. *E.g.*, *Wiegert*, 900 N.W.2d at 715 (imposing a public reprimand and two-year probation term for negligent misappropriation).

Here, we have already concluded that Majors intentionally misappropriated client funds. Majors did not keep C.L.’s unearned fees in a trust account, and he used those funds for his own business expenses. These withdrawals led to shortages in the business account when the account balance was insufficient to cover C.L.’s advanced filing fee and unearned attorney’s fees. *See Eskola*, 891 N.W.2d at 297–98 (concluding that shortages in the attorney’s business account, when the balance “was repeatedly less than the total amount of client funds” that should have been held, showed misappropriation).⁹

B.

We next consider the cumulative weight of Majors’s disciplinary violations. *Id.* at 299–300. We treat an “isolated incident” differently from a pattern of misconduct “occurring over a substantial amount of time.” *Id.* (citation omitted) (internal quotation marks omitted). Here, Majors’s most serious misconduct—misappropriation—took place over approximately seven months during the height of the COVID-19 pandemic with a single client. Although more than a brief lapse in judgement, his conduct does not form an extended pattern warranting more severe discipline.

C.

Next, we consider the harm that Majors caused to the public and to the legal profession. This factor includes evaluating how many clients were harmed and the extent

⁹ We acknowledge, however, that until the Director notified Majors of his noncompliance, he did not believe that he was misappropriating client funds. And by that point, the majority of the shortages caused by his misappropriation had already been resolved by the provision of legal services to C.L. and by Majors making other deposits into the account.

of that harm. *In re Coleman*, 793 N.W.2d 296, 308 (Minn. 2011). Here, Majors’s conduct did not result in any harm to C.L. or A.C.; nor did his conduct result in harm to any other parties in those matters. He also eventually earned all the unearned fees, corrected the improper fee agreement, and provided legal services to each client.

Misappropriation in particular, however, causes substantial harm to the legal profession and judicial system as a whole. *In re Sayaovong*, 909 N.W.2d 575, 583 (Minn. 2018). Yet an attorney who has ended or is in the process of ending the practice of law is unlikely to present substantial harm to the public. *Cf. In re Frank*, 967 N.W.2d 643, 643 (Minn. 2021) (order) (following the parties’ stipulation that included mandatory retirement paired with a shorter-than-typical suspension for the attorney’s misconduct). Here, Majors testified credibly before the referee and said at oral argument that he is no longer taking new clients and has only two long-standing clients remaining.

D.

To determine the appropriate discipline, we also must examine any aggravating and mitigating factors. *Quinn*, 946 N.W.2d at 592. The referee found only one aggravating factor—Majors’s disciplinary history—but noted that his prior admonitions and warnings were “remote in time and not similar to the matter at hand.” *In re Majors*, No. A21-0242, Order at 8 (Minn. filed August 5, 2021). We agree, and therefore do not give much weight to this factor.

The referee also found two mitigating factors: (1) the lack of harm resulting from Majors’s misconduct;¹⁰ and (2) Majors’s corrective steps to stop taking retainer funds and to change his fee agreement to conform with the rules, which the referee found showed remorse. Although Majors did not comply with the Director’s instruction to transfer any unearned client funds from his business account to his trust account—and instead kept the remaining minimal amount in his business account until he earned the fees the next month—the record overall shows that he is remorseful and took all other necessary corrective steps. We therefore strongly weigh his remorse as a mitigating factor.

E.

Finally, we consider similar cases when deciding what discipline is warranted “to ensure consistency in our decisions.” *Quinn*, 946 N.W.2d at 593. Intentional misappropriation is serious misconduct that often warrants disbarment unless substantial mitigating factors are present. *Id.* at 591. But we also recognize that, under certain circumstances, “we have imposed discipline less than disbarment in a misappropriation case [even] when the record does not reveal substantial mitigating factors.” *Id.* at 593 (citation omitted) (internal quotation marks omitted).

In *Quinn*, we imposed an 18-month suspension. *Id.* at 587. Quinn deposited filing fees in his business account and failed to maintain a sufficient balance to cover the fees, totaling only \$306, which we concluded was misappropriation. *Id.* at 590–91. We noted

¹⁰ We already considered the lack of harm to Majors’s clients as part of the four-factor analysis for determining what discipline is warranted. We do not reconsider harm as a separate mitigating factor and will not discuss it further here. *Tigue*, 900 N.W.2d at 433 (“[L]ack of harm to clients is not a separate mitigating factor.”).

that Quinn failed to respond in a timely and appropriate manner to his client and the Director. *Id.* at 591–92. Quinn’s misconduct also harmed his clients, and we weighed heavily several aggravating factors present, including Quinn’s disciplinary history of similar violations and his lack of remorse. *Id.* at 592–93.

In another misappropriation case, we imposed a two-year suspension. *In re Brooks*, 696 N.W.2d 84 (Minn. 2005). Brooks converted a \$200 filing fee for her own use and had stopped practicing law. *Id.* at 86–87. In addition to the misappropriation, we noted other serious misconduct and aggravating factors: Brooks failed to cooperate with the disciplinary investigation, neglected her clients’ matters, failed to maintain trust-account books and records, appeared to abandon her legal practice, and had previously committed five disciplinary violations, three of which involved similar trust-account violations. *Id.* at 87–89.

These cases share similarities with this matter, but they are also different in key respects. As in *Quinn* and *Brooks*, Majors misappropriated a relatively small amount of client funds. But the other cases also involved additional, more substantial misconduct and aggravating factors, which warranted suspensions for 18 months or more. Here, no other serious misconduct is alleged, no substantial aggravating factors are present, and Majors’s demonstrated remorse is a critical mitigating factor. The referee found Majors to be credible and his misappropriation, moreover, caused no harm to his clients. Considering the unique circumstances of this case, and with the understanding that Majors will no

longer accept new clients, we therefore conclude that the appropriate discipline is a suspension for 90 days.¹¹

Accordingly, we order that:

1. Respondent B. Joseph Majors, II, is suspended from the practice of law for a minimum of 90 days, effective 14 days from the date of this opinion.
2. Majors shall comply with Rule 26, RLPR (requiring notice of suspension to clients, opposing counsel, and tribunals).
3. Majors shall pay \$900 in costs pursuant to Rule 24, RLPR.
4. Majors shall not accept any new clients.
5. Majors 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, he 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 the court.
6. Within 1 year of the date of this opinion, Majors 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

¹¹ We consider the fact that Majors disregarded the Director's notice that he likely misappropriated funds, but it does not alone drive our conclusion that his misconduct warrants a suspension, as the dissent suggests. When an attorney intentionally misappropriates funds—regardless of notice from the Director—our precedent is clear that the appropriate discipline is disbarment or a suspension. *See, e.g., Quinn*, 946 N.W.2d at 591.

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). Failure to do so shall result in automatic suspension, as provided in Rule 18(e)(3), RLPR.

7. Upon reinstatement to the practice of law, Majors shall be placed on probation for a period of 2 years, subject to the following terms and conditions:

a. Majors shall cooperate fully with the Director's Office in its efforts to monitor compliance with this probation. Majors shall promptly respond to the Director's correspondence by its due date. Majors shall provide to the Director a current mailing address and shall immediately notify the Director of any change of address. Majors shall cooperate with the Director's investigation of any allegations of unprofessional conduct that may come to the Director's attention. Upon the Director's request, Majors shall provide authorization for release of information and documentation to verify compliance with the terms of this probation.

b. Majors shall abide by the Minnesota Rules of Professional Conduct.

c. Majors shall maintain trust account books and records in compliance with Minn. R. Prof. Conduct 1.15 and Appendix 1. The trust account books and records shall include the following: client subsidiary ledgers; checkbook registers; monthly trial balance reports; monthly reconciliation reports; bank statements; canceled checks (if they are provided with the bank statements); duplicate deposit slips; and bank reports of interest, service charges, and interest payments to the Minnesota IOLTA Program. Such books and records shall be made available to the Director within 30 days from the commencement of the probation and thereafter shall be made available to the Director at such intervals as the Director deems necessary to determine compliance. The Director may terminate Majors's trust account books and records monitoring early if the Director determines it is appropriate to do so.

Suspended.

DISSENT

THISSEN, J., dissenting.

There is no need to suspend respondent B. Joseph Majors, II for 90 days to protect the public and deter future misconduct. I would publicly reprimand Majors. Therefore, I dissent.

First, I dissent for the reasons stated in my concurrence and dissent in *In re Quinn*, 946 N.W.2d 583, 594–96 (Minn. 2020). The court acknowledges that Majors earned every penny of the fees that his clients paid him. No client suffered any harm. The shortfalls in Majors’s business account were small and no one disputes Majors’s testimony that he had other resources available to cover any shortfalls had his representation of his client ended before he earned all the fees. And Majors is retiring from the practice of law as soon as he completes representation of his two remaining clients. Common sense tells me that a 90-day suspension

is excessive and not necessary to either protect the public from this attorney or deter future misconduct which is highly unlikely to recur. I further do not see how [Majors’s] conduct seriously threatens the functioning of the judicial system. Rather, such a lengthy suspension is punitive and that is not a proper purpose for imposing discipline.

Id. at 595.

Second, the only reason that the court is considering a suspension of any length is because the Director informed Majors on May 7, 2020, that he was required to deposit all unearned fees from his client, C.L., into a trust account, rather than hold them in his

business account.¹ In his response at the time, Majors noted that he had earned all but \$38.68 of the advanced fees his client C.L. had paid. He held the money in his business account instead of transferring it to his trust account (held in a bank in a different town) and earned those fees in the next billing cycle. By keeping the \$38.68 in his business account for a month after being told that the funds should be deposited in the trust account, Majors was deemed to have “intentionally misappropriated” the funds.

That fact transforms a violation of Rule 1.15—a rules violation that warrants some discipline—into a very serious “intentional misappropriation” violation that “usually warrants disbarment.” *Supra* at 10. Notably, the concepts of “intentional misappropriation” and “negligent misappropriation” do not exist in the Rules of Professional Conduct. They are purely the creations of this court. Of course, “intentional misappropriation” may be a species of Rule 8.4(c) misconduct: “engag[ing] in conduct involving dishonesty, fraud, deceit, or misrepresentation.” But we would not normally understand what Majors did here—keeping a prepaid fee in his business account rather than a trust account *with his client’s knowledge and permission*—as dishonesty, fraud, deceit, or misrepresentation. There is much more to say about how our case law evolved to a point where every knowing violation of Rule 1.15 (again, an independent rules

¹ The Director appropriately cited Minn. R. Prof. Conduct 1.15 to support her position. I do not dispute that Majors violated Rule 1.15(a), (c)(5). Further, I do not dispute that Majors violated Rule 1.5(b)(1)–(3) and 1.15(c)(5) in the unchallenged part of the referee’s decision related to another client. But those violations would not warrant a suspension.

violation that we can and should appropriately discipline) becomes misconduct warranting presumptive disbarment as a violation of Rule 8.4(c), but this is not the time to do so.

Finally, we do not sit as an appellate court in lawyer discipline cases. We have original jurisdiction over lawyer discipline cases and our role is to protect the public and to deter future misconduct—not to punish the lawyer. We look to other lawyer discipline cases when determining appropriate discipline, not because they are binding precedent in the traditional sense but because they provide a check on our discretion to ensure consistency. *See Quinn*, 946 N.W.2d at 593. But we do not ensure consistency unless we assess each individual case—with its own set of facts and unique variables—on its own merits. And to its credit, the court undertakes just such an approach in this case.

Nonetheless, it appears that the court believes that it is compelled by precedent to impose a suspension here because it concluded that Majors’s conduct falls within a broad category of conduct called “intentional misappropriation.” I do not believe there is any basis for the court to feel that it is bound or somehow required by precedent to impose a suspension in this case. Our sole inquiry should be to determine the discipline necessary under the circumstances of this case to protect the public and deter future misconduct. A public reprimand will accomplish that goal here.