

**Rule 5.1 Responsibilities of Managerial and Supervisory Lawyers  
(Commission's Proposed Rule Adopted on October 21–22, 2016 – Clean Version)**

- (a) A lawyer who individually or together with other lawyers possesses 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\* comply with these Rules and the State Bar Act.
- (b) A lawyer having direct supervisory authority over another lawyer, whether or not a member or employee of the same law firm,\* shall make reasonable\* efforts to ensure that the other lawyer complies with these Rules and the State Bar Act.
- (c) A lawyer shall be responsible for another lawyer's violation of these Rules and the State Bar Act if:
  - (1) the lawyer orders or, with knowledge of the relevant facts and of the specific conduct, ratifies the conduct involved; or
  - (2) the lawyer, individually or together with other lawyers, possesses managerial authority in the law firm\* in which the other lawyer practices, or has direct supervisory authority over the other lawyer, whether or not a member or employee of the same law firm,\* and knows\* of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable\* remedial action.

**Comment**

*Paragraph (a) – Duties Of Managerial Lawyers To Reasonably\* Assure Compliance with the Rules.*

[1] Paragraph (a) requires lawyers with managerial authority within a law firm\* to make reasonable\* efforts to establish internal policies and procedures designed, for example, 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.

[2] Whether particular measures or efforts satisfy the requirements of paragraph (a) might depend upon the law firm's structure and the nature of its practice, including the size of the law firm,\* whether it has more than one office location or practices in more than one jurisdiction, or whether the firm or its partners\* engage in any ancillary business.

[3] A partner,\* shareholder or other lawyer in a law firm\* who has intermediate managerial responsibilities satisfies paragraph (a) if the law firm\* has a designated managing lawyer charged with that responsibility, or a management committee or other body that has appropriate managerial authority and is charged with that responsibility. For example, the managing lawyer of an office of a multi-office law firm\* would not necessarily be required to promulgate firm-wide policies intended to reasonably\* assure

that the law firm's lawyers comply with the Rules or State Bar Act. However, a lawyer remains responsible to take corrective steps if the lawyer knows\* or reasonably should know\* that the delegated body or person\* is not providing or implementing measures as required by this Rule.

[4] Paragraph (a) also requires managerial lawyers to make reasonable\* efforts to assure that other lawyers in an agency or department comply with these Rules and the State Bar Act. This Rule contemplates, for example, the creation and implementation of reasonable\* guidelines relating to the assignment of cases and the distribution of workload among lawyers in a public sector legal agency or other legal department. See, e.g., State Bar of California, Guidelines on Indigent Defense Services Delivery Systems (2006).

*Paragraph (b) – Duties of Supervisory Lawyers*

[5] Whether a lawyer has direct supervisory authority over another lawyer in particular circumstances is a question of fact.

*Paragraph (c) – Responsibility for Another's Lawyer's Violation*

[6] A lawyer will not be in violation of paragraph (c)(1) if the lawyer's decision to ratify a course of conduct is a reasonable\* resolution of an arguable question of professional responsibility.

[7] The appropriateness of remedial action under paragraph (c)(2) would depend on the nature and seriousness of the misconduct and the nature and immediacy of its harm. A managerial or supervisory lawyer must intervene to prevent avoidable consequences of misconduct if the lawyer knows\* that the misconduct occurred.

[8] A supervisory lawyer violates paragraph (b) by failing to make the efforts required under that paragraph, even if the lawyer does not violate paragraph (c) by knowingly\* directing or ratifying the conduct, or where feasible, failing to take reasonable\* remedial action.

[9] Paragraphs (a), (b), and (c) create independent bases for discipline. This Rule does not impose vicarious responsibility on a lawyer for the acts of another lawyer who is in or outside the law firm.\* Apart from paragraph (c) of this Rule and Rule 8.4(a), a lawyer does not have disciplinary liability for the conduct of a partner,\* associate, or subordinate lawyer. The question of whether a lawyer can be liable civilly or criminally for another lawyer's conduct is beyond the scope of these Rules.

**Proposed Rule 5.1 Responsibilities of Managerial and Supervisory Lawyers**  
**Synopsis of Public Comments**

**TOTAL = 1**      **A = 0**  
                         **D = 1**  
                         **M = 1**  
                         **NI = 0**

No.	Commenter/Signatory	Comment on Behalf of Group?	A/D/M/NI <sup>1</sup>	Rule Section or Cmt.	Comment	RRC Response
Y-2016-16	Bundy, Stephen (01-09-17)	N	M	Cmt. [6]	New Comment [6] is a mistake and should be eliminated or revised.	Proposed Comment [6] is based on Rule 5.2(b). Both recognize the possibility of legitimate disagreements over the ethically correct course of conduct. The Commission believes that, just as a subordinate lawyer should not be responsible for following a supervisor's reasonable resolution of an arguable question of professional responsibility, a supervisor should not be responsible for a subordinate's reasonable decision on a course of action. It is the Commission's view that in those circumstances the supervising or subordinate lawyer should not be at risk of disciplinary action for following the course laid out by the other person. In part this recognizes that the other person likely is the one with superior knowledge of the situation.
Y-2016-21ab	State Bar Office of Chief Trial Counsel (Dresser) (01-09-17)	Y	D		Supervision should remain a part of the rule addressing competence (Rule 1.1). Supervision by an attorney is an essential part of lawyer competence.	The duty to supervise currently is part of the competence rule, but the Commission believes that adoption of proposed Rule 5.1 will make clear to lawyers who manage law firms the importance of assuring ethical conduct within the firm and will make clear to

<sup>1</sup> A = AGREE with proposed Rule

D = DISAGREE with proposed Rule

M = AGREE ONLY IF MODIFIED

NI = NOT INDICATED

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					<p>Comments 5, 8, and 9 are unnecessary and merely repeat the rule.</p> <p>The first sentence of Comment 7 is unnecessary.</p> <p>The term “knowingly” well established law providing that violations can be found based upon recklessness, gross negligence, or willful blindness, as well as “knowingly” or intentionally.</p> <p>The Comment [9] discussion of subsections (a) through (c) merely repeats the rule and is unnecessary.</p> <p>The third sentence of Comment [9] states that paragraph (c) of this proposed Rule and proposed Rule 8.4 are the only time there is disciplinary liability for the conduct of a partner, associate, or subordinate lawyer. That comment is overly broad because Rule 8.4.1, Comment [1] states that Rule 8.4.1 imposes on all firm lawyers an obligation to advocate corrective action.</p>	<p>supervising lawyers that supervision includes ethical conduct, and will clarify the limits on a supervisor’s responsibilities. The Commission believes this sentence helps to explain the text of the proposed Rule.</p> <p>The definition of “knowingly” recognizes that a person’s knowledge may be inferred from circumstances, and the Commission believes this will encompass the same field as currently covered by conduct previously labeled with other terms.</p> <p>The Commission believes this sentence helps to explain the text of the proposed Rule.</p> <p>[I agree with this comment. Kevin: Do you have notes from our last meeting that show we discussed the conflict between 8.4.1 and 5.1?]</p>