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Keep an eye on your support staff; their miscues could cost you big time

Sole practitioners commonly rely on non-lawyer assistants to handle a variety of firm functions. Trust can build through these one-on-one relationships, and over time, secretaries, paralegals or bookkeepers may take on more independent responsibilities as your proverbial “right hand.”

While delegating administrative tasks is a good way to make a solo firm more productive, mistakes or malfeasance by staff members may lead to ethical lapses. If an assistant mishandles a trust account or forgets a filing deadline, can the attorney be sanctioned?

If you do not keep close attention, the answer is yes, according to the Illinois Rules of Professional Conduct.

The duty to supervise administrative staff is outlined in Rule 5.3, “Responsibilities Regarding Nonlawyer Assistance.” Under the rule — expanded this year to include outside contractors such as document and data management companies — lawyers must have procedures to train and supervise workers, protect client confidentiality and mitigate ethical violations when they occur.

Train and regularly supervise assistants

Rule 5.3 provides that lawyers with general managerial authority in a firm, or with direct supervisory authority over an assistant, must make “reasonable efforts” to ensure the worker’s conduct is “compatible with the professional obligations of the lawyer.”

The comments describe “reasonable efforts” as “measures giving reasonable assurance that non-lawyers ... act in a way compatible with the professional obli-

gations of the lawyer.”

The comments go on to advise that the duty to supervise includes “appropriate instruction and supervision concerning the ethical aspects of their employment” and should anticipate that assistants “do not have legal training and are not subject to professional discipline.”

The following cases caution that sole practitioners must train and carefully supervise their staff, no matter how long or how close the relationship.

- Mishandled firm accounts

See *In re Swanner*, 758 S.E.2d 711 (S.C. 2014) (solo suspended when his bookkeeper-wife failed to conduct monthly reconciliations of the trust and operating accounts); *State ex rel. Oklahoma Bar Association v. Hill*, 281 P.3d 1264 (Okla. 2012) (solo censured after his bookkeeper-wife drew funds from firm accounts without consent); *In re Otlowski*, 976 A.2d 172 (Del. 2009) (solo reprimanded after his bookkeeper-daughter embezzled funds from the firm’s escrow account); *In re Cater*, 887 A.2d 1 (D.C. 2005) (solo suspended after her secretary embezzled funds from

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two estates; “In delegating account monitoring duties to her secretary, it would have been a simple matter for respondent to have maintained the checkbooks securely and to have reviewed the monthly bank statements periodically”).

- Missed court deadlines

See *Pagan v. Masterscapes of CT*

SOLE SPEAK

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LLC, 2015 Conn. Super. LEXIS 1652 (Conn. Super. Ct. June 29, 2015) (unpublished) (solo responsible for discovery violations that led to non-suit; “counsel left responsibility for this case in the hands of her paralegal without counsel’s conducting own periodic file reviews or otherwise reviewing the paralegal’s work”).

- Delegated work that constitutes the practice of law.

See *Attorney Grievance Commission v. Dore*, 73 A.3d 161 (Md. 2013) (solo suspended for having assistants prepare and execute affidavits in his name without review); *Attorney Grievance Commission v. Chapman*, 60 A.3d 25 (Md. 2013) (solo suspended for delegating loan modification work to consultant; “the clear reality is that

[the consultant] obtained the client, staffed the case, directed the approach and only tangentially updated [the attorney]”).

Take remedial action when errors or misconduct occur

Lastly, if a mishap occurs, Rule 5.3 requires “reasonable remedial action” when the lawyer “knows of the conduct at a time when its consequences can be avoided or mitigated.” Not only is prompt mitigation required, but failing to take action could be considered ratification of the misconduct, which also violates the rule.

Consistent with Rule 5.3, prompt remedial efforts can lessen or eliminate the risk of discipline or a malpractice claim.

See *In re O’Brien*, 888 A.2d 232 (Del. 2005) (proposed suspension based on paralegal’s theft from escrow account reduced to reprimand in part because solo attorney “engaged in substantial remedial efforts ... including retaining outside accountants and obtaining additional computer software.”); *Shapiro v. Rinaldi*, 2016 N.J. Super. Unpub. LEXIS 596 (N.J. Super. Ct. App. Div. March 18, 2016) (solo not liable for malpractice based on missed deadline when secretary failed to forward proposed client’s request for representation; attorney set up “reasonable efforts to ensure that his secretary complied with his professional obligations.”)

In sum, whether you recently hired an assistant or have been working with the same person for years, do not be complacent.

Assistants must be properly trained and regularly supervised — no matter how reliable and trustworthy. With your livelihood and your clients’ welfare in the balance, there is no alternative.