STATE OF MINNESOTA

IN SUPREME COURT

A22-1548

In re Petition for Disciplinary Action Against
Mitchell J. Ask, a Minnesota Attorney,
Registration No. 0290634.

O R D E R

The Director of the Office of Lawyers Professional Responsibility has filed a petition for disciplinary action alleging that respondent Mitchell J. Ask committed professional misconduct warranting public discipline—namely, commission of felony driving while impaired (DWI). *See* Minn. R. Prof. Conduct 8.4(b). Respondent was convicted of this offense, and on February 26, 2021, he received a 36-month, stayed sentence and was placed on probation for 7 years.[1] Respondent's criminal probation was transferred from Stearns County Community Corrections to Hennepin County Community Corrections, in *State of Minnesota v. Mitchell John Ask*, Court File No. 73-CR-20-5339. If respondent is not discharged early from his criminal probation, it will expire on February 22, 2028.

[1] As of the date of this order, respondent has been on his criminal probation for over 2 years. The terms of that probation require respondent to abstain from using alcohol and other mood-altering substances and include conditions to support respondent's sobriety. There is no evidence before us suggesting that respondent has not been successfully complying with the terms of his criminal probation.

Respondent and the Director have entered into a stipulation for discipline. In it, respondent waives his procedural rights under Rule 14, Rules on Lawyers Professional Responsibility (RLPR), waives his right to answer, and unconditionally admits the allegations in the petition. The parties jointly recommend that the appropriate discipline is a 30-day suspension followed by a period of probation coextensive with respondent's criminal probation.

The court has independently reviewed the file and approves the recommended disposition in part. We agree that respondent should be suspended for a minimum of 30 days. But we modify the recommended terms of respondent's probation. Respondent could be discharged early from his criminal probation. As modified, respondent's disciplinary probation will last for the entire length of time that his criminal probation could last, in other words, until February 22, 2028.

The dissent takes issue with the length of respondent's suspension, claiming he should be suspended for 120 days. A suspension of that length is significantly more serious discipline than we have imposed on lawyers who committed felony DWI. As the dissent notes, we have imposed 6-month, *stayed* suspensions on attorneys for an initial felony DWI conviction. *See In re Davis*, 740 N.W.2d 568, 568 (Minn. 2007) (order); *In re Post*, 686 N.W.2d 529, 529–30 (Minn. 2004) (order). In fact, when one of these attorneys committed his second felony, we imposed a 2-month suspension. *In re Davis*, 799 N.W.2d 602, 603 (Minn. 2011) (order). And more recently, we suspended an attorney for 30 days when his misconduct included being convicted of four gross-misdemeanor DWI offenses

in Minnesota and committing felony-level DWI conduct in Florida.[2] *In re Kootz*, 958 N.W.2d 650, 651 (Minn. 2021) (order).

In addition, we are placing respondent on a lengthy probation. During it, respondent will be required to abstain from the use of alcohol and be subject to several conditions to encourage his sobriety. Respondent could have his license suspended for an additional period if he does not comply with these conditions.

In the end, "[t]he 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.' " *In re Klotz*, 909 N.W.2d 327, 335 (Minn. 2018) (quoting *In re Pitera*, 827 N.W.2d 207, 210 (Minn. 2013)). Given the discipline we have imposed in prior comparable cases, as well as the terms that respondent will be subject to during probation, we conclude that a 30-day suspension, followed by probation until February 22, 2028, will adequately protect the public and the judicial system and deter future misconduct.

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[2] We stated that Kootz was "convicted of multiple DWI offenses." *In re Kootz*, 958 N.W.2d 650, 651 (Minn. 2021) (order). Kootz admitted the facts alleged in the disciplinary petition. *Id.* That petition, in turn, alleged Kootz had three Minnesota gross-misdemeanor DWI convictions and one Minnesota gross-misdemeanor test-refusal conviction. In addition, it alleged that Kootz was charged with felony DWI in Florida for driving with an alcohol concentration over .15 and having three prior DWI convictions in Minnesota. It further stated that the jury determined that the State had not proven Kootz's DWI conviction history beyond a reasonable doubt and instead convicted him of misdemeanor DWI. But Kootz's Minnesota DWI conviction history with respect to his Florida offense was conclusively determined for purposes of his discipline case. *See* Rule 19(a), RLPR (stating that a lawyer's conviction is "conclusive evidence that the lawyer committed the conduct for which the lawyer was convicted"). Thus, when we disciplined Kootz, we viewed the Florida offense to be felony-level misconduct.

Based upon all the files, records, and proceedings herein,

IT IS HEREBY ORDERED THAT:

1. Respondent Mitchell J. Ask is suspended from the practice of law for a minimum of 30 days, effective 14 days from the date of this order.

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

3. Respondent shall pay $900 in costs under Rule 24(a), RLPR.

4. Respondent 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, respondent 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.

5. Upon reinstatement, respondent will be placed on probation until February 22, 2028, upon the following terms and 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 respondent's compliance with the terms of this probation.

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

(c) Respondent shall abide by the terms of probation imposed by Hennepin County Community Corrections in *State of Minnesota v. Mitchell John Ask*, Court File No. 73-CR-20-5339, until he is discharged from that probation. Within 30 days from the filing of the court's order reinstating respondent to the practice of law, respondent shall execute a release of information authorizing his probation agent to communicate with the Director's Office.

(d) If at any point, the terms of criminal probation related to maintaining respondent's sobriety, such as drug testing or Alcoholics Anonymous (AA) attendance, are modified or eliminated, including because respondent had been discharged early from his criminal probation, respondent will notify the Director and comply with any additional terms required by the Director that relate to maintaining respondent's sobriety.

(e) Respondent shall continue the individual therapy programming referenced in the criminal probation and shall comply with all recommendations of the therapist.

(f) Respondent shall maintain total abstinence from alcohol and other mood-altering chemicals, except that respondent may use prescription drugs in accordance with the directions of a prescribing physician who is fully advised of respondent's chemical dependency before issuing the prescription(s).

(g) Respondent shall continue attending weekly meetings of AA or another abstinence-based recovery support group or program acceptable to the Director. Respondent shall, by the tenth day of each month, without a specific reminder or request, submit to the Director an attendance verification on a form provided by the Director, which provides the name, address, and telephone number of the person personally verifying attendance.

(h) If random drug testing is not conducted under the criminal probation, including if respondent is discharged early from his criminal probation, respondent shall, at his own expense, no more than four times per month, submit to random urinalysis for drug screening at a facility approved by the Director and shall direct the drug screening facility to provide the results of all urinalyses to the Director's Office. Respondent shall cooperate with the phone-in program established by the Director for the random test. Any failure to phone-in in accordance with the random test program shall be considered the same as receipt of a positive test result. Any positive test result will be grounds for revoking this probation. Respondent is exempted from random urinalysis conducted for the Director's office during 30-day periods of intensive alcohol monitoring required by the criminal probation.

(i) Respondent shall notify the Director of any arrest, charges, or indictment for any criminal offense, in any jurisdiction, within 10 days of the arrest or issuance of the charges/indictment.

(j) If at any time during the period of probation, after giving respondent an opportunity to be heard by the Director, the Director concludes that respondent has violated the conditions of the probation or engaged in further misconduct, the Director may file a petition for disciplinary action against the respondent in the Minnesota Supreme Court without the necessity of submitting the matter to a Panel or Panel Chair. Respondent waives the right to such consideration by the Panel or Panel Chair.

6. Within 1 year of the date of this order, respondent 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 Minnesota State Board of 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 timely file the required documentation shall result in automatic suspension, as provided in Rule 18(e)(3), RLPR.

Dated: June 5, 2023

BY THE COURT:

Natalie E. Hudson

Natalie E. Hudson
Associate Justice

C O N C U R R E N C E & D I S S E N T

MOORE, III, Justice (concurring in part, dissenting in part).

Today the court approves in part a stipulation for discipline reached between the Director's office and respondent Mitchell J. Ask, which arose from Ask's recent conviction of felony driving while impaired (DWI) in Stearns County. While I concur with the court's modification of the probationary terms imposed upon Ask, I respectfully dissent from the court's approval of the parties' agreement for a 30-day suspension. In my view, Ask's violation of Minn. R. Prof. Cond. 8.4(b) arises from repetitive dangerous criminal behavior—four convictions for DWI within a 10-year period—that reflects adversely on his fitness as an attorney and injures the reputation of the legal profession. Even though such misconduct may well arise from chronic alcohol abuse or addiction, our disciplinary decision must prioritize public protection when repeat DWI offenses are involved. Because Ask's continued indifference to the law and public safety endangers the public and undermines the public's confidence in the legal system and the profession at large, I would suspend Ask for 120 days and require him to petition for reinstatement.

I.

Ask was admitted to the practice of law in Minnesota in 1999. In 2017, he was suspended for 30 days and placed on probation for 2 years for making false statements to a court, false statements within a plea petition, and false statements to a police officer in violation of Minn. R. Prof. Conduct 3.3(a)(1) and 8.4(c) and (d). Between 2012 and 2014, Ask was convicted of three DWI offenses. His fourth DWI prompted this disciplinary proceeding.

On the morning of August 13, 2020, a Paynesville police officer stopped Ask's vehicle after receiving a driving complaint that described the vehicle traveling in the wrong lane and over the fog line on Highway 55. After approaching the car, the officer noticed that Ask, the driver, had bloodshot, watery eyes and smelled of alcohol. Ask submitted to a breath test, which revealed an alcohol concentration of .28. During the traffic stop, the officer also observed an uncased handgun and a bag of ammunition and magazines sitting on the passenger seat in Ask's vehicle. Ask did not have a permit to carry a handgun.

Ask was arrested and charged with two counts of felony first-degree DWI and carrying a pistol in a public place without a permit.[1] On December 18, 2020, Ask pleaded guilty in Stearns County District Court to one felony count of operating a motor vehicle with an alcohol concentration of .08 or more within 2 hours, and the other two charges were dismissed. The district court convicted Ask of first-degree DWI, imposed a stayed, 36-month prison sentence, and placed Ask on probation for 7 years.

On November 1, 2022, the Director of the Office of Lawyers Professional Responsibility filed a petition for disciplinary action, alleging that Ask had violated Minn. R. Prof. Conduct 8.4(b) by committing the felony DWI offense. Ask admitted to committing professional misconduct and entered into a stipulation with the Director. In this stipulation, the parties jointly recommend that the appropriate discipline for Ask's conduct is a 30-day suspension from the practice of law followed by a period of probation coextensive with his criminal probation. While the court has modified the recommended

[1] Minn. Stat. §§ 169A.20, subd. 1(1), 169A.20, subd. 1(5), 624.714, subd. 1a (2022).

terms of Ask's disciplinary probation to ensure that it will last for the entire length of time his criminal probation could last, it leaves in place the recommended 30-day suspension—a term that, in my view, insufficiently addresses Ask's concerning misconduct.

II.

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 Albrecht*, 779 N.W.2d 530, 540 (Minn. 2010) (citation omitted) (internal quotation marks omitted). To determine the appropriate sanction, we are guided by 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." *In re Moulton*, 945 N.W.2d 401, 408 (Minn. 2020). We also consider aggravating and mitigating circumstances specific to the case.[2] *Id.* Ultimately, while "we may consider similar cases," the discipline we impose "is tailored to the specific facts of each case." *In re MacDonald*, 962 N.W.2d 451, 466 (Minn. 2021).

Minnesota Rule of Professional Conduct 8.4(b) states that it is professional misconduct for a lawyer to "commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects." While lawyers are

[2] Alcoholism can be a mitigating factor if the attorney proves by clear and convincing evidence that (1) they are affected by alcoholism, (2) the alcoholism caused the misconduct, (3) they are recovering from alcoholism, (4) the recovery has arrested the misconduct, and (5) the misconduct is not apt to recur. *In re Anderley*, 481 N.W.2d 366, 370 (Minn. 1992). While chemical dependency is not a defense to misconduct, if it meets the *Anderley* test, it may lighten the discipline. *In re Getty*, 518 N.W.2d 18, 21 (Minn. 1994). Because this case comes to us on a stipulation, we do not have any information about possible mitigation based on chemical dependency.

"personally answerable to the entire criminal law," they are "professionally answerable only for offenses that indicate lack of those characteristics relevant to the practice of law." *Id.*, cmt 2. But "[a] pattern of repeated offenses, even ones of minor significance when considered separately, can indicate indifference to legal obligation." *Id.*

"We view felony convictions as serious misconduct, and we have disbarred lawyers convicted of a felony absent significant mitigating factors." *In re Perez*, 688 N.W.2d 562, 567 (Minn. 2004). We do not automatically disbar attorneys convicted of felonies, but rather "consider the circumstances surrounding the criminal act to determine if any discipline short of disbarment is appropriate." *In re Strunk*, 945 N.W.2d 379, 387 (Minn. 2020). Our inquiry on this issue is "fact intensive, and considers numerous factors, including the nature of the criminal conduct, whether the felony was directly related to the practice of law, and whether the crime would seriously diminish public confidence in the profession." *Id.* Each case involving a felony conviction must be "analyzed in light of the purposes of an attorney disciplinary proceeding—'to protect the public and the court and to serve as a deterrent against future misconduct.' " *In re Daffer*, 344 N.W.2d 382, 385 (Minn. 1984) (quoting *In re Weyhrich*, 399 N.W.2d 274, 279 (Minn. 1983)). "To evaluate the severity of a felony offense, we may consider the severity ranking assigned under the Minnesota Sentencing Guidelines." *Strunk*, 945 N.W.2d at 385. We have ordered lesser sanctions than disbarment where the criminal conduct was not directly related to the practice of law and where there were substantial mitigating circumstances. *In re Ginsberg,* 690 N.W.2d 539, 555–56 (Minn. 2004); *Daffer*, 344 N.W.2d at 385.

We have previously disciplined only two lawyers for violating Rule 8.4(b) based on felony DWI convictions in Minnesota, and in each case—notwithstanding the "presumptive sanction" referenced in our precedent for attorneys convicted of felony crimes[3]—we approved without comment recommended or stipulated penalties far less serious than disbarment. *See In re Davis*, 740 N.W.2d 568, 568 (Minn. 2007) (order) (approving a joint stipulation and imposing a stayed 6-month suspension for felony-level DWI); *In re Davis*, 799 N.W.2d 602, 603 (Minn. 2011) (order) (revoking the stay of Davis's disciplinary probation from the 2007 order and imposing a 2-month suspension for a second felony-level DWI committed while still on probation from the first); *In re Post*, 686 N.W.2d 529, 529–30 (Minn. 2004) (order) (approving a joint stipulation and imposing a stayed 6-month suspension for felony-level DWI). We have also suspended lawyers for committing misdemeanor DWI, along with other misconduct.[4]

Generally, we "give some deference to the Director's decision to enter into a stipulation for discipline." *In re Olson*, 872 N.W.2d 862, 864 (Minn. 2015). Nevertheless, "[w]e are the sole arbiter of the discipline to be imposed for professional misconduct

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[3] *See Strunk*, 945 N.W.2d at 387.

[4] *See In re Kootz*, 958 N.W.2d 650, 651 (Minn. 2021) (order); *In re Nipper*, 825 N.W.2d 119, 119 (Minn. 2013). As the court notes, Kootz's misconduct involved felony-level DWI conduct in Florida which did not result in a felony DWI *conviction*. Kootz had previously been convicted of four misdemeanor DWI offenses in Minnesota, including three instances in which he drove with an alcohol concentration above .08. After he was convicted of misdemeanor DWI in Florida, the Florida Supreme Court disbarred Kootz for that new conviction and his failure to report his Minnesota convictions to the Florida Bar Counsel. In contrast, after Kootz failed to report his Florida disbarment and we learned of his fourth DWI conviction, we approved a joint stipulation and imposed a 30-day suspension. *Kootz*, 958 N.W.2d at 651.

by Minnesota lawyers." *In re Stoneburner*, 882 N.W.2d 200, 206 (Minn. 2016) (citation omitted) (internal quotation marks omitted). Deference to a stipulation is inappropriate when "the parties' recommended disposition is insufficient to protect the public and the judicial system and to deter future misconduct." *In re Olson*, 872 N.W.2d at 864. The Director's decision in this case is presumably based upon the orders approved in the *Davis* and *Post* cases cited above. However, I believe this is a case where protection of the public demands that we depart from the stipulation and establish a different approach to attorney discipline cases involving felony DWIs.

In evaluating the proper discipline for an attorney's criminal convictions that violate Rule 8.4(b), we cannot ignore important public policy questions raised by the misconduct. The point is not to enforce criminal laws through attorney discipline proceedings, but rather to understand the effect of the attorney's misconduct related to the criminal convictions on the public. In that context, over the past 22 years, Minnesota's DWI laws have prioritized two serious public safety concerns: drivers with high alcohol concentrations and repeat offenders. In 2001, the Legislature established felony-level penalties for individuals who commit a fourth DWI in 10 years or commit more than one felony DWI.[5] A felony DWI is ranked as having a severity level 7 by the Minnesota Sentencing Guidelines, and a conviction for felony DWI requires the district court to impose certain mandatory penalties. Minn. Sent. Guidelines 4.A. (sentencing guidelines grid); Minn. Stat. §§ 169A.275, subds. 4–5, 169A.276 (2022). In 2015, the Legislature amended the definition of "aggravating

[5] Act of June 30, 2001, ch. 8, art. 11, § 3, 2001 Minn. Laws 1st Spec. Sess. 1943, 2112 (codified as amended at Minn. Stat. § 169A.24, subd. 1(1)–(2) (2022)).

factor" in Minn. Stat. § 169A.03, subd. 3 (2022), to include "having an alcohol concentration of 0.16 or more as measured at the time, or within two hours of the time, of the offense."[6] This amendment lowered the prior aggravating factor threshold of .20. The presence of this aggravating factor automatically enhances a DWI to a gross misdemeanor offense. *See* Minn. Stat. § 169A.26 (2022). These changes demonstrate the Legislature's increased concern toward impaired driving, even at lower levels of intoxication, and people who repeatedly drive while impaired.

These concerns are not without merit, as drinking and driving remains a serious—and dangerous—problem in Minnesota. In particular, the dangers created by drivers impaired by alcohol, especially those with high alcohol concentrations, remain prevalent. For example, in 2021, 15 percent of the 488 people who died on Minnesota roads were killed in incidents that involved a driver with an alcohol concentration of .08 or greater. *See* Off. Traffic Safety, Minn. Dep't Pub. Safety, *Minnesota Motor Vehicle Crash Facts* 31 (2021). The average alcohol concentration for a driver involved in a fatal alcohol-related crash was .17—nearly double the per se limit. *Id.* at 30. These statistics demonstrate the real danger that DWI offenders pose to public safety in our state.

At the same time, we have also become aware of the prevalence of alcoholism in the legal profession, thanks to a study of 12,825 licensed attorneys funded by the Hazelden Betty Ford Foundation and the American Bar Association Commission on Lawyer Assistance Programs. *See* Patrick R. Krill, Ryan Johnson & Linda Albert, *The Prevalence*

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[6] Act of May 22, 2015, ch. 65, art. 6, § 5, 2015 Minn. Laws 1, 48 (codified as amended at Minn. Stat. § 169A.03, subd. 3 (2022)).

of Substance Use and Other Mental Health Concerns Among American Attorneys, J. Addiction Med., Volume 10, Number 1, 46, 46 (January/February 2016). One of the chief findings of this study was that 20.6 percent of respondents met criteria for "hazardous, harmful, and potentially alcohol-dependent drinking." *Id.* at 46, 49. The authors of the article noted that "the consequences of attorney impairment . . . [are] profound and far-reaching." *Id.* at 46. "As a licensed profession that influences all aspects of society, economy, and government, levels of impairment among attorneys are of great importance and should therefore be closely evaluated." *Id.*

In light of the public policy concerns underlying the Minnesota DWI laws relevant to this case—public safety concerns about drivers with high alcohol concentrations and repeat offenders—and our heightened awareness of and concerns about the prevalence of alcohol abuse and associated well-being with lawyers, I believe our past felony DWI-related discipline cases should not control the sanctions we impose today. As we recently noted in *Strunk*, "[a] conviction for a felony-level offense harms the legal profession by undermining the public's confidence in the ability of attorneys to abide by the rule of law." 945 N.W.2d at 386. We require attorneys being admitted to the bar to be "honest and candid, use good judgment, conduct oneself with respect for and in accordance with the law, and avoid acts that exhibit disregard for the rights or welfare of others." *Id.* An attorney convicted of a fourth DWI has caused serious harm to the public and profession—a harm that our past felony DWI cases did not discuss. Those cases are more than 10 years old, involved stipulated discipline, and did not include information about the attorneys' alcohol concentration at the time of their DWI offenses. *See In re Post*, 686 N.W.2d at

529–30; *In re Davis*, 740 N.W.2d at 568; *In re Davis*, 799 N.W.2d at 602–03. In short, these cases do not reflect the need for accountability for repeat DWI offenses, and the court does neither attorneys nor the public any favors by failing to recognize that felony DWI convictions require a more serious response.

While not binding on us, it is notable that other states have taken different approaches to attorney discipline for repeat or felony DWI offenses under ethics rules similar to Rule 8.4(b), including much more stringent penalties than our court has imposed in the past and chooses to impose today.[7] In imposing discipline for attorneys who incur repeat DWI offenses, other state supreme courts have noted that repeated incidents of driving under the influence evidence "a substantial disrespect for the law." *In re McDonough*, 77 P.3d 306, 308, 310, 313 (Or. 2003) (imposing an 18-month suspension after multiple misdemeanor driving-while-intoxicated offenses); *see also In re Horsch*, 905 N.W.2d 129, 134 (Wis. 2017) (imposing a 60-day suspension and noting that the attorney's "four drunk driving convictions evince an irresponsible attitude toward the law."). This type of disregard for the law is significant because it undermines public confidence in the profession as a whole. More pointedly, as the Indiana Supreme Court noted, "[t]he image of a drunken lawyer driving down the highway . . . does little to serve

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[7] *See, e.g.*, *In re Stewart*, 342 S.W.3d 307, 311–13 (Mo. 2011) (suspending an attorney indefinitely after the attorney's fourth DWI conviction); *In re Laskowski*, 147 P.3d 135, 136, 138 (Kan. 2006) (suspending an attorney indefinitely after conviction of a felony driving-while-intoxicated offense); *In re Keith*, No. 73314, 2017 WL 6372464, at *1–2 (Nev. Dec. 11, 2017) (suspending an attorney for 3 years after the attorney was convicted of a misdemeanor driving-while-impaired offense after having been previously disciplined for a similar felony offense).

the profession." *In re Coleman*, 569 N.E.2d 631, 634 (Ind. 1991) (suspending a lawyer for 3 years based on a pattern of DWI offenses and the unauthorized use of a client's money).

The facts of this alarming case likewise warrant a more stringent response than the court may have tolerated in the past when called upon to discipline attorneys who commit felony DWI offenses. Law enforcement's attention was drawn to Ask due to a citizen complaint of his vehicle traveling in the wrong lane of the roadway and over the fog line. When he was tested after being stopped, Ask had an alcohol concentration of .28 percent—more than three times the .08 DWI threshold—with an uncased gun in the passenger seat of his vehicle. These facts represent a particular danger to the public that the court should heed and address. *See People v. Miller*, 409 P.3d 667, 677 (Colo. O.P.D.J. 2017) (disciplining an attorney after a drunk driving incident in which the attorney's alcohol concentration was .254, noting that the attorney's "decision to drive while intoxicated posed a risk of significant harm to the public"); *In re McMaster*, 795 S.E.2d 853, 854–56 (S.C. 2017) (suspending an attorney for 30 months following convictions for driving under the influence and unlawful carrying of a pistol).

In considering the issue of discipline in this case, the fact that no injury or property damage occurred as a result of Ask's felony DWI cannot be viewed as a mitigating factor. *See In re Stewart*, 342 S.W.3d 307, 310 (Mo. 2011) ("The full measure of the injury caused by [the attorney's repeated incidents of drunk driving] cannot be captured by the fact that, mercifully, he avoided causing any injury or property damage."). It is relevant, however, that Ask was previously disciplined for 30 days. *See In re Quinn*, 946 N.W.2d 583, 592 (Minn. 2020) (noting that prior disciplinary history is an aggravating factor). "[A]fter

being disciplined, an attorney is expected to show a 'renewed commitment' to ethical behavior." *In re Coleman*, 793 N.W.2d 296, 308 (Minn. 2011). By committing felony DWI after his prior suspension, Ask has failed to demonstrate such a renewed commitment to our ethical rules.

Instead, his continued violation of the law reflects a possible serious and ongoing chemical dependency problem.[8] The court's decision to place Ask on probation for a fixed period of time on stated conditions that do not depend exclusively on his criminal probation continuing without early discharge is reasonable. However, given the gravity of the misconduct in this case, I would go a step further and would require Ask to petition for reinstatement after his suspension and account for the steps he has taken to change and to ensure his continued sobriety. As part of the reinstatement process, Ask should be required to demonstrate, at a minimum: (1) completion of all appropriate rehabilitative treatment and aftercare, (2) evidence of continued maintenance of sobriety since his last DWI, (3) compliance with all court-ordered probation components, including random testing, and (4) his plan to change behavior in an effort to ensure future sobriety.

In short, Ask's violation of Minn. R. Prof. Cond. 8.4(b) arises from extremely dangerous conduct that reflects adversely on his fitness as an attorney and injures the reputation of the legal profession. Ask's continued disregard for the law and public safety, even if the product of addiction, undermines the public's confidence in the legal system and the profession at large, and the period of his suspension should reflect these

[8] The record provided to the court in this stipulated discipline case does not include details of Ask's past chemical use assessments or chemical dependency experience.

consequences of his behavior. A 120-day suspension with a requirement that Ask petition for reinstatement would better hold him accountable for his misconduct and protect the public. Accordingly, I respectfully dissent.

McKEIG, Justice (concurring in part and dissenting in part).

I join in the concurrence in part and dissent in part of Justice Moore.