



**LAW FIRMS AND
ASSOCIATIONS**

MRPC

5.1 – 5.8

RULE 5.1 – RESPONSIBILITIES OF A PARTNER OR SUPERVISORY LAWYER

(a) 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 in the firm conform to the Rules of Professional Conduct.

RULE 5.1 – COMMENT 1

(a) applies to lawyers who have managerial authority over the professional work of a firm. See Rule 1.0(c). 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.

RULE 5.1 – COMMENT 2

(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.

RULE 5.1 – DIRECT SUPERVISORY AUTHORITY

(b) A 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.**

RULE 5.1 – COMMENT 3: SMALL FIRM...

In a small firm of experienced lawyers, informal supervision and periodic review of compliance with the required systems ordinarily will suffice.

RULE 5.1 – COMMENT 3: LARGE FIRM...

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 senior partner or special committee

RULE 5.1 — RESPONSIBLE FOR ANOTHER LAWYER'S VIOLATION

- (c) A lawyer shall be responsible for another lawyer's violation of the Rules of Professional Conduct if:**
 - (1) the lawyer orders or, with knowledge of the specific conduct, ratifies the conduct involved; or**

RULE 5.1 – RESPONSIBILITY CONTINUED...

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.

RULE 5.1 – COMMENT 5

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.

RULE 5.1 – COMMENT 7

Apart from this Rule and Rule 8.4(a), a lawyer does not have disciplinary liability for the conduct of a partner, 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.

RULE 5.2 – RESPONSIBILITIES OF A SUBORDINATE LAWYER

- (a) A lawyer is bound by the Rules of Professional Conduct notwithstanding that the lawyer **acted at the direction of another person.**
- (b) A subordinate lawyer does not violate the Rules of Professional Conduct if that **lawyer acts in accordance with a supervisory lawyer's reasonable resolution** of an arguable question of professional duty.

RULE 5.2 – COMMENT 1

For example, if a subordinate filed a frivolous pleading at the direction of a supervisor, the subordinate would not be guilty of a professional violation unless the subordinate knew of the document's frivolous character.

RULE 5.3 – RESPONSIBILITIES REGARDING NONLAWYER ASSISTANCE

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

(a) a partner, 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 the person's conduct is compatible with the professional obligations of the lawyer;

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

(b) a lawyer having **direct supervisory authority over the nonlawyer** shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and

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

(c) a lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:

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

(c) a lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:

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

COMMENT 2: NONLAWYERS WITHIN FIRM

Lawyers generally employ assistants in their practice, including secretaries, investigators, law student interns, and paraprofessionals. Such assistants, whether employees or independent contractors, act for the lawyer in rendition of the lawyer's professional services. *A lawyer must give such assistants appropriate instruction and supervision concerning the ethical aspects of their employment, particularly regarding the obligation not to disclose information relating to representation of the client, and should be **responsible for their work product.***

COMMENT 3: NONLAWYERS OUTSIDE FIRM

Examples include the retention of an investigative or paraprofessional service, hiring a document management company to create and maintain a database for complex litigation, sending client documents to a third party for printing or scanning, and using an Internet-based service to store client information.

When using such services outside the firm, a lawyer must make reasonable efforts to ensure that the services are provided in a manner that is compatible with the lawyer's professional obligations.

RULE 5.4 PROFESSIONAL INDEPENDENCE OF A LAWYER

(a) A lawyer or law firm shall not share legal fees with a nonlawyer, except that:

(1) an agreement by a lawyer with the lawyer's firm, partner, or associate may provide for the payment of money, over a reasonable period of time after the lawyer's death, to the lawyer's estate or to one or more specified persons;

(a) A lawyer or law firm shall not share legal fees with a nonlawyer, except that:

(2) a lawyer who purchases the practice of a deceased, disabled, or disappeared lawyer may, pursuant to the provisions of Rule 1.17, pay to the estate or other representative of that lawyer the agreed-upon purchase price;

(3) a lawyer or law firm may include nonlawyer employees in a compensation or retirement plan, even though the plan is based in whole or in part on a profit-sharing arrangement; and

(a) A lawyer or law firm shall not share legal fees with a nonlawyer, except that:

(4) a lawyer may share court-awarded legal fees with a nonprofit organization that employed, retained or recommended employment of the lawyer in the matter.

RULE 5.4 PROFESSIONAL INDEPENDENCE OF A LAWYER

(b) A lawyer shall **not** form a **partnership with a nonlawyer** if **any** of the activities of the partnership consist of the **practice of law**.

(c) A lawyer shall **not** permit a person who recommends, employs, or pays the lawyer to render legal services for another to direct or regulate the lawyer's professional judgment in rendering such legal services.

RULE 5.4 PROFESSIONAL INDEPENDENCE OF A LAWYER

(d) A lawyer shall not practice with or in the form of a professional corporation or association authorized to practice law for a profit, if:

(1) a nonlawyer owns any interest therein, except that a fiduciary representative of the estate of a lawyer may hold the stock or interest of the lawyer for a reasonable time during administration;

RULE 5.4 PROFESSIONAL INDEPENDENCE OF A LAWYER

(2) a nonlawyer is a **corporate director or officer** thereof or occupies the position of similar responsibility in any form of association other than a corporation ; or

(3) a nonlawyer has the right to **direct or control** the professional judgment of a lawyer.

RULE 5.4 PROFESSIONAL INDEPENDENCE OF A LAWYER

The rule itself does not differentiate between nonlawyers and out-of-state lawyers, but courts may.

Compare Peterson v. Anderson, 745 P.2d 166 (Ariz. 1987) (lawyer licensed in other state is nonlawyer for purposes of fee-sharing rule), with Daynard v. Ness, Motley, Loadholt, Richardson & Poole, P.A., 188 F. Supp. 2d 115 (D. Mass. 2002) (law professor working in Massachusetts but licensed in New York not barred from seeking to enforce oral fee-sharing agreement with Mississippi and South Carolina lawyers for advising them in multibillion-dollar tobacco litigation; policy concerns of Rule 5.4(a) not implicated), and Tomar, Seliger, Simonoff, Adourian & O'Brien, P.C. v. Snyder, 601 A.2d 1056 (Del. Super. Ct. 1990) (lawyers licensed in other state not nonlawyers for purposes of Rule 5.4(a)).

RULE 5.5: UNAUTHORIZED PRACTICE OF LAW; MULTIJURISDICTIONAL PRACTICE OF LAW

(a) A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.

RULE 5.5 – COMMENT 1

Paragraph (a) applies to unauthorized practice of law by a lawyer, whether through the lawyer's direct action or by the lawyer assisting another person.

For example, a lawyer may not assist a person in practicing law in violation of the rules governing professional conduct in that person's jurisdiction.

RULE 5.5 – COMMENT 3

A lawyer may provide professional advice and instruction to nonlawyers whose employment requires knowledge of the law; **for example**, claims adjusters, employees of financial or commercial institutions, social workers, accountants and persons employed in government agencies.

RULE 5.5 – COMMENT 3

Lawyers also may assist independent nonlawyers, such as paraprofessionals, who are authorized by the law of a jurisdiction to provide particular law-related services.

In addition, a lawyer may counsel nonlawyers who wish to proceed pro se.

RULE 5.5(B) UNAUTHORIZED PRACTICE OF LAW

(b) A lawyer who is **not** admitted to practice in this jurisdiction **shall not**:

- (1)** except as authorized by these Rules or other law, **establish an office** or other systematic and continuous presence in this jurisdiction for the practice of law; or
- (2)** hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction.

RULE 5.5(C) – PERMISSIBLE ACTIVITIES

(c) A lawyer admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services on a temporary basis in this jurisdiction that:

(1) are undertaken in association with a lawyer who is admitted to practice in this jurisdiction and who actively participates in the matter;

RULE 5.5(C) – PERMISSIBLE ACTIVITIES

(2) [**pro hac vice**] are in or reasonably related to a pending or potential proceeding before a tribunal in this or another jurisdiction, if the lawyer, or a person the lawyer is assisting, is authorized by law or order to appear in such proceeding or reasonably expects to be so authorized;

RULE 5.5(C) – PERMISSIBLE ACTIVITIES

(3) are in or reasonably related to a pending or potential arbitration, mediation, or other alternative dispute resolution proceeding in this or another jurisdiction, if the services arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice and are **not** services for which the forum requires **pro hac vice** admission; or

Rule 5.5(c) – permissible activities

4) are not within paragraphs (c)(2) or (c)(3) and **arise out of** or are **reasonably related** to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice.

RULE 5.5(D) FOREIGN LAWYERS

(d) A lawyer admitted in another United States jurisdiction **or in a foreign jurisdiction**, and not disbarred or suspended from practice in any jurisdiction or the equivalent thereof, **may** provide legal services through an office or other systematic and **continuous presence in this jurisdiction that:**

RULE 5.5(D) FOREIGN LAWYERS

5.5(d)(1) are provided to the lawyer's **employer** or its **organizational affiliates**; [in-house counsel] **are not services for which the forum requires pro hac vice** admission;

and, when performed by a **foreign** lawyer and **requires advice on the law of this or another jurisdiction or of the United States**, such advice shall be based upon the advice of a lawyer who is duly licensed and authorized by the jurisdiction to provide such advice; or

RULE 5.5(D) FOREIGN LAWYERS

5.5(d). . . **may** provide legal services through an office or other systematic and **continuous presence** in this jurisdiction that:

(2) are services that the lawyer is authorized by federal or other law or rule to provide in this jurisdiction.

Sperry v. Florida, 373 U.S. 379

(1963)

- **Nonlawyer** (Sperry) working as a patent agent in Florida – his work was exclusively before the U.S. Patent Office (patent applications, etc.).
- Florida charged him with unauthorized practice of law (Court admits this **is** the practice of law)
- Patent regulations permit nonlawyers to do these tasks, pursuant to the relevant enabling statute
- **Supremacy Clause decision** – states must yield to federal regs & statutes (USPTO, SSA, VA, INS, etc.)

RULE 5.5 – COMMENT 19

A lawyer who practices law in this jurisdiction pursuant to paragraphs (c) or (d) or otherwise is subject to the disciplinary authority of this jurisdiction.

RULE 5.5(E) - FOREIGN LAWYER

(e) For purposes of paragraph (d), the **foreign lawyer** must be a member **in good standing** of a recognized legal profession in a foreign jurisdiction, the members of which are admitted to practice as lawyers or counselors at law or the equivalent, and are subject to effective regulation and discipline by a duly constituted professional body or a public authority.

RULE 5.6 RESTRICTIONS ON RIGHT TO PRACTICE

A lawyer shall not participate in offering or making:

(a) a partnership, shareholders, operating, employment, or other similar type of agreement that restricts the right of a lawyer to practice after termination of the relationship, **except** an agreement concerning benefits upon **retirement**; or

RULE 5.6 – RESTRICTIONS ON RIGHT TO PRACTICE

A lawyer shall not participate in offering or making:

(b) an agreement in which a restriction on the lawyer's right to practice is part of the settlement of a client controversy.

ABA FORMAL OP. 94-381 (1994)

A prohibition in a retainer or employment agreement on counsel for a corporation representing anyone against the corporation in the future is an impermissible restriction on the right to practice which may not be demanded or accepted by a lawyer without violating Model Rule 5.6(a).

ABA FORMAL OP. 94-381 (1994)

These restrictions would have the effect of prohibiting the lawyers involved from representing others in any matter adverse to the corporation, even if that matter were unrelated to any representation of the corporation in which the lawyers had been involved.

The proposed restrictions **may appear at first blush** simply to incorporate into a retention or employment agreement an expanded view of the principles of Model Rule 1.9. By prohibiting future adverse representations in unrelated matters, however, the restrictions run afoul of Model Rule 5.6(a).

ABA FORMAL OP. 95-394 (1995)

The prohibition on a lawyer's participating in offering or making an agreement in which a restriction on the lawyer's right to practice is part of the settlement of a controversy applies not only where the controversy is between private parties, but also where a party is a governmental entity.

ABA FORMAL OP. 95-394 (1995)

Example: A lawyer has been litigating against a government agency. The agency has proposed a settlement that is favorable to the lawyer's client but that is conditioned on the lawyer's agreeing not to represent any similarly situated parties against the same agency in the future.

ABA FORMAL OP. 95-394 (1995)

The question turns specifically on the final phrase of 5.6(b), “between private parties,” in light of the circumstance that one of the parties involved here is a governmental entity, which is not in ordinary parlance considered to be a “private” party.

ABA: It would be improper under **Rule 5.6(b)** for the lawyer representing the private party to agree to the condition attached to the offer of settlement; and improper under **Rule 8.4(a)** for the government lawyer to make such an offer.

RULE 5.7 - RESPONSIBILITIES REGARDING LAW-RELATED SERVICES

(a) A lawyer shall be subject to the Rules of Professional Conduct with respect to the provision of law-related services, as defined in paragraph (b), if the law-related services are provided:

(1) by the lawyer in circumstances that are not distinct from the lawyer's provision of legal services to clients; or

RULE 5.7(A) - RESPONSIBILITIES REGARDING LAW-RELATED SERVICES

(a)(2) in other circumstances by an entity controlled by the lawyer individually or with others if the lawyer **fails to take reasonable** measures to assure that a person obtaining the law-related services **knows** that the services are not legal services and that the protections of the client-lawyer relationship do not exist.

RULE 5.7 – RESPONSIBILITIES REGARDING LAW-RELATED SERVICES

(b) The term "law-related services" denotes services that might reasonably be performed in conjunction with and in substance are related to the provision of legal services, and that are not prohibited as unauthorized practice of law when provided by a nonlawyer.

RULE 5.7 – COMMENT 9

A broad range of economic and other interests of clients may be served by lawyers' engaging in the delivery of law-related services.

Examples of law-related services include providing title insurance, financial planning, accounting, trust services, real estate counseling, legislative lobbying, economic analysis, social work, psychological counseling, tax preparation, and patent, medical or environmental consulting.