

Your Duty to Train and Supervise Non-Lawyer Employees

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As attorneys use non-lawyer assistants more and more to increase the quality and cost-effectiveness of their practices, attorneys must pay greater attention to the training and supervision of these employees with respect to their ethical responsibilities and compliance with the Minnesota Rules of Professional Conduct (Rule 5.3, MRPC). During the last two years more than a dozen attorneys have received admonitions for violations of Rule 5.3.

Rule 5.3(a), MRPC, provides that, "a partner in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer." A paralegal for a collection attorney sent two more letters to the debtor after the attorney had received notice that the debtor was represented by counsel in the matter. It was not until after the debtor complained to the Office of Lawyers Professional Responsibility that the supervising attorney sent a memorandum to all collection paralegals outlining procedures to avoid contacting represented parties directly. The attorney received an admonition for violation of Rules 4.2 and 5.3, MRPC.

Delegation issues

An attorney's responsibility does not end with the delegation of a task to a non-lawyer assistant. Rule 5.3(b), MRPC, provides that a non-lawyer's supervising attorney shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer. Defense counsel asked a city attorney, pursuant to Rule 7 of the Rules of Criminal Procedure, to provide a copy of a tape to which the defendant was entitled. The city attorney instructed his legal assistant to handle the matter. The tape was not produced. The attorney did not follow up. Because the tape was not produced, the court dismissed the charges without prejudice and the city attorney later refiled the charges.

The city attorney's failure to comply with discovery or to properly supervise a task delegated to a non-lawyer assistant wasted judicial resources and cost the defendant extra legal fees. The city attorney received an admonition for violation of Rules 3.4(d), 8.4(d) and 5.3(b), MRPC.

A court reporter sent several bills to an attorney for payment. The attorney did not pay, and the court reporter obtained a judgment. When the attorney still failed to pay, the court reporter filed a complaint with the Office of Lawyers Professional Responsibility. The attorney replied that the office manager was responsible for handling payment of court reporter invoices and judgments.

Failure to pay a professionally incurred judgment is prejudicial to the administration of justice in violation

of Rule 8.4(d), MRPC. Although delegation of some responsibility to the office manager is not unreasonable, the attorney retains the obligation to ensure that professional debts are paid on a timely basis. When an attorney's office procedures allow a debt to remain unpaid for over a year and a judgment to be filed against him without his knowledge, his lack of supervision violates Rules 8.4(d) and 5.3(b), MRPC. The attorney received an admonition.

Attorneys should periodically review the Rules of Professional Conduct with their entire staffs to ensure that the firm has in place practices and procedures that will comply with the attorneys' professional obligations. Attorneys may not simply assume that employees know their obligations and that every delegated task will be accomplished in a proper and timely manner. The "buck" stops with the supervising attorney.