

Rule 5.1. Responsibilities of Partners, Managers, and Supervisory Lawyers.

(a) 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 legal professionals ~~lawyers~~ in the firm conform to the applicable Rules of Professional Conduct.

(b) A lawyer having direct supervisory authority over another lawyer or other legal professional shall make reasonable efforts to ensure that the other lawyer or other legal professional conforms to the applicable Rules of Professional Conduct.

(c) A lawyer shall be responsible for another legal professional's ~~lawyer's~~ violation of the applicable Rules of Professional Conduct if:

(c)(1) The lawyer orders or, with 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 other legal professional ~~lawyer~~ practices or has direct supervisory authority over the other legal professional ~~lawyer~~, 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) applies to lawyers who have managerial authority over the professional work of a firm. This includes members of a partnership, the shareholders in a law firm organized as a professional corporation and members of other associations authorized to practice law; lawyers having comparable managerial authority in a legal services organization or a law department of an enterprise or government agency; and lawyers who have intermediate managerial responsibilities in a firm. Paragraph (b) applies to lawyers who have supervisory authority over the work of other legal professionals ~~lawyers~~ in a firm.

[2] Paragraph (a) requires lawyers with managerial authority within a firm to make reasonable efforts to establish internal policies and procedures designed to provide reasonable assurance that all legal professionals ~~lawyers~~ in the firm will conform to the applicable Rules of Professional Conduct. Such policies and procedures include those designed to detect and resolve conflicts of interest, identify dates by which actions must be taken in pending matters, account for client funds and property and ensure that inexperienced legal professionals ~~lawyers~~ are properly supervised. The responsibility for the firm's compliance with paragraph (a) resides with each partner, or other lawyer in the firm with comparable authority.

[2a] Utah's Comment [2] to this Rule differs from the ABA Model Rule's Comment [2]. The Model Rule Comment [2] might suggest the possibility that a firm could be in violation of the Rule without an individual or group of individuals also being in violation. Utah's Comment [2] 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.

37 [3] Other measures that may be required to fulfill the responsibility prescribed in paragraph (a) can
38 depend on the firm's structure and the nature of its practice. In a small firm of experienced legal
39 professionals~~lawyers~~, informal supervision and periodic review of compliance with the required systems
40 ordinarily will suffice. In a large firm, or in practice situations in which difficult ethical problems frequently
41 arise, more elaborate measures may be necessary. Some firms, for example, have a procedure whereby
42 junior legal professionals~~lawyers~~— can make confidential referral of ethical problems directly to a
43 designated senior partner or special committee. See Rule 5.2. Firms, whether large or small, may also
44 rely on continuing legal education in professional ethics. In any event, the ethical atmosphere of a firm
45 can influence the conduct of all its members and the partners may not assume that all legal professionals
46 ~~lawyers~~ associated with the firm will inevitably conform to the Rules.

47 [4] Paragraph (c)(1) expresses a general principle of personal responsibility for acts of another. See
48 also Rule 8.4(a).

49 [5] Paragraph (c)(2) defines the duty of a partner or other lawyer having comparable managerial
50 authority in a law firm, as well as a lawyer who has direct supervisory authority over performance of
51 specific legal work by another legal professional~~lawyer~~. Whether a lawyer has such supervisory authority
52 in particular circumstances is a question of fact. Partners and lawyers with comparable authority have at
53 least indirect responsibility for all work being done by the firm, while a partner or manager in charge of a
54 particular matter ordinarily also has supervisory responsibility for the work of other firm legal
55 professionals~~lawyers~~— engaged in the matter. Appropriate remedial action by a partner or managing
56 lawyer would depend on the immediacy of that lawyer's involvement and the seriousness of the
57 misconduct. A supervisor is required to intervene to prevent avoidable consequences of misconduct if the
58 supervisor knows that the misconduct occurred. Thus, if a supervising lawyer knows that a subordinate
59 misrepresented a matter to an opposing party in negotiation, the supervisor as well as the subordinate
60 has a duty to correct the resulting misapprehension.

61 [6] Professional misconduct by a legal professional~~lawyer~~— under supervision could reveal a violation
62 of paragraph (b) on the part of the supervisory lawyer even though it does not entail a violation of
63 paragraph (c) because there was no direction, ratification or knowledge of the violation.

64 [7] Apart from this Rule and Rule 8.4(a), a lawyer does not have disciplinary liability for the conduct of
65 a partner, associate or subordinate. Whether a lawyer may be liable civilly or criminally for another legal
66 professional's ~~lawyer's~~ conduct is a question of law beyond the scope of these Rules.

67 [8] The duties imposed by this Rule on managing and supervising lawyers do not alter the personal
68 duty of each lawyer in a firm to abide by the Rules of Professional Conduct. See Rule 5.2(a).