STATE OF MINNESOTA

IN SUPREME COURT

A21-0374

Original Jurisdiction — Per Curiam

In re Petition for Disciplinary Action against
Joseph Daniel Roach, a Minnesota Attorney,
Registration No. 0250843.

Filed: December 7, 2022
Office of Appellate Courts

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

Paul Engh, Minneapolis, Minnesota; and

Thomas B. Wieser, Meier, Kennedy & Quinn, Chartered, Saint Paul, Minnesota, for respondent.

S Y L L A B U S

1. The referee's findings that respondent violated Minn. R. Prof. Conduct 1.1 and 1.4(b), but that the Director failed to prove a violation of Minn. R. Prof. Conduct 1.5(b), were not clearly erroneous.

2. A public reprimand and 2 years of supervised probation is the appropriate discipline for respondent who failed to provide competent representation, failed to adequately communicate with clients, charged fees that his client did not agree to, and threatened to withhold client files until his fee was paid.

Publicly reprimanded and placed on supervised probation.

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 Joseph Daniel Roach. We appointed a referee. After a hearing, the referee determined that Roach committed professional misconduct while handling a divorce matter for a client. The referee concluded that Roach committed misconduct by charging a higher hourly rate than the client agreed to pay and by threatening to withhold client files until the client paid Roach's bills. No party challenges these conclusions. The referee also concluded that Roach failed to provide competent representation and failed to adequately communicate with his client. Roach asserts that these conclusions were erroneous because he secured a favorable resolution for his client and remained in communication with the client. Finally, the referee found that Roach did not charge unreasonable fees. The Director asserts that this conclusion was erroneous because Roach billed a high hourly rate despite lacking relevant experience and recorded more hours for certain tasks than the Director believes reasonable.

We conclude that the referee did not clearly err by finding that Roach failed in his duty to provide competent representation and clear communication. We also conclude that the referee did not clearly err by crediting Roach's explanation of his billing practices. Finally, we conclude that the appropriate discipline for Roach's misconduct is a public reprimand and 2 years of supervised probation.

FACTS

Roach was admitted to practice law in Minnesota in 1994. He had extensive experience in farming and banking prior to becoming a lawyer. Roach practiced in business advising and transactional work, particularly within the farming industry. Roach was a shareholder at Lapp, Libra, Stoebner & Pusch, Chartered (Lapp Libra) during the course of the divorce proceedings that led to the Director's investigation and the hearing before the referee.[1]

J.C. was married for over 18 years prior to filing for divorce in January 2015. The divorce was acrimonious, involving disputes over both custody and marital assets. Many of J.C.'s assets related to farmland and investments that were held by both a holding and investment company (the LLC) and a Chapter 318 farm trust established by J.C.'s father (the Trust). J.C. co-owned the LLC with one of his brothers, and J.C. and that brother were also the trustees for, and equal beneficiaries of, the Trust.

J.C.'s wife believed that some of the assets held by the LLC and the Trust were also part of the marital estate. In May and June 2015, her counsel filed discovery requests, seeking financial information relating to the LLC and the Trust, and then attempted to add the LLC, the Trust, and J.C.'s brother as parties to the divorce. J.C. and his brother retained Roach as an expert in agricultural business organizations to help navigate these motions.

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[1] Roach left Lapp Libra after the misconduct giving rise to this disciplinary action came to light. In a separate civil action, Lapp Libra secured a judgment against Roach for breach of his fiduciary duty to the firm for failure to report that a client filed an ethics complaint against him and for wrongfully downplaying the seriousness of those allegations. *Roach v. Lapp, Libra, Thomson, Stoebner & Pusch, Chartered*, No. A20-1013, 2021 WL 2070521 (Minn. App. May 24, 2021), *rev. denied* (Aug. 24, 2021).

Because he was not a litigator, Roach also brought in a law firm shareholder, Schwartz, to assist with opposing the discovery requests and the motion to add the farm entities. The district court denied the motion to add the farm entities, and counsel for J.C.'s wife filed a separate civil lawsuit, asserting largely the same claims against J.C., his brother, and the farm entities.

In December 2015, Roach contacted J.C. to express concerns that J.C.'s current attorneys were not taking adequate measures to either resolve the divorce before trial or to prepare for trial if no settlement was obtained. Roach admitted that he had no prior experience with family law matters but offered to take over as lead attorney in the dissolution. Roach advised that if a trial was necessary, J.C. would need to retain an additional lawyer with experience in litigating marital dissolution disputes. J.C. discharged his current attorneys and hired Roach. The engagement letter with Lapp Libra stated that Roach would bill his time at $500 per hour. Roach, however, instead charged $510 per hour for all work performed during 2016.

Roach and his law firm partner Schwartz represented J.C.'s interests throughout early 2016. They opposed and responded to discovery requests, took depositions, and identified and hired expert witnesses, including accountants and a property appraiser. In the separate civil lawsuit, Roach and Schwartz obtained an anti-suit injunction staying the matter pending resolution of the divorce. Roach also hired another lawyer with whom he had worked previously, Grande, to serve as an experienced family law trial counsel. Roach then represented J.C. at an unsuccessful mediation in March 2016.

On April 21, 2016—the scheduled first day of trial—J.C.'s wife reduced her settlement demand. Roach and J.C. dispute what happened next. J.C. testified that Roach initially told him not to accept the settlement, but that Roach later advised him to accept. J.C. asserted that Roach claimed the settlement could be structured to be tax deductible, and J.C. would be entitled to the cash value of life insurance policies he had purchased for his wife and one of his children. J.C. testified that he accepted the offer only because he understood that, in practice, it would cost him less than the agreed-upon settlement amount. Roach, on the other hand, testified that there was no discussion of potential tax consequences at that time and that his client simply accepted the offer.

Roach read the settlement agreement into the record in district court. The agreement included a significant payment from J.C. to his former spouse, and the parties specifically agreed to waive any spousal maintenance, and also agreed to sign a Karon waiver.[2] Roach was to draft the final written agreement for the parties to sign.

In May 2016, Roach sent J.C. a draft settlement agreement. Consistent with the agreement on the record, this draft stated that neither party required spousal maintenance and that the parties "agreed to waive the right to modify the amount and duration of spousal maintenance." This draft also described the significant payment from J.C. to his former spouse as a "cash property settlement." In July 2016, Roach sent J.C. a second draft of the proposed settlement agreement. This updated draft stated that J.C. would pay "nontaxable spousal maintenance" and changed the description of the cash payment from a "cash

[2] Named for our decision in *Karon v. Karon*, 435 N.W.2d 501, 502–03 (Minn. 1989), a Karon waiver is an agreement to waive any future ability to modify spousal maintenance.

property settlement" to "settlement of spousal maintenance and property claims." There is no record of why these changes were made, but federal law at the time of the settlement allowed taxpayers to deduct spousal maintenance payments from taxable income and did not allow taxpayers to deduct property settlement payments. *See* 26 U.S.C. § 215(a) (2015) (repealed 2017).

At some point, J.C. and Roach discussed the tax treatment of the settlement payment. On July 21, 2016, J.C. sent Roach an email asking whether Roach had heard from an accountant about whether J.C. could deduct the settlement payment from his taxable income. According to J.C., this email was sent to follow up on conversations that occurred before the settlement agreement. According to Roach, the email was the first time his client had raised the issue of tax deductibility. Roach replied to this email, "I did the research myself. We're good." Roach stated in further emails on July 21 that J.C.'s former spouse "will have to pay tax on the settlement payment" and that "you [J.C.] get to deduct the payment." Part of Roach's billing statement for July 21 includes "[r]eview tax code regarding deductibility of payment due under Settlement Agreement."

Roach sent the July 20, 2016, second draft of the proposed settlement agreement to counsel for J.C.'s former spouse. The attorney strongly objected to the draft, stating "my client and I do not believe your proposed written agreement is an accurate reflection of the agreement stated on the record by the parties." Specifically, counsel stated that the cash payment was "not a lump sum taxable spousal maintenance payment because the parties agreed that neither party would pay the other any spousal maintenance." Roach continued to tell his client that the payment would be tax deductible and attempted to convince

opposing counsel to agree to the draft agreement characterizing the payment as "settlement of spousal maintenance and property claims."

On November 17, 2016, counsel for J.C.'s former spouse sent another draft settlement agreement. Roach advised J.C. to accept this version. J.C. noted that this draft again referred to the payment as a "cash property settlement" and stated, "I assume that means I will not be able to deduct any of this like I have been understanding?" Roach replied that the language was the same as the first draft agreement and stated that Roach did not think it would be "an issue."

Roach met with J.C. and J.C.'s brother on December 2, 2016. The brothers again asked about whether the settlement payment would be tax deductible. Roach responded, "I'm not your tax advisor. You should talk with him." When pushed, Roach said, "The way it's written up, you should be able to take the deduction. Whether the IRS supports that, allows that is beyond my control." J.C. signed the agreement and demanded to see his client files. Roach responded, "Sure. Pay my bill and we'll get you all you want."

J.C.'s brother later consulted with his accountant, who advised him that none of the settlement payment would be tax deductible. J.C. filed an ethics complaint against Roach, and in March 2021 the Director filed a petition for disciplinary action. We appointed a referee, who conducted a hearing on the allegations in November 2021.

After the hearing, the referee concluded that Roach committed several forms of misconduct. The referee concluded that Roach committed misconduct by charging a higher hourly fee than agreed upon with the client and by threatening to withhold the client file

from the client until Roach was paid, in violation of Minn. R. Prof. Conduct 1.5(b)[3] and 1.16(g).[4] Roach does not contest these findings.

The referee also concluded that Roach violated Minn. R. Prof. Conduct 1.1[5] by failing to account for the tax treatment of the divorce settlement payment. The referee credited Roach's testimony that his client did not raise the issue until July 21, 2016—months after the initial settlement. But the Director presented expert testimony that the tax treatment of divorce settlements was "entry level training" for family law practitioners, and the referee found that it was misconduct for Roach to fail to anticipate the issue of the tax treatment of settlement proceeds. Roach challenges this conclusion, arguing that he acted competently to secure his client's interests as soon as he was aware of the potential issue.

The referee further concluded that Roach violated Minn. R. Prof. Conduct 1.4(b)[6] by failing to communicate the accurate tax status of the settlement to his client. The referee

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[3] "The scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible shall be communicated to the client . . . ." Minn. R. Prof. Conduct 1.5(b). "Any changes in the basis or rate of the fee or expenses shall also be communicated to the client." *Id.*

[4] "A lawyer shall not condition the return of client papers and property on payment of the lawyer's fee or the cost of copying the files or papers." Minn. R. Prof. Conduct 1.16(g).

[5] "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.

[6] "A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation." Minn. R. Prof. Conduct 1.4(b).

concluded that even after Roach became aware of his client's aim of deducting the settlement payment, Roach failed to inform his client that achieving this goal would require reopening the settlement agreement. Instead, Roach repeatedly told his client that the payment was deductible under the original agreement, even as he negotiated with opposing counsel to change the language of the settlement. Roach likewise challenges this finding, arguing that as soon as he became aware of the tax issue, he worked diligently to negotiate with opposing counsel and further his client's interests.

Finally, the referee concluded that Roach did not violate Minn. R. Prof. Conduct 1.5(a)[7] by charging unreasonable fees. The Director presented evidence that Roach billed an inappropriately high hourly rate given his inexperience with family law matters. And the evidence showed Roach billing what the Director asserted was an unreasonably high number of hours. For example, Roach billed more hours to review and revise the motion for an anti-suit injunction in the separate civil matter than his partner Schwartz billed to research and write the initial draft, despite testimony from Schwartz that Roach made only minimal non-substantive changes to the motion. But Roach testified that his rate was justified by his relevant experience in advising agricultural business organizations; that experience was central to assessing the disputed assets, according to Roach. And, although his billing records contained sparse details about the specific tasks, Roach testified that he honestly recorded his time working on the matter and that the number of hours he recorded

[7] "A lawyer shall not make an agreement for, charge, or collect an unreasonable fee . . . ." Minn. R. Prof. Conduct 1.5(a).

was necessary given the underlying complexity of the dispute. The referee credited Roach's testimony and found no billing misconduct.

The referee found there were neither mitigating factors nor aggravating factors present. The referee recommended imposing discipline consisting of a public reprimand and 2 years of supervised probation.[8]

ANALYSIS

Roach asserts that the referee erred by finding that he failed to provide competent representation and that he failed to adequately communicate with his client. The Director in turn asserts that the referee erred by failing to find that Roach charged unreasonable fees. We begin by examining the findings of the referee. We then determine the appropriate discipline in this case.

I.

The referee's findings of fact and conclusions are not binding when one of the parties in a disciplinary matter orders a transcript, as Roach did here. Rule 14(e), Rules on Lawyers Professional Responsibility (RLPR). But these findings and conclusions are still entitled to "great deference." *In re Paul*, 809 N.W.2d 693, 702 (Minn. 2012). This deference is particularly appropriate when the referee's findings rest on "disputed testimony" or "a respondent's demeanor, credibility, or sincerity." *In re Barta*, 461 N.W.2d 382, 382 (Minn. 1990). We review the referee's findings and conclusions for

[8] The referee also ordered Roach to refund the full difference between the $500 per hour rate that his client agreed to pay and the $510 per hour rate that Roach charged. Roach and J.C. settled this amount as part of a separate malpractice action, so we need not consider whether to order a refund here.

clear error. *In re Fairbairn*, 802 N.W.2d 734, 740 (Minn. 2011); *In re Aitken*, 787 N.W.2d 152, 158 (Minn. 2010). A finding is clearly erroneous when it leaves us "with the definite and firm conviction that a mistake has been made." *In re Bonner*, 896 N.W.2d 98, 105 (Minn. 2017) (citation omitted) (internal quotation marks omitted).

A.

The referee found that Roach committed misconduct by not representing his client competently. Lawyers have a duty to provide competent representation for their clients. Minn. R. Prof. Conduct 1.1. "Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation." *Id.* In complex circumstances, expertise in a particular field of law may be necessary to provide competent representation. *Id.*, cmt. 1. "[A]n attorney fails to provide competent representation when the attorney does not fully inform the client of the consequences of specific legal actions." *In re Fett*, 790 N.W.2d 840, 848 (Minn. 2010).

The referee concluded that Roach violated Rule 1.1 "by not knowing whether an asset will be tax deductible in the divorce case." Roach argues that this conclusion was clearly erroneous. The referee found that Roach's client did not raise the issue of tax deductibility until July 21, 2016—well after the settlement had been reached. Roach argues that as soon as he knew of his client's desire to make the settlement tax deductible, he attempted to alter the settlement to make that possible. Roach argues that these efforts failed because it would have created significant tax consequences for J.C.'s former spouse, not through any error on his part.

But even if Roach's client did not raise the issue of tax deductions until after the settlement was reached, the Director presented expert testimony that understanding the tax consequences of different types of settlements is a basic competency for family law attorneys. Roach failed to provide competent representation because he failed to anticipate the issue and raise it himself, even if the client failed to do so. And once the issue was raised, Roach repeatedly gave incorrect legal advice. Roach repeatedly told J.C. that he would be able to deduct the payments, even after the final settlement agreement characterized the payment as a cash property settlement. This advice was not supported by the on-the-record agreement. The finding of the referee that Roach violated Minn. R. Prof. Conduct 1.1 was not clearly erroneous.

B.

Lawyers must explain legal matters to their clients so that the client can make an effective and informed decision. Minn. R. Prof. Conduct 1.4(b). "The client should have sufficient information to participate intelligently in decisions concerning the objectives of the representation and the means by which they are to be pursued." *Id.*, cmt. 5. A lawyer can commit misconduct by failing to explain the legal significance of events in the client's matter. *See In re Letourneau*, 792 N.W.2d 444, 449, 451 (Minn. 2011) (holding that a lawyer's failure to explain the effect of an opposing party's bankruptcy on pending litigation violated Rule 1.4(b)); *In re Greenman*, 860 N.W.2d 368, 373 (Minn. 2015) (holding that a lawyer's failure to explain that unanswered requests for admission were deemed admitted violated Rule 1.4(b)).

The referee concluded that Roach committed misconduct because, after his client "raised the issue of tax deductibility [Roach] did not tell him it could not be done without reopening the case." Roach argues that the referee's finding was clearly erroneous because his client did not raise the issue of tax deductibility until after the initial settlement agreement, and Roach then attempted to secure the deduction. Roach argues that his actions were appropriate for the situation.

In essence, Roach argues that once he knew about the issue, he took diligent and appropriate action to seek to satisfy his client's interests. Again, however, Roach's arguments are orthogonal to the misconduct found by the referee. The referee did not find that it was inappropriate for Roach to negotiate with opposing counsel to modify the agreement. Rather, the referee found that it was inappropriate for Roach to tell his client that the agreement did not need to be modified. The record does not show Roach ever communicating that only spousal maintenance was tax deductible, or that the on-the-record agreement waived spousal maintenance and made the payment a property settlement, or that making the payment tax deductible would require reopening the agreement. Rather, even once Roach unquestionably knew of the issue, he continued to claim that the payment would be tax deductible. All the way through the December 2, 2016, meeting, Roach incorrectly repeated that J.C. would be able to deduct the payment. The referee did not clearly err by concluding that this conduct violated Minn. R. Prof. Conduct 1.4(b).

C.

The Director alleged that Roach charged unreasonable fees, in terms of both the amount per hour and number of hours billed. "A lawyer shall not make an agreement for,

charge, or collect an unreasonable fee . . . ." Minn. R. Prof. Conduct 1.5(a). The reasonableness of a fee is determined by several factors including the time, labor, and skill necessary to perform the task; "the fee customarily charged in the locality for similar legal services;" and "the experience, reputation, and ability of the lawyer or lawyers performing the services." *Id.*

1.

The Director alleged that Roach charged an unreasonable fee because of the hourly rate. Roach agreed to bill his time at $500 per hour. The Director presented expert testimony alleging that such a high hourly rate is rare for family law matters and would be reserved for only the most experienced attorneys. Roach had no prior family law experience. The Director alleges that Roach therefore had a duty to reduce his hourly fees to reflect his inexperience, which Roach did not do.

Roach testified that his hourly rate was appropriate because he assisted J.C. with more than just family law matters. The divorce involved substantial assets held by both a Chapter 318 farm trust and an LLC. Roach worked to exclude the financial details of these entities from the litigation. Roach testified that this work relied on his knowledge of complex business matters. The Director's own expert acknowledged that it was prudent to bring in an expert in agricultural business organizations. Roach argues that the comparison to family law attorneys is inapposite and that a better comparison is to other business attorneys—an area of law in which Roach had substantial experience.

We have held that it is unreasonable to charge for services that were not provided and to charge fees that the lawyer cannot explain or justify. *See, e.g.*, *In re Igbanugo*,

863 N.W.2d 751, 760 (Minn. 2015); *In re Lochow*, 469 N.W.2d 91, 94–95 (Minn. 1991). But we have never held that a lawyer commits misconduct solely by charging an excessive hourly rate. Roach disclosed his rate clearly and before he was hired as lead attorney for the divorce matter. Roach was hired because of his significant experience with farming business operations. And Roach clearly disclosed his limited experience and the fact that he would have to hire outside trial counsel. It was not clearly erroneous for the referee to find that the agreed-upon hourly rate was not misconduct.

2.

The Director further alleged that Roach committed misconduct by billing an unreasonably high number of hours for certain tasks. For example, Roach's billing records show that he logged approximately 7.5 hours to review and prepare a joint defense agreement, despite testimony from one of Roach's partners that Roach was provided a form agreement and made minimal changes to the form. Roach billed more hours to review and revise two motions than did Schwartz, the attorney who researched and drafted both motions. Further, Schwartz testified that Roach made minimal changes on both occasions. And Roach recorded and billed hours in connection with two motions after the motions were filed with the district court.

This conduct is troubling. But our role in reviewing the referee's findings is limited, and we are especially careful to defer to the referee when the findings rest on disputed testimony or the assessment of the demeanor and credibility of a witness. *Fett*, 790 N.W.2d at 845. Roach testified at the hearing that he accurately and honestly recorded his time. He admitted that his billing records were sparse in detail but testified that the hours he

claimed were necessary and justified given the complexity of the dispute. For example, Roach testified that the 7.5 hours spent on the joint defense agreement involved more than merely filling out the form and that Roach spent this time reviewing the document in full and ensuring the agreement fit into the overall litigation strategy. And Roach notes that many of his actions on behalf of his client that are now challenged by the Director were successful, including both of the motions—that is, the Director does not dispute the performance of Roach but rather alleges that Roach expended excessive hours in performing his duties. The Director's argument has merit, but in finding no misconduct, the referee credited Roach's testimony. We are unable to say that, based on the referee's personal observation of Roach as he testified, this decision leaves us with a "definite and firm conviction that a mistake has been made." *Bonner*, 896 N.W.2d at 105 (citation omitted) (internal quotation marks omitted). The referee's finding that the Director failed to prove a violation of Minn. R. Prof. Conduct 1.5(b) was not clearly erroneous.

II.

We turn next to the appropriate discipline for Roach. Both the referee and the Director recommend that discipline here consist of a public reprimand and 2 years of supervised probation. Roach argues 2 years of supervised probation is excessive, but his brief is unclear on the appropriate discipline to be imposed. Roach appears to accept that his conduct is deserving of a public reprimand; he argues, however, that 1 year of unsupervised probation is more appropriate.

We afford great weight to the referee's recommended discipline. *In re Butler*, 960 N.W.2d 540, 552 (Minn. 2021). But "we retain ultimate responsibility for determining

[the] appropriate discipline." *In re Montez*, 812 N.W.2d 58, 66 (Minn. 2012). We impose discipline "not to punish the attorney, but rather to protect the public, to protect the judicial system, and to deter future misconduct by the disciplined attorney as well as by other attorneys." *In re Albrecht*, 779 N.W.2d 530, 540 (Minn. 2010) (citation omitted) (internal quotation marks omitted). In determining "the appropriate discipline, we consider four factors: (1) the nature of the misconduct, (2) the cumulative weight of the violations, (3) the harm to the public, and (4) the harm to the legal profession." *Butler*, 960 N.W.2d at 552. We also consider aggravating and mitigating factors and impose discipline consistent with similar cases. *Id.*

A.

We first consider the nature of Roach's misconduct, which includes a failure to competently represent a client's interests and failure to communicate with a client. This misconduct warrants discipline. *See Fett*, 790 N.W.2d at 851 ("To maintain society's confidence in the legal profession, individuals must be able to trust that their attorneys will act competently and communicate fully with them."). The misconduct also involved a threat to withhold client files, which is less serious misconduct—especially given that Roach returned the client files. *See In re Charges of Unprofessional Conduct in Panel Case No. 44387*, 932 N.W.2d 310, 316 (Minn. 2019) (imposing a private admonition for attempting to withhold client files).

B.

Next, we consider the cumulative weight of the misconduct. We distinguish between misconduct that is an "isolated incident" from misconduct that shows a pattern

"occurring over a substantial amount of time." *In re Eskola*, 891 N.W.2d 294, 300 (Minn. 2017) (citation omitted) (internal quotation marks omitted). A pattern of misconduct may justify more severe discipline than any individual violation standing alone. *Id.* Roach's misconduct involves a single client matter. But Roach engaged in a pattern of misconduct in that one matter. Roach misrepresented the status of the settlement agreement to his client on multiple occasions and over the course of more than 6 months. The misconduct here is more than just an isolated incident, and the cumulative weight of Roach's violations supports more severe discipline.

C.

Next, we consider whether the misconduct caused harm to the public. "When assessing the harm to the public, we consider the number of clients harmed and the extent of the clients' injuries." *In re Bosse*, 951 N.W.2d 469, 482 (Minn. 2020). Roach harmed only a single client. But because of his misconduct, his client was unable to make an informed decision about the divorce settlement agreement. This caused twofold financial harm. First, his client suffered adverse tax consequences because he was unable to deduct the settlement payment. And second, Roach's client incurred substantial attorney fees in addressing Roach's own misconduct. Further, Roach's incorrect legal advice prevented his client from making a fully informed decision, which is harmful regardless of any financial consequences. *See In re Redburn*, 746 N.W.2d 330, 338 (Minn. 2008). And Roach's misconduct prolonged an already lengthy and contentious divorce, inflicting unnecessary emotional strain on his client.

D.

We also consider whether Roach's conduct caused harm to the legal profession. Failure to communicate with clients reflects adversely on the bar and undermines public confidence in the legal profession. *Id.* Roach's misconduct harmed the legal profession because it "subjects the profession to severe scrutiny and criticism and contributes to the public's general mistrust of attorneys." *In re Geiger*, 621 N.W.2d 16, 24 (Minn. 2001).

E.

We next consider aggravating and mitigating factors. We review the referee's conclusions about aggravating and mitigating factors for clear error. *In re Swanson*, 967 N.W.2d 644, 652 (Minn. 2021). Here, the referee did not find any aggravating or mitigating factors.

At the time the misconduct occurred, Roach had been an attorney for over 20 years. "[L]engthy experience as an attorney" is an aggravating factor. *In re Sea*, 932 N.W.2d 28, 37 (Minn. 2019). Roach's experience is significant and sufficient to constitute an aggravating factor. *See In re Schulte*, 869 N.W.2d 674, 679 (Minn. 2015) (holding that more than 20 years of experience constitutes an aggravating factor). And Roach's experience is directly connected to his misconduct: it is precisely because of his experience in specialized areas of law that he should have known the danger of undertaking representation outside his area of expertise. Roach's experience in the practice of law is an aggravating factor in his misconduct, and the referee clearly erred by finding no aggravating factors.

Roach argues that the referee should have found mitigating factors because his actions did not cause any harm to his clients and because he cooperated with the Director's investigation. Lack of harm to a client's interest previously was considered as a separate mitigating factor. *See, e.g.*, *In re Glasser*, 831 N.W.2d 644, 649 (Minn. 2013). But we have since clarified that "lack of harm to clients should not be considered a separate mitigating factor because we have already considered any harm to clients when assessing the harm that the attorney's misconduct caused the public and the legal profession." *In re Tigue*, 900 N.W.2d 424, 433 (Minn. 2017). And "cooperation with the Director is a requirement and therefore cooperation with the Director does not qualify as a mitigating factor." *In re Mayne*, 783 N.W.2d 153, 162 (Minn. 2010). Neither lack of harm nor cooperation with the Director are valid mitigating factors.

Roach also argues that he is entitled to mitigation because he lacked an improper or selfish motive. A lack of dishonest or selfish motive can serve as a mitigating factor. *See Fairbairn*, 802 N.W.2d at 747; *see also ABA Standards for Imposing Lawyer Sanctions* § 9.32 (1991). But the referee found that Roach failed to inform his client about the tax consequences of the settlement even after the client raised the issue. Instead, Roach continued to affirmatively claim that the settlement would be tax deductible. And at the December 2, 2016, meeting, in response to a specific question regarding the issue, Roach once again affirmed that the payment would be tax deductible. But Roach clearly attempted to hedge, saying that he was not a tax advisor and that the question was ultimately up to the IRS. This behavior supports a finding that the misconduct was

motivated by a desire to hide any mistakes from the client. It was not clearly erroneous for the referee to find that Roach was not entitled to mitigation.

F.

Finally, we consider discipline imposed in similar cases to ensure that our decision is consistent with prior sanctions. *Fett* concerned an attorney who advised a client to take a course of action that was directly contrary to Minnesota's power of attorney statute. 790 N.W.2d at 843–45. The attorney violated Minn. R. Prof. Conduct 1.1 by providing incorrect advice and Minn. R. Prof. Conduct 1.4(b) by failing to adequately justify or explain that advice. *Fett*, 790 N.W.2d at 848–49. We imposed a public reprimand and 1 year of unsupervised probation. *Id.* at 852. Roach committed similar misconduct by providing incorrect legal advice and failing to adequately communicate with his client in violation of rules 1.1 and 1.4(b). Roach, however, committed additional misconduct by charging a higher rate that his client agreed to and threatening to withhold client files. Further, although in *Fett* the misconduct was aggravated by the attorney's prior disciplinary history—a factor not found here—the referee also found two mitigating factors that are not present here, lack of harm to the client and lack of improper motive. *Id.* at 851–52.

In light of these facts and because the referee's recommendation is within the range of proper discipline, we conclude that the appropriate discipline for Roach is a public reprimand and supervised probation for 2 years.

Accordingly, we order that:

1. Respondent Joseph Daniel Roach is publicly reprimanded.

2. Respondent shall pay $900 in costs, *see* Rule 24, RLPR.

3. Respondent shall be subject to supervised probation for 2 years. During the period of probation, respondent shall be subject to the following conditions:

a. Respondent shall cooperate fully with the Director's Office in its efforts to monitor compliance with this probation. Respondent shall promptly respond to the Director's correspondence by its due date. Respondent shall provide the Director with a current mailing address and shall immediately notify the Director of any change of address. Respondent 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, respondent shall provide authorization for release of information and documentation to verify compliance with the terms of this probation.

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

c. Respondent shall be supervised by a licensed Minnesota attorney, appointed by the Director to monitor compliance with the terms of this probation. Within 2 weeks of the date of filing of this opinion, respondent shall provide the Director with the names of four attorneys who have agreed to be nominated as respondent's supervisor. If, after diligent effort, respondent is unable to locate a supervisor acceptable to the Director, the Director will seek to appoint a supervisor. Until a supervisor has signed a consent to supervise, respondent shall on the first day of each month provide the Director with an inventory of active client files described in paragraph d. below. Respondent shall make active client files available to the Director upon request.

d. Respondent shall cooperate fully with the supervisor's efforts to monitor compliance with this probation. Respondent shall contact the supervisor and schedule a minimum of one in-person meeting per calendar quarter. Respondent shall submit to the supervisor an inventory of all active client files by the first day of each month during probation. With respect to each active file, the inventory shall disclose the client name, type of representation, date opened, most recent activity, next anticipated action, and anticipated closing date. Respondent's supervisor shall file written reports with the Director at least quarterly, or at such more frequent intervals as may reasonably be requested by the Director.

So ordered.