

SUPREME COURT OF WISCONSIN  
OFFICE OF LAWYER REGULATION

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Public Reprimand With Consent

2013-OLR- 9

Mark R. Mullen  
Attorney at Law

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The Respondent, Attorney Mark R. Mullen (“Mullen”), age 39, was admitted to the practice of law in Wisconsin on September 28, 2001 and practices in Chippewa Falls, Wisconsin. Mullen is the managing attorney at his firm.

On November 15, 2012, the Director of the Assigned Counsel Division (“Director”) of the Office of the State Public Defender (“SPD”) filed a grievance against Mullen with OLR.

In the grievance, the Director stated, “The ACD division is responsible for appointing private lawyers to take public defender cases and for auditing and paying those bills. In the course of auditing, as explained below, I have received information that leads me to believe that the Mullen Law Group is stealing from the State Public Defender Agency.”

In the grievance, the Director stated that an intern at Mullen’s firm informed her that a paralegal/office manager at the Mullen Law Group had been billing the SPD for the intern’s hours and the paralegal’s hours. The Director further stated, “I received a call from [the paralegal] on or about October 29. She stated that she had worked as a paralegal at the Mullen Law Group for approximately one year (since the fall of 2011). She stated that she was responsible for inputting the attorney hours into the SPD billing website and that she had been instructed to bill her paralegal hours to the SPD website as well.”

On November 14, 2012, pursuant to PD 1.03(3), Mullen was suspended from the SPD

certification lists. In a November 14, 2012 letter via email to Mullen, the Director stated:

This letter is to notify you that the State Public Defender Agency has temporarily suspended your law firm from handling SPD cases. This suspension may become permanent, depending on the outcome of the investigation described below.

It has come to our attention that your firm has been billing administrative assistant time to the State Public Defender as attorney time. The SPD billing rules prohibit assigned counsel attorneys from billing administrative assistant time as attorney time. You have been warned about this in the past. In 2007 you were the focus of an SPD investigation for improperly billing paralegal time as attorney time. During that investigation former ACD Director [D.S.] corresponded and spoke with you about the fact you had improperly billed attorney time for your paralegal to make jail visits.

In responding to the grievance, Mullen acknowledged that he had notice that it was impermissible to bill the SPD for administrative assistant time. Mullen also acknowledged that his firm in fact billed administrative assistant time to the SPD as attorney time.

An associate at Mullen's firm informed OLR that, "Pursuant to the office policy at the time I was hired, [the paralegal] would log onto the SPD billing site with my username and password and enter the billable hours from each day as well as submit for billing. I believed she was only entering the hours I handed her, that is, the hours I recorded on the case activity log sheet."

The associate further stated, "Once the hour logs were given to [the paralegal] I no longer had control over them; she would keep the written logs in a file in her desk. This policy was in place when I joined the firm and was set by the managing attorney Mark Mullen and used by him and [the paralegal]."

All time entered into the SPD online billing website by an attorney is certified as work the attorney performed by selecting the "(A)cccept Agreement" option in the Billing Confirmation webpage.

With respect to entering time on the SPD website, the associate stated:

I was not the person selecting “(A)cept agreement” when the closed cases were submitted. The office policy when I was hired was to turn our handwritten billable hours over to the office assistant to enter into the online billing site and to submit the closed cases by selecting “(A)cept agreement”.

Another associate at Mullen’s firm, stated:

I did not personally click “Accept Agreement,” as per our office policy. Our policy, which was established by our managing partner, Mark Mullen, was to submit our written hours to our assistant who would then enter the amounts. Once the case was completed, our assistant was to submit the bill to the public defender.

The paralegal unequivocally stated to OLR that Mullen told her to bill his hours and her own hours to the SPD. The paralegal informed OLR that when she began working for Mullen’s firm, Mullen provided her with his identification number and password, and instructed her on how to bill the SPD on its website.

In a March 18, 2013 email to the SPD, Mullen stated his intention to voluntarily decertify himself and remove his name from any and all SPD certification lists per SPD rule 1.07. Mullen also agreed to a 100 hour reduction from his pending SPD invoices.

By charging and collecting fees from the SPD for work performed in part by his paralegal, Mullen violated SCR 20:1.5(a), which in relevant part states, “A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses.”

By failing to make reasonable efforts to establish internal policies and procedures designed to identify and prevent improper billing of the SPD by his firm’s attorneys, Mullen violated SCR 20:5.1(a), which states, “A partner in a law firm, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm, shall make

reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers in the firm conform to the Rules of Professional Conduct.”

By failing to make reasonable efforts to establish internal policies and procedures designed to identify and prevent improper billing by his firm via the conduct of his paralegal, and by failing to have in place adequate supervisory measures, Mullen violated, SCR 20:5.3(a), which states, “With respect to a nonlawyer employed or retained by or associated with a lawyer: (a) a partner, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person’s conduct is compatible with the professional obligations of the lawyer...”

By directing his paralegal to bill the SPD for work performed in part by his paralegal, and thereby directing the paralegal to engage in conduct that would have violated SCR 20:8.4(c) had he engaged in the conduct himself, Mullen violated the following Rules of Professional Conduct:

**SCR 20:5.3(c) Responsibilities regarding nonlawyer assistants**

With respect to a nonlawyer employed or retained by or associated with a lawyer:...

(c) a lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:

- (1) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or
- (2) the lawyer is a partner or has comparable managerial authority in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

**SCR 20:8.4 Misconduct**

It is professional misconduct for a lawyer to:...

(a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another

By establishing an office procedure in which his paralegal was to bill the SPD for work performed at least in part by the paralegal, in violation of SPD billing rules, Mullen violated SCR 20:8.4(c), which states, “It is professional misconduct for a lawyer to:...(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation.”

Mullen has no prior discipline.

In accordance with SCR 22.09(3), Attorney Respondent is hereby publicly reprimanded.

Dated this 10 day of September, 2013.

SUPREME COURT OF WISCONSIN

/s/  
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JOHN B. MURPHY, REFEREE