

STATE OF MINNESOTA

IN SUPREME COURT

A21-0754

Original Jurisdiction

Per Curiam
Concurring, Thissen, J.

In re Petition for Disciplinary Action
against Ignatius Chukwuemeka Udeani,
a Minnesota Attorney,
Registration No. 0300615

Filed: January 25, 2023
Office of Appellate Courts

Susan M. Humiston, Director, Jennifer D. Peterson, Senior Assistant Director, Office of
Lawyers Professional Responsibility, Saint Paul, Minnesota, for petitioner.

Ignatius Chukwuemeka Udeani, Minneapolis, Minnesota, pro se.

S Y L L A B U S

Disbarment is the appropriate discipline for an attorney with a significant disciplinary history who engaged in serious and prolonged misconduct across multiple matters that harmed vulnerable clients and who failed to cooperate with the Director's investigations.

Disbarred.

OPINION

PER CURIAM.

The Director of the Office of Lawyers Professional Responsibility filed a petition for disciplinary action against respondent Ignatius Chukwuemeka Udeani. The petition alleged that Udeani breached his ethical duties to five clients, three of whom were vulnerable immigrants, including by misappropriating client funds and providing incompetent representation, and then did not cooperate with the Director's investigations into those activities. After a hearing, the referee concluded that Udeani committed the alleged misconduct and that multiple aggravating factors were present, including Udeani's extensive experience as a lawyer, long discipline history, lack of remorse, and the vulnerable nature of his clients who were harmed. The referee found no mitigating factors. The referee recommended that Udeani be disbarred. We agree. Based on Udeani's misconduct, we disbar Udeani from the practice of law.

FACTS

Udeani was admitted to practice law in Minnesota in 2000. He has an extensive disciplinary history: he was put on private probation in 2007; admonished in 2012 and 2013; suspended for 30 days in 2017 and, when reinstated, placed on supervised probation for a period of 2 years; indefinitely suspended for a minimum of 3 years in 2020; and admonished four more times in 2020. This prior discipline was for multiple instances of misconduct concerning Udeani's fee arrangements with clients, trust accounts, and failure to competently and diligently represent clients.

The Director filed this petition for disciplinary action against Udeani on June 15, 2021, alleging misconduct consisting of nine separate rule violations and involving five clients. The Director alleged, and the referee concluded, that Udeani committed misconduct in numerous ways. He failed to return unearned fees to two clients, and for one of those clients, the referee concluded that the failure was misappropriation. Udeani committed additional financial misconduct by failing to get receipts for cash payments countersigned by a third client. He created costly and time-consuming delays by not acting with diligence and promptness for one client. He failed to represent three clients competently in immigration-related matters. And for one of those three clients, he did not promptly reply to the client's reasonable requests for information. Finally, he failed to cooperate with the Director's investigation into seven complaints.

Following a hearing on the petition—for which Udeani failed to appear¹—the referee concluded that Udeani's actions and failures to act violated Minn. R. Prof. Conduct

¹ Udeani's only appearance before the referee was for a telephonic scheduling conference held 6 months before trial. Following the referee's findings, Udeani did not file a brief with the court, nor did he appear for oral argument.

1.1,² 1.3,³ 1.4(a)(3)⁴ and (a)(4),⁵ 1.15(c)(4),⁶ 1.15(h),⁷ 1.16(d),⁸ 8.1(b),⁹ and 8.4(c).¹⁰ The referee hearing in this matter was held while Udeani was suspended for other misconduct.

² Rule 1.1 states: “A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation.”

³ Rule 1.3 states: “A lawyer shall act with reasonable diligence and promptness in representing a client.”

⁴ Rule 1.4(a)(3) states: “A lawyer shall . . . keep the client reasonably informed about the status of the matter.”

⁵ Rule 1.4(a)(4) states: “A lawyer shall . . . promptly comply with reasonable requests for information.”

⁶ Rule 1.15(c)(4) states: “A lawyer shall . . . promptly pay or deliver to the client or third person as requested the funds, securities, or other properties in the possession of the lawyer which the client or third person is entitled to receive.”

⁷ Rule 1.15(h) states in relevant part: “Every lawyer engaged in private practice of law shall maintain or cause to be maintained on a current basis, books and records sufficient to demonstrate income derived from, and expenses related to, the lawyer’s private practice of law, and to establish compliance with paragraphs (a) through (f).”

⁸ Rule 1.16(d) states: “Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client’s interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled, and refunding any advance payment of fees or expenses that has not been earned or incurred.”

⁹ Rule 8.1(b) states in relevant part: “An applicant for admission to the bar, or a lawyer in connection with a bar admission application or in connection with a disciplinary matter, shall not . . . knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this rule does not require disclosure of information otherwise protected by Rule 1.6.”

¹⁰ Rule 8.4(c) states: “It is professional misconduct for a lawyer to . . . engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.”

In re Udeani (Udeani I), 945 N.W.2d 389, 399 (Minn. 2020) (imposing indefinite suspension with no right to petition for reinstatement for three years). In *Udeani I*, the referee and the Director recommended that we suspend Udeani for the misconduct at issue there. *Id.* at 396. In this matter, the referee recommended that we disbar Udeani, and the Director agrees with that recommendation.

ANALYSIS

The only issue before us is the appropriate discipline for Udeani. In considering this issue, the referee's findings of fact and conclusions of law are deemed conclusive because neither party ordered a transcript of the proceedings. Rule 14(e), Rules on Lawyers Professional Responsibility (RLPR); *In re Fru*, 829 N.W.2d 379, 387 (Minn. 2013). The purpose of attorney discipline is "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 Rebeau*, 787 N.W.2d 169, 173 (Minn. 2010). In determining the appropriate discipline for an attorney, we consider four factors: "(1) the nature of the misconduct; (2) the cumulative weight of the disciplinary violations; (3) the harm to the public; and (4) the harm to the legal profession." *In re Nelson*, 733 N.W.2d 458, 463 (Minn. 2007). We also consider aggravating or mitigating circumstances in determining the discipline to impose. *Fru*, 829 N.W.2d at 388. We address each of these in turn.

First, the nature of Udeani’s misconduct is serious; it includes failure to return unearned fees—which the referee concluded was misappropriation in one instance¹¹—lack of diligence, lack of competence, failure to communicate, and failure to cooperate with the Director’s investigations. “Misappropriation of client funds alone is particularly serious misconduct and usually warrants disbarment absent clear and convincing evidence of substantial mitigating factors.” *In re Sayaovong*, 909 N.W.2d 575, 581–82 (Minn. 2018) (citation omitted) (internal quotation marks omitted). Failure to return unearned fees is another form of financial misconduct and also constitutes “serious misconduct” because, “from the clients’ perspectives, they [are] deprived of the use of their funds without any explanation.” *In re Taplin*, 837 N.W.2d 306, 312 (Minn. 2013). Udeani’s misconduct also placed two clients at risk of deportation—one for several months and the other for a period of years. We have issued serious discipline—including disbarment—for actions that place immigration clients at risk of deportation. *See In re Kaszynski*, 620 N.W.2d 708, 711, 713-14 (Minn. 2001). In addition, Udeani failed to cooperate with the Director’s investigation into seven disciplinary complaints filed against him. We have explained that “failure to cooperate with a disciplinary investigation, in and of itself, constitutes an act of misconduct that warrants indefinite suspension.” *In re Brooks*, 696 N.W.2d 84, 88 (Minn. 2005). And finally, we view “other disciplinary rule violations” more severely when paired

¹¹ Our case law supports the referee’s determination that the failure to return unearned fees to the clients was misappropriation, *see, e.g., In re Lundeen*, 811 N.W.2d 602, 608 (Minn. 2012)—a determination that was not challenged here. But the failure to return client funds is not always misappropriation. For example, in *Udeani I*, the referee did not conclude that the failure to return the client funds at issue was misappropriation. *See Udeani I*, 945 N.W.2d at 397.

with “serious client neglect and incompetence,” *Fru*, 829 N.W.2d at 389, and “have disbarred attorneys in cases involving serious client neglect,” *In re Fahrenholtz*, 896 N.W.2d 845, 848 (Minn. 2017). Udeani acted incompetently and neglectfully with respect to three clients, and this—paired with his failure to cooperate, failure to return unearned fees, failure to get cash receipts countersigned, and failure to communicate—is serious misconduct. In short, the nature of Udeani’s misconduct weighs toward serious discipline.

Next, we consider “the cumulative weight of all of the professional misconduct in determining the appropriate sanction.” *In re Rhodes*, 740 N.W.2d 574, 580 (Minn. 2007). Even if “a single act standing alone would not have warranted such discipline,” we recognize that “the cumulative weight and severity of multiple disciplinary rule violations may compel severe discipline.” *In re Oberhauser*, 679 N.W.2d 153, 160 (Minn. 2004). Udeani’s misconduct here, like the misconduct that previously gave rise to his indefinite suspension, was not a “brief lapse in judgment or a single, isolated incident.” *Udeani I*, 945 N.W.2d at 397. Rather, there are “multiple instances of misconduct occurring over a substantial amount of time.” *Id.* Indeed, his ethical violations in this case were committed over 9 years and against multiple clients. This factor also weighs toward serious discipline.

We also measure harm to the public based on the quantity (“ ‘the number of clients harmed’ ”) and quality (“ ‘the extent of the clients’ injuries’ ”) of the harm. *In re Coleman*, 793 N.W.2d 296, 308 (Minn. 2011) (quoting *In re Randall*, 562 N.W.2d 679, 683 (Minn. 1997)). Udeani caused widespread harm here. His misconduct injured five clients and their families. Similarly, the extent of the clients’ injuries is extensive. Two clients were

placed at risk of deportation—a “most perilous fate.” *In re Muenchrath*, 588 N.W.2d 497, 501 (Minn. 1999). The amount of money that Udeani failed to return was a substantial amount to one of his clients. Indeed, four clients faced financial hardship because of Udeani’s misconduct—one of those clients was forced to move back in with parents, and others struggled to support their families. This factor weighs toward serious discipline.

Finally, we consider the harm to the legal profession. In addition to the harm Udeani caused his clients directly, much of his misconduct also undermined the reputation of and public confidence in the legal profession. In the immigration context, neglect and misconduct that threatens a client’s immigration status undermines the “public’s trust in the competence, diligence, and integrity of lawyers.” *Fru*, 829 N.W.2d at 390. That is precisely what occurred here. Udeani’s misconduct threatened the legal status of two clients. The referee found that Udeani’s conduct left one of those clients “skeptical of lawyers” and the other “skeptical and afraid to trust attorneys.” A third client from whom Udeani misappropriated funds felt “scammed” and “los[t] trust in lawyers.” This factor also points toward serious discipline.

In addition to the four factors discussed above, we also consider aggravating or mitigating circumstances in determining the discipline to impose. *Id.* at 388. The referee found that no mitigating factors and five aggravating factors apply to Udeani’s misconduct. The aggravating factors are Udeani’s: (1) failure to cooperate after the Director served the petition for discipline;¹² (2) failure to acknowledge the wrongfulness of his misconduct or

¹² Failing to cooperate can be either an independent ground for discipline or an aggravating factor, depending on when in the proceeding it occurred, but the same conduct

show remorse; (3) harm to vulnerable immigrant clients; (4) substantial experience in the practice of law having been licensed since 2000; and (5) history of prior, similar misconduct. Our case law recognizes all of these factors as aggravating factors.¹³

Although each of these aggravating factors is significant, we take particular note of Udeani’s disciplinary history, which is extensive and involves misconduct similar to his current misconduct. *See In re MacDonald*, 962 N.W.2d 451, 467 (Minn. 2021) (giving “serious weight” to disciplinary history that “involved the same type of misconduct”). Udeani was placed on private probation in 2007, based in part on his failure “to competently and diligently represent a client in an immigration matter.” His admonishments in 2012 and 2013 were based on misconduct that included missing a hearing and not depositing funds into a client’s trust account. We suspended him for 30 days in 2017 based, in part, on failing to handle client matters diligently. Finally, the 2020 suspension was for wide ranging misconduct, addressed in 16 counts, including refusing to refund unearned fees, failing to act competently and with diligence, and failure

cannot be both. *Taplin*, 837 N.W.2d at 313. Here, the referee properly accounted for Udeani’s noncooperation. His noncooperation before the petition was filed was an act of misconduct, as alleged in count five of the petition. The aggravating factor does not include that noncooperation but is instead limited to Udeani’s noncooperation after the petition was filed. Specifically, after attending a telephonic scheduling conference with the referee, Udeani has taken no further part in the proceedings.

¹³ *See Taplin*, 837 N.W.2d at 313 (recognizing failure to cooperate as an aggravating factor); *In re Severson*, 860 N.W.2d 658, 670 (Minn. 2015) (recognizing lack of remorse as an aggravating factor); *Kaszynski*, 620 N.W.2d at 712–13 (recognizing both vulnerability of clients—particularly including immigration clients who were dependent on their attorney in legal proceedings—and substantial experience in the practice of law as aggravating factors); *Rhodes*, 740 N.W.2d at 580 (recognizing prior history of misconduct as an aggravating factor).

to cooperate with the Director's investigations.¹⁴ See *Udeani I*, 945 N.W.2d at 401. Overall, Udeani's previous discipline was for similar misconduct and harm to vulnerable victims. These factors aggravate Udeani's misconduct in this case.

In sum, Udeani failed to return unearned client funds, failed to get countersigned cash receipts, failed to act competently and diligently on behalf of his clients, failed to properly communicate with them, and failed to cooperate with the Director's investigations. His actions caused extensive harm to several clients and their families and damaged the legal profession. When the weight of these violations is combined and considered in light of Udeani's prior professional discipline for similar misconduct, the other aggravating factors found by the referee, and the lack of mitigating factors, we hold that the appropriate discipline in this case is disbarment.

CONCLUSION

For the foregoing reasons, respondent Ignatius Chukwuemeka Udeani is disbarred from the practice of law in the State of Minnesota, effective on the date of this opinion. Respondent shall comply with Rule 26, RLPR (requiring notice to clients, opposing counsel, and tribunals), and shall pay \$900 in costs under Rule 24(a), RLPR.

¹⁴ Much of Udeani's misconduct in this case happened at the same time as the misconduct for which we suspended and admonished him in 2020. It was largely because of Udeani's noncooperation that the Director had to proceed separately with the misconduct committed here from that at issue in *Udeani I*.

CONCURRENCE

THISSEN, Justice (concurring).

I agree that Ignatius Chukwuemeka Udeani should be disbarred. I write separately to note my continued concern with the practice of relying on noncooperation with the disciplinary proceedings (which is an independent rule violation) as an aggravating factor. *See In re Nelson*, 933 N.W.2d 73, 75–77 (Minn. 2019) (Thissen, J., concurring). I suggest that the Lawyers Professional Responsibility Board review the question of whether the recent practice of bringing in noncooperation with disciplinary proceedings through the back door of aggravating circumstances is appropriate and whether the rules should be clarified on that issue.