

Responsibility for Non-Lawyer Assistants

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Most lawyers know they have the responsibility to train and supervise nonlawyer assistants and can be held responsible for their mistakes. Lawyers may not know, however, that this obligation extends to unpaid nonlawyer assistants.

In a recent matter before the Office of Lawyers Professional Responsibility (OLPR), the nonlawyer assisting on a task in the case was neither an employee nor independent contractor of the lawyer, but was a friend of the client. The lawyer represented a person in an employment-related matter. As part of that representation, the lawyer requested to review documents of his client's employer. The lawyer's client requested that a close friend of hers accompany the lawyer during the lawyer's visit to the employer's office to review the documents. The lawyer told the OLPR that he had no reason to object to this request, and therefore agreed. The lawyer provided no instruction or guidance to his client's friend concerning her obligations or conduct while attending the document review. When the lawyer and his client's friend arrived at the employer's office for the document review, it was clear to the lawyer that his client's friend and the employer's representative overseeing the document review were familiar with one another, and that there was a mutual and strong distrust between them. The employer's representative informed the lawyer that his client's friend would not be allowed to review documents. The lawyer told the employer's representative that his client's friend was there to assist him at his client's request and that he would assume responsibility for the behavior of his client's friend. Only then did the employer's representative consent to the presence of his client's friend.

While the lawyer was reviewing documents the employer produced, the employer's representative found the friend of the lawyer's client in a separate office photographing other documents that had not been produced. The employer's representative confiscated the camera, and the client's friend left the building.

The lawyer violated Rule 5.3(b), Minnesota Rules of Professional Conduct, which provides:

With respect to a non-lawyer employed or retained by or associated with a lawyer:

(b) A lawyer having direct supervisory authority over the non-lawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer. . . .

The introduction to the rule makes clear that the duty to supervise extends to all persons the lawyer holds out as assistants. Although Rule 5.3(b), MRPC, does not impose a strict liability standard on lawyers for the actions of assistants, it does require lawyers to take affirmative steps to avoid transgressions.

It was clear to the lawyer that the employer's representative and his client's friend did not trust one another. Indeed, the employer's representative would not have allowed his client's friend in the offices and his client's friend would not have had access to confidential documents but for the lawyer assuming

responsibility for the conduct of his client's friend. Despite this, the lawyer provided no instruction to his client's friend and allowed her to leave his presence during the document review. Afforded this opportunity, she took actions unquestionably outside the boundaries of ethical conduct. The lawyer's failure to provide any guidance or supervision led to professional discipline.