Rule 5.3. Responsibilities Regarding Nonlawyer ~~Assistants~~Assistance.

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 ~~possess~~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;

(b) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and

(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:

(c)(1) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or

(c)(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.

Comment

[1] Paragraph (a) requires lawyers with managerial authority within a law firm to make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that nonlawyers in the firm and nonlawyers outside the firm who work on firm matters act in a way compatible with the professional obligations of the lawyer. See Comment [6] to Rule 1.1 (retaining lawyers outside the firm) and Comment [1] to Rule 5.1 (responsibilities with respect to lawyers within a firm). Paragraph (b) applies to lawyers who have supervisory authority over such nonlawyers within or outside the firm. Paragraph (c) specifies the circumstances in which a lawyer is responsible for the conduct of such nonlawyers within or outside the firm that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer. The firm's compliance with paragraph (a) resides with each partner or other lawyer in the firm with comparable authority.

[1a] Utah's Comment [1] differs from the ABA Model Rule's Comment [1]. The Model Rule Comment suggests the possibility that a firm could be in violation of this Rule without an individual or group of individuals also being in violation. Utah's Comment [1] makes clear that, even though the concept of firm discipline is possible, a firm should not be responsible in the absence of individual culpability for a rule violation.

Nonlawyers Within the Firm

[2] Lawyers generally employ assistants in their practice, including secretaries, investigators, law student interns and paraprofessionals. Such assistants, whether employees or independent contractors, act for the lawyer in rendition of the lawyer's professional services. A lawyer must give such assistants appropriate instruction and supervision concerning the ethical aspects of their employment, particularly regarding the obligation not to disclose information relating to representation of the client, and should be

38 responsible for their work product. The measures employed in supervising nonlawyers should take
39 account of the fact that they do not have legal training and are not subject to professional discipline.
40 ~~[2] Paragraph (a) requires lawyers with managerial authority within a law firm to make reasonable~~
41 ~~efforts to establish internal policies and procedures designed to provide reasonable assurance that~~
42 ~~nonlawyers in the firm will act in a way compatible with the Rules of Professional Conduct. See Comment~~
43 ~~[1] to Rule 5.1. Paragraph (b) applies to lawyers who have supervisory authority over the work of a~~
44 ~~nonlawyer. Paragraph (c) specifies the circumstances in which a lawyer is responsible for conduct of a~~
45 ~~nonlawyer that would be a violation of the Rules of Professional Conduct if engaged in by a~~
46 ~~lawyer.~~Nonlawyers Outside the Firm
47 [3] A lawyer may use nonlawyers outside the firm to assist the lawyer in rendering legal services to
48 the client. Examples include the retention of an investigative or paraprofessional service, hiring a
49 document management company to create and maintain a database for complex litigation, sending client
50 documents to a third party for printing or scanning, and using an Internet-based service to store client
51 information. When using such services outside the firm, a lawyer must make reasonable efforts to ensure
52 that the services are provided in a manner that is compatible with the lawyer's professional obligations.
53 The extent of this obligation will depend upon the circumstances, including the education, experience and
54 reputation of the nonlawyer; the nature of the services involved; the terms of any arrangements
55 concerning the protection of client information; and the legal and ethical environments of the jurisdictions
56 in which the services will be performed, particularly with regard to confidentiality. See also Rules 1.1
57 (competence), 1.2 (allocation of authority), 1.4 (communication with client), 1.6 (confidentiality),
58 5.4(a)(professional independence of the lawyer), and 5.5(a)(unauthorized practice of law). When retaining
59 or directing a nonlawyer outside the firm, a lawyer should communicate directions appropriate under the
60 circumstances to give reasonable assurance that the nonlawyer's conduct is compatible with the
61 professional obligations of the lawyer.
62 [4] Where the client directs the selection of a particular nonlawyer service provider outside the firm,
63 the lawyer ordinarily should agree with the client concerning the allocation of responsibility for monitoring
64 as between the client and the lawyer. See Rule 1.2. When making such an allocation in a matter pending
65 before a tribunal, lawyers and parties may have additional obligations that are a matter of law beyond the
66 scope of these Rules.
67 ~~The firm's compliance with paragraph (a) resides with each partner or other lawyer in the firm with~~
68 ~~comparable authority.~~
69 ~~[2a] Utah's Comment [2] differs from the ABA Model Rule's Comment [2].~~ ~~The Model Rule Comment~~
70 ~~suggests the possibility that a firm could be in violation of this Rule without an individual or group of~~
71 ~~individuals also being in violation.~~ ~~Utah's Comment [2] makes clear that, even though the concept of firm~~
72 ~~discipline is possible, a firm should not be responsible in the absence of individual culpability for a rule~~
73 ~~violation.~~
74