

RELIANCE ON NONLAWYERS

by

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Rule 5.3 of the Minnesota Rules of Professional Conduct spells out a lawyer's obligations in supervising nonlawyer assistants. A recent 9th U.S. Circuit Court of Appeals decision illustrates the perils associated with improper or inadequate supervision of nonlawyers.

In *Pincay v. Andrews*, 351 F.3d 947 (9th Cir. 2003), judgment in the underlying matter was entered in Pincay's favor on July 3, 2002. On July 10, 2002, the nonlawyer calendaring clerk in the large law firm representing Andrews faxed to the lawyer supervising the case (who was out of the office) a copy of the judgment. The lawyer and nonlawyer calendar clerk then exchanged e-mails about the appeal deadline. The nonlawyer clerk cited to Federal Rule of Appellate Procedure 4 and stated that there was a 60-day appeal period. About 10 days before the 60 days expired, the lawyer was informed that Pincay had filed notice in a separate proceeding that the judgment was final because the appeal period had expired. Pincay was correct. The appeal period, in fact, was only 30 days. Fed. R. App. Pro. 4(a)(1)(A).

The lawyer then brought a motion for an extension of the time in which to appeal, claiming excusable neglect. The District Court judge granted the motion. The 9th Circuit, however, reversed.

Andrews' counsel did not show good cause for his failure to file on time, nor can his action be classified as excusable neglect. What counsel did was to delegate a professional task to a nonprofessional to perform. Knowledge of the law is a lawyer's stock in trade. Bureaucratization of the law such that the lawyer can turn over to nonlawyers the lawyer's knowledge of the law is not acceptable for our profession.

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As he did in the district court, *Andrews* focuses on the mistake made by the calendaring clerk — an unexplained aberration by a man experienced in court procedures. The lawyer's only excuse is that he relied on this nonlawyer clerk. But this focus is wrong. The focus must be on the lawyer. Paralegals and other nonlawyers perform services in firms; many of the services involve knowledge of the law and were once performed by junior lawyers. The economy of such delegation is evident. But delegation cannot be made of responsibility for professional knowledge. When the lawyer delegates, he retains responsibility for knowing the law.

The 9th Circuit viewed its decision as egalitarian.

A solo practitioner would not even be in a position to attempt this kind of delegation. Membership in a large firm does not give the lawyer leave to delegate to others the basic rules of the lawyer's practice.

Id.

Delegation of tasks to nonlawyers is often economic, efficient, and in the client's best interest. Lawyers remain, however, ultimately responsible for tasks delegated. Failure to recognize this can lead to adverse consequences for a client.

It could also result in repercussions for the lawyer. The client in a case such as *Pincay* may well contemplate a malpractice claim. The lawyer may also be subject to professional discipline. Delegating legal research to a nonlawyer and accepting the nonlawyer's analysis without any double-checking likely is not the level of "thoroughness and preparation" that Rule 1.1, Minnesota Rules of Professional Conduct, requires.

In short, delegation of tasks is acceptable. Abdication of responsibility, however, is not.