

RESPONSIBILITY FOR THE CONDUCT OF OTHERS

by

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It is said (Paul Simon's assertion to the contrary notwithstanding) that, "No man is an island." We are not rocks, we are not islands; we depend on others in performing our work as lawyers. Those others might include the receptionist, an administrative assistant, a paralegal, or a bookkeeper. While none of these people are likely licensed to practice law and not directly subject to the rules governing lawyers, as attorneys we have a professional duty to make sure that when they are acting on our behalf, their conduct complies with the Rules of Professional Conduct (MRPC).

For example, if you are a partner in a law firm, or a lawyer who possesses comparable managerial authority, you have a professional obligation to "make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the nonlawyer's conduct is compatible with the professional obligations of the lawyer." A lawyer can be "responsible for the conduct of a nonlawyer that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer. ..." Rule 5.3, MRPC.

In one public disciplinary case, a lawyer allowed a legal assistant in his office to place ads saying "we speak Spanish" and falsely stating that the office had lawyers with 16 years of immigration law experience. In fact, the legal assistant was the only person in the office who spoke Spanish, and at the time of the ad the lawyer had no immigration law experience. The Minnesota Supreme Court found that the lawyer "failed to adequately train and supervise" the legal assistant in violation of Rule 5.3, MRPC. This lack of supervision enabled the legal assistant to hold himself out as an attorney and dispense legal advice. *In re Kaszynski*, 620 N.W.2d 708 (Minn. 2001). Although the lawyer later discharged the legal assistant, the lawyer was still "responsible for the considerable damage . . . caused to his clients."

While the rules do not specify what constitutes a reasonable effort to ensure compliance, in evaluating the conduct of a nonlawyer assistant, the director would look to such things as whether the lawyer offered training to office staff and the degree of supervision exercised by the lawyer.

The lawyer cannot avoid responsibility for the misconduct of staff simply by asserting that the lawyer delegated responsibility to them. In a relatively recent disciplinary

matter, the respondent lawyer “testified that he delegated several duties to his staff and faults them for the alleged misconduct.” But as noted by the court, the lawyer “retains ultimate responsibility to ensure that he and his staff comply with ethics rules.” *In re Voss*, 830 N.W.2d 867, 876 (Minn. 2013).

This vicarious responsibility is not absolute. If the lawyer properly trains the nonlawyer and properly oversees his or her work, but the nonlawyer nonetheless engages in conduct that would be a violation of the rules, the lawyer may not be responsible for the misconduct. However, what the lawyer does after learning of the misconduct is important to such a determination. The supervising lawyer will be responsible for the conduct of the nonlawyer assistant if “the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or ... knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.” Rule 5.3(c), MRPC.

For example, if the lawyer attempts to use information gained through a nonlawyer investigator’s direct contact with a represented person, that action might well constitute a ratification of the misconduct and a violation of Rule 5.3.

As noted in the Preamble to the Rules, “A lawyer, as a member of the legal profession, is a representative of clients, an officer of the legal system and a public citizen having special responsibility for the quality of justice.” That special responsibility is not limited solely to the lawyer’s own conduct, but extends to the conduct of others the lawyer relies upon.