

IN THE MATTER OF DISCIPLINARY  
PROCEEDINGS AGAINST THOMAS O.  
MULLIGAN, ATTORNEY AT LAW.

CASE CODE: 30912

OFFICE OF LAWYER REGULATION,

Complainant;

CASE NO. 13 AP 2742 D

THOMAS O. MULLIGAN,

Respondent.

**RECEIVED**

DEC 12 2013

**COMPLAINT**

CLERK OF SUPREME COURT  
OF WISCONSIN

NOW COMES the Wisconsin Supreme Court - Office of Lawyer Regulation (OLR), by its retained counsel, Gregory P. Seibold, and as and for its complaint against Respondent Thomas O. Mulligan, alleges and states as follows:

**Parties**

1. The OLR was established by the Wisconsin Supreme Court and operates pursuant to Supreme Court Rules. This complaint is filed pursuant to SCR 22.11.

2. Attorney Thomas O. Mulligan ("Mulligan") is a Wisconsin attorney licensed to the practice of law in Wisconsin on December 19, 1985, State Bar ID: 1013152. The most recent address furnished by Mulligan to the State Bar of Wisconsin is 902 River Street, P.O. Box 457, Spooner, Wisconsin, 54801-0457.

**Prior Discipline**

3. In 1997, Mulligan received a private reprimand for failing to properly communicate with his client, failing to return a client's file, failing to refund unearned fees upon termination of representation, and failing to communicate the basis or rate of his fee within a

reasonable time after commencing the representation. *Private Reprimand of Thomas O. Mulligan, 1997-25.*

4. In 2005, Mulligan received a private reprimand for failing to timely refund an advanced payment of a fee that had not been earned. *Private Reprimand of Thomas O. Mulligan, 2005-10.*

5. In 2009, Mulligan received a public reprimand for failing to consult with his client regarding his intent to proceed with an appeal without obtaining trial transcripts and failing to consult with his client regarding his decision to seek only *de novo* review of a contract. *Disciplinary Proceedings Against Thomas O. Mulligan, 2009 WI 12.*

#### **Regarding Wylie**

6. Richard Wylie (“Wylie”) faced 81 criminal charges in Washburn and Burnett counties, consolidated into Washburn County Case No. 08CF02, filed on January 8, 2008.

7. Initially, Wylie retained Attorney William Norine to represent him in Washburn County Case No. 08CF02. Attorney Norine represented Wylie until Attorney Norine became District Attorney for Burnett County.

8. In July 2008, Mulligan took over the representation of Wylie.

9. Ross Wylie is Wylie’s father. At the beginning of Mulligan’s representation of Wylie, Mulligan received a \$5,000 check from Ross Wylie’s business. This initial \$5,000 advanced fee was deposited into Mulligan’s general (non-trust) account.

10. No fee agreement was ever executed between Mulligan and either Wylie or Ross Wylie.

11. During Mulligan’s representation of Wylie, the District Attorney sought forfeiture of Wylie’s bond. A hearing on the forfeiture of the bond was held January 12, 2009. Mulligan

sought to reduce bail for Wylie; the request was denied. The District Attorney agreed to release \$5,000 of Wylie's \$10,000 cash bail to Mulligan's trust account in return for \$5,000 being forfeited to Washburn County. The Washburn County Clerk of Court issued a check to Mulligan's trust account for \$5,000 which was deposited on January 13, 2009.

12. Pursuant to an agreement between Mulligan and Wylie dated January 14, 2009, Mulligan was to pay \$500 from the \$5,000 bail money being held in trust by Mulligan to Wylie's account at the County Jail.

13. The \$500 was never retained in Mulligan's trust account for payment to Wylie, nor immediately paid to Wylie out of either the trust account or Mulligan's business account. Instead, Mulligan withdrew the \$5,000 bail return money from his trust account by a check payable directly to himself.

#### COUNT I

14. By accepting \$5,000 to represent Richard Wylie in numerous criminal matters, and failing to enter into a written fee agreement with Wylie or Ross Wylie, **Mulligan violated SCR 20:1.5(b)(1) and (2).**<sup>1</sup>

#### COUNT II

15. By failing to deposit the initial \$5,000 advanced fee payment into his trust account, without providing the written notices required under SCR 20:1.15(b)(4m) or otherwise indicating a

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<sup>1</sup> SCR 20:1.5(b)(1) and (2) provide: "(1) 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 in writing, except when the lawyer will charge a regularly represented client on the same basis or rate as in the past. If it is reasonably foreseeable that the total cost of representation to the client, including attorney's fees, will be \$1000 or less, the communication may be oral or in writing. Any changes in the basis or rate of the fee or expenses shall also be communicated in writing to the client. (2) If the total cost of representation to the client, including attorney's fees, is more than \$1000, the purpose and effect of any retainer or advance fee that is paid to the lawyer shall be communicated in writing."

proper basis or intent to utilize the alternative advanced fee placement measures stated in SCR 20:1.15(b)(4m), **Mulligan violated SCR 20:1.15(b)(4).**<sup>2</sup>

### COUNT III

16. By withdrawing \$5,000 bail return money from his trust account and promptly transferring the funds into his general account, when \$500 of that amount belonged to Richard Wylie, pursuant to a written agreement, **Mulligan violated SCR 20:1.15(b)(1).**<sup>3</sup>

### Regarding Brown

17. On September 23, 2009, Andrea Brown (f/k/a Andrea Shanks) (“Brown”) hired Mulligan to represent her as the petitioner in a divorce. The fee agreement, dated September 23, 2009, and executed by both Brown and Mulligan, stated:

Please be advised that my fee in representing you for your divorce is a retaining fee of \$1,750.00 which is a minimum, non-refundable fee. I bill out at a rate of \$200.00 per hour plus costs and anticipate the entire costs to be between \$3,500.00 and \$5,000.00, depending on the time involved. I would be willing to have you pay the balance of the fee on a monthly basis.

PLEASE NOTE: A retaining fee is a nonrefundable fee due to the attorney at the initiation of services. It is the minimum amount due and additional charges may be incurred as warranted by the duration of needed services. Costs and disbursements, such as filing and service fees, copies obtained from other agencies, etc., are not included in the retainer fee and will be billed to you additionally.

18. Brown provided Mulligan Law Office with \$1,750 on September 24, 2009. The funds represented an advanced fee paid to Mulligan in contemplation of future legal services.

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<sup>2</sup> SCR 20:1.15(b)(4) provides: “Except as provided in par. (4m), unearned fees and advanced payments of fees shall be held in trust until earned by the lawyer, and withdrawn pursuant to sub. (g). Funds advanced by a client or 3rd party for payment of costs shall be held in trust until the costs are incurred.”

<sup>3</sup> SCR 20:1.15(b)(1) provides: “A lawyer shall hold in trust, separate from the lawyer’s own property, that property of clients and 3rd parties that is in the lawyer’s possession in connection with a representation. All funds of clients and 3rd parties paid to a lawyer or law firm in connection with a representation shall be deposited in one or more identifiable trust accounts.”

19. Notwithstanding the language in the fee agreement describing the funds paid by Brown as a “retaining fee,” Brown actually provided Mulligan with an advanced fee, and not a “retainer,” as defined by the Supreme Court Rules.

20. Mulligan did not place the advanced fee received from Brown into his trust account and the fee agreement executed by Brown and Mulligan did not contain the notices required under SCR 20:1.15(b)(4m) that would allow for the placement of the advanced fee into an account other than Mulligan’s trust account.

21. Brown never provided Mulligan with any funds beyond the \$1,750 paid to him on September 24, 2009.

#### **COUNT IV**

22. By failing to deposit Andrea Brown’s advanced fee payment into his trust account without providing the written notices required under SCR 20:1.15(b)(4m) or otherwise indicating a proper basis or intent to utilize the alternative advanced fee placement measures stated in SCR 20:1.15(b)(4m), **Mulligan violated SCR 20:1.15(b)(4).**

#### **Regarding Trust Account**

23. Between 2008 and 2009, Mulligan used funds in his trust account to pay for personal obligations, including income taxes, property taxes, and attorney fees. Further, Mulligan deposited his own personal funds into the trust account and did not maintain all of the records required by SCR 20:1.15(f).

24. On December 1, 2011, OLR sent Mulligan a letter inquiring about trust account improprieties and requesting copies of his trust account records for the years 2008 through 2011, inclusive, as required by SCR 20:1.15(f), including:

- a. The monthly bank statements for the account;
- b. The transaction (check) register for the account;
- c. All deposit records for the account;
- d. All checks and other disbursement records for the account;
- e. The monthly reconciliation statements for the account; and,
- f. All individual client ledgers.

25. In response, Mulligan, through his counsel, Dean R. Dietrich of Ruder Ware, L.L.S.C., provided copies of his bank statements, deposit slips, and handwritten check stubs. Mulligan later provided copies of his checks. Mulligan did not provide client ledgers or monthly reconciliation statements. Attorney Dietrich told OLR that Mulligan did not maintain individual client ledgers.

26. Mulligan's check stubs do not show a running balance, do not show the source for all deposits, and do not show consistently the identity of the client for whom funds were deposited or disbursed, each of which is required by SCR 20:1.15(f)(1).

27. Mulligan and his wife, Patricia Mulligan, are the only authorized signatories to the trust account.

28. Between December 17, 2007 and December 31, 2011, deposits of personal funds totaling \$45,380.57 were made by Mulligan and/or his wife into the trust account in the following individual amounts:

- (a) April 19, 2010 -\$15,000;
- (b) May 14, 2010 -\$4,500;
- (c) June 15, 2009 - \$4,337.50;
- (d) June 18, 2010 - \$400;

- (e) June 26, 2009 - \$10,000;
- (f) July 15, 2008 - \$97;
- (g) September 17, 2010 - \$500;
- (h) September 28, 2009 - \$2,600;
- (i) October 27, 2009 - \$3,914.32; and,
- (j) November 4, 2010 - \$4,031.75.

29. Between December 17, 2007 and December 31, 2011, Mulligan disbursed \$54,869.01 from the trust account related to Mulligan's personal matters in the following individual amounts:

- (a) 06/05/2009 – Cash withdrawal in the amount of \$4,893;
- (b) 07/23/2009 – Check #3413 in the amount of \$3,255.92;
- (c) 07/23/2009 – Check #3414 in the amount of \$4,128.54;
- (d) 07/23/2009 – Check #3415 in the amount of \$1,500;
- (e) 07/23/2009 – Check #3416 in the amount of \$4,337.50;
- (f) 09/28/2009 – Check #3420 in the amount of \$3,000;
- (g) 10/29/2009 – Check #3423 in the amount of \$1,020;
- (h) 11/02/2009 – Check #3421 in the amount of \$25.60;
- (i) 11/02/2009 – Check #3422 in the amount of \$1,468.94;
- (j) 12/18/09 – Check #3431 issued to cash in the amount of \$750;
- (k) 04/19/2010 – Cash withdrawal in the amount of \$200;
- (l) 04/19/2010 – Check #3436 issued to cash in the amount of \$200;
- (m) 04/28/2010 – Check #3437 in the amount of \$32;
- (n) 05/10/2010 – Check #3440 in the amount of \$5,000;

- (o) 05/11/2010 – Check #3441 in the amount of \$100;
- (p) 05/14/2010 – Check #3443 in the amount of \$4,262.91;
- (q) 05/17/2010 – Check #3444 in the amount of \$500;
- (r) 05/17/2010 – Check #3445 in the amount of \$700;
- (s) 05/24/2010 – Check #3446 in the amount of \$1,020;
- (t) 05/28/2010 – Check #3454 in the amount of \$184.63;
- (u) 06/16/2010 – Check 3456 in the amount of \$6,240.70;
- (v) 06/24/2010 – Check #3459 issued to cash in the amount of \$250;
- (w) 09/15/2010 – Returned Item Fee of \$5;
- (x) 09/24/2010 – Check #3465 in the amount of \$500;
- (y) 11/04/2010 – Cash withdrawal in the amount of \$300;
- (z) 01/04/2011 – Check #3477 in the amount of \$3,887.97;
- (aa) 02/17/2011 – Check #3479 in the amount of \$400; and,
- (bb) 12/21/2011 – Bank transfer in the amount of \$7,456.30.

30. Among the disbursements from Mulligan's trust account were cash withdrawals, which are specifically prohibited by SCR 20:1.15(e)(4)a. These transactions, which total \$6,593, included the following:

- (a) 06/5/2009 - \$4,893 cash withdrawal of personal funds;
- (b) 12/18/2009 - \$750 check #3431 issued payable to cash;
- (c) 04/19/2010 - \$200 cash withdrawal by Patricia Mulligan;
- (d) 04/19/2010 - \$200 check #3436 issued payable to cash;
- (e) 06/24/2010 - \$250 check #3459 issued payable to cash;
- (f) 11/04/2010 - \$300 cash withdrawal by Patricia Mulligan.



31. Therefore, between December 17, 2007 and December 31, 2011, Mulligan disbursed from his trust account \$9,488.44 more for personal matters than he deposited to his trust account.

32. The opening balance of Mulligan's trust account in December 2007 was \$2,774.88. It is possible that some portion of such funds belonged to Mulligan. Therefore, between December 17, 2007 and December 31, 2011, Mulligan disbursed from his trust account at least \$6,713.56 and as much as \$9,488.44 more for personal matters than he had on deposit during such time period.

33. Mulligan made numerous conversions of client or third party funds by disbursing funds for personal matters when he did not have sufficient personal funds on deposit in the trust account to cover client trust obligations.

#### COUNT V

34. By depositing \$45,380.57 of personal funds into his trust account between December 17, 2007 and December 31, 2011, thereby commingling personal funds with trust account funds, **Mulligan violated SCR 20:1.15(b)(3).**<sup>4</sup>

#### COUNT VI

35. By disbursing from his trust account, and by allowing his wife to make disbursements from his trust account, totaling at least \$6,713.56 and as much as \$9,488.44 more for personal matters than he had on deposit between December 17, 2007 and December 31, 2011, Mulligan failed to hold in trust and converted a net total of between \$6,713.56 and \$9,488.44 of client or third party funds for his personal use; and by disbursing funds for personal matters on numerous occasions when he did not have sufficient personal funds on deposit in the trust

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<sup>4</sup> **SCR 20:1.15(b)(3) provides:** "No funds belonging to the lawyer or law firm, except funds reasonably sufficient to pay monthly account service charges, may be deposited or retained in a trust account."

account to cover such disbursements, **Mulligan violated former SCR 20:1.15(b)(1)<sup>5</sup>, and current SCR 20:8.4(c).<sup>6</sup>**

**COUNT VII**

36. By failing to maintain a complete transaction register, subsidiary client ledgers, and monthly reconciliation statements, **Mulligan violated the trust account record keeping requirements of SCR 20:1.15(f)(1)<sup>7</sup>.**

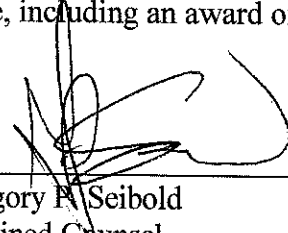
**COUNT VIII**

37. By making the cash disbursements totaling \$6,593.00 from the trust account, **Mulligan violated SCR 20:1.15(e)(4)a.<sup>8</sup>**

**WHEREFORE**, the Office of Lawyer Regulation asks that Attorney Mulligan be found in violation of the Supreme Court rules as alleged in Counts One through Eight of this Complaint, that the Court suspend Attorney Mulligan's Wisconsin law license for two years, and for such other and further relief as may be just and equitable, including an award of costs.

Dated this 6th day of December, 2013.

By: \_\_\_\_\_

  
Gregory P. Seibold  
Retained Counsel  
State Bar Number: 1001433  
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<sup>5</sup> **Former SCR 20:1.15(b)(1) provides:** "A lawyer shall hold in trust, separate from the lawyer's own property, that property of clients and 3rd parties that is in the lawyer's possession in connection with a representation. All funds of clients and 3rd parties paid to a lawyer or law firm in connection with a representation shall be deposited in one or more identifiable trust accounts."

<sup>6</sup> **SCR 20:8.4(c) provides:** "It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation."

<sup>7</sup> **SCR 20:1.15(f)(1) provides:** "Complete records of a trust account that is a draft account shall include a transaction register; individual client ledgers for IOLTA accounts and other pooled trust accounts; a ledger for account fees and charges, if law firm funds are held in the account pursuant to sub. (b)(3); deposit records; disbursement records; monthly statements; and reconciliation reports."

<sup>8</sup> **SCR 20:1.15(e)(4)a provides:** "No disbursement of cash shall be made from a trust account or from a deposit to a trust account, and no check shall be made payable to 'Cash'."