

4-5.1 | RESPONSIBILITIES OF PARTNERS, MANAGERS, AND SUPERVISORY LAWYERS

(a) Duties Concerning Adherence to Rules of Professional Conduct. 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 therein conform to the Rules of Professional Conduct.

(b) Supervisory Lawyer's Duties. Any lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct.

(c) Responsibility for Rules Violations. A lawyer shall be responsible for another lawyer's violation of the Rules of Professional Conduct if:

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

(2) the lawyer is a partner or has comparable managerial authority in the law firm in which the other lawyer practices or has direct supervisory authority over the other lawyer, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

(Amended July 23, 1992, effective January 1, 1993 (605 So.2d 252); amended September 24, 1998, effective Oct. 1, 1998 (718 So.2d 1179); March 23, 2006, effective May 22, 2006 (933 So.2d 417).)

Comments

Subdivision (a) applies to lawyers who have managerial authority over the professional work of a firm. See terminology. 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. Subdivision (b) applies to lawyers who have supervisory authority over the work of other lawyers in a firm.



Subdivision (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 lawyers in the firm will conform to the 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 lawyers are properly supervised.

Other measures that may be required to fulfill the responsibility prescribed in subdivision (a) can depend on the firm's structure and the nature of its practice. In a small firm of experienced lawyers, informal supervision and periodic review of compliance with the required systems ordinarily will suffice. In a large firm, or in practice situations in which difficult ethical problems frequently arise, more elaborate measures may be necessary. Some firms, for example, have a procedure whereby junior lawyers can make confidential referral of ethical problems directly to a designated supervising lawyer or special committee. See rule 4-5.2. Firms, whether large or small, may also rely on continuing legal education in professional ethics. In any event the ethical atmosphere of a firm can influence the conduct of all its members and the partners may not assume that all lawyers associated with the firm will inevitably conform to the rules.

Subdivision (c) expresses a general principle of personal responsibility for acts of another. See also rule 4-8.4(a).

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

Professional misconduct by a lawyer under supervision could reveal a violation of subdivision (b) on the part of the supervisory lawyer even though it does not entail a violation of subdivision (c) because there was no direction, ratification, or knowledge of the violation.

Apart from this rule and rule 4-8.4(a), a lawyer does not have disciplinary liability for the conduct of a partner, shareholder, member of a limited liability company, officer, director, manager, associate, or subordinate. Whether a lawyer may be liable civilly or criminally for another lawyer's conduct is a question of law beyond the scope of these rules.



The duties imposed by this rule on managing and supervising lawyers do not alter the personal duty of each lawyer in a firm to abide by the Rules of Professional Conduct. See rule 4-5.2(a).

