“Raising the Bar”
as to
Legal Ethics and Related Ethics in
Land Title Agency Work

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“Raising the Bar”
Raising It from Where to Where?

Where are we now?

Where do we want to go?

What must we do to get there?
I. How to Apply Two Key Approaches to Ethics
Two Key Approaches to Ethics

Compliance-Based Ethics

Rules-based, the letter of the rule

Integrity-Based Ethics

Values-based, the letter and the spirit of the rule

Compliance-Based Ethics: Essentially Limiting Oneself to Compliance with the Rules and Law

Determine the applicable rule or law

React by complying with the rule or law

Do not worry about going beyond the rule or law
Integrity-Based Ethics: The Idea of Going Beyond Compliance

Consider the letter of the rule or the law as a starting point.

Consider also the spirit or purpose of the rule or law.

Contextualize the rule or law within integrity.
Preamble to Ohio Rules of Professional Conduct

[9] The Ohio Rules of Professional Conduct often prescribe rules for a lawyer’s conduct. Within the framework of these rules, however, many difficult issues of professional discretion can arise. These issues must be resolved through the exercise of sensitive professional and moral judgment guided by the basic principles underlying the rules.

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[16] Compliance with the rules, as with all law in an open society, depends primarily upon understanding and voluntary compliance, secondarily upon reinforcement by peer and public opinion, and finally, when necessary, upon enforcement through disciplinary proceedings. The rules do not, however, exhaust the moral and ethical considerations that should inform a lawyer, for no worthwhile human activity can be completely defined by legal rules. The rules simply provide a framework for the ethical practice of law.

*       *       *       *

(Emphasis added)
Stewart’s First Standard

“Maintain honesty and integrity above all else.”
“ALTA seeks to guide its membership on best practices to protect consumers, promote quality service, provide for ongoing employee training and meet legal and market requirements. These practices are voluntary and designed to help members illustrate to consumers and clients the industry’s professionalism and best practices to ensure a positive and compliant real estate settlement experience. These best practices are not intended to encompass all aspects of title or settlement company activity.”

* * * *

(Emphasis added)
Emphasizing the Centrality of Management’s Organizational Role

“…[E]thics has *everything* to do with management. Rarely do the character flaws of a lone actor fully explain corporate misconduct. More typically, unethical business practice involves the tacit, if not explicit, cooperation of others and reflects the values, attitudes, beliefs, language, and behavioral patterns that define an organization’s operating culture. Ethics, then, is as much an organizational as a personal issue. Managers who fail to provide proper leadership and to institute systems that facilitate ethical conduct share responsibility with those who conceive, execute, and knowingly benefit from corporate misdeeds.”

Managers must acknowledge their role in shaping organizational ethics and seize this opportunity to create a climate that can strengthen the relationships and reputations on which their companies’ success depends. Executives who ignore ethics run the risk of personal and corporate liability in today’s increasingly tough legal environment.

II. How to Use and Apply Key Ethics Concepts
A Fuller Understanding of Integrity

Moral Reasoning Models

Ethical Defenses

Ethical Missteps

Role-Based Ethics

Key Values and Virtues
Models for Moral Reasoning

Kohlberg’s Levels (Abridged and Abstracted)

Fear of Punishment

Peer Pressure or Authority Figures

Comprehensive System of Internalized Values

The Temptation to Misuse
Two Defenses from
Excuse Theory

Lack of knowledge of a situation

Lack of ability to control a situation
Common Ethical Missteps

Denial of a problem

Enabling of the problem (active or passive)

Compartmentalization of a problem
The Temptation to Misuse Role-Based Ethics

Giving up autonomy as a moral reasoning agent when one does not have to do so.

Correctly understanding one’s role
Key Values and Virtues Underlying Integrity

Humility

Truth (and Honesty)

Trust and Trustworthiness
   (Character, Competence, Accountability)

Fairness and Justice

Sense of Duty

Wisdom and Prudence

Courage
Key Ethics Concepts that Additionally Facilitate Integrity-Based Ethics

The Relationship of Values and Wisdom

Thinking Strategically

The Concept of Professionalism
Humility and Courage Allow Integrity and Integrity Allows Wisdom

“[W]isdom is the child of integrity—being integrated around principles. And integrity is the child of humility and courage. In fact, you could say that humility is the mother of all virtues because humility acknowledges that there are natural laws or principles that govern the universe. They are in charge. Pride teaches us that we are in charge. Humility teaches us to understand and live by principles, because they ultimately govern the consequences of our actions. If humility is the mother, courage is the father of wisdom. Because to truly live by these principles when they are contrary to social mores, norms and values takes enormous courage.”

Stephen R. Covey
Thinking Strategically

Mission Driven

Vision Driven

Stakeholder Awareness

Honest assessment of one’s starting point – present reality

Honest identification of what it will take to go from present reality to vision (Alignment Process using SWOT)
The Concept of Professionalism and A Review of Current Professionalism Models
STATEMENT ON PROFESSIONALISM

...As professionals we need to strive to meet lofty goals and ideals in order to achieve the highest standards of a learned profession. To this end, the Court issues A Lawyer’s Creed and A Lawyer’s Aspirational Ideals, which have been adopted and recommended for the Court’s issuance by the Supreme Court Commission on Professionalism. In so doing, it is not the Court’s intention to regulate or to provide additional bases for discipline, but rather to facilitate the promotion of professionalism among Ohio’s lawyers, judges and legal educators. It is the Court’s hope that these individuals, their professional associations, law firms and educational institutions will utilize the creed and the aspirational ideals as guidelines for this purpose. [emphasis added]

ISSUED BY THE SUPREME COURT OF OHIO FEBRUARY 3, 1997
A Summary of the Current Professionalism Model on a National Basis
“Seven principles of professionalism are apparent in the Stanley Commission Report, the MacCrate Report, the Haynsworth Report, the Conference of Chief Justices (CCI) National Action Plan, and the Preamble to the Model Rules.

In our synthesis, professionalism means that each lawyer:

1. Agrees to comply with the ethics of duty — the minimum standards for the lawyer’s professional skills and ethical conduct set by the Rules;

2. Should strive to realize, over a career, the ethics of aspiration — the ideals and core values of the profession including internalizing the highest standards for the lawyer’s professional skills and ethics conduct;

3. Agrees to act as a fiduciary where his or her self-interest is overbalanced by devotion to serving the client and the public good in the profession’s area of fiduciary responsibility: justice;
4. Should, over a career, continue to grow in personal conscience;

5. Agrees both to hold other lawyers accountable for meeting the minimum standards set forth iii the Rules and to encourage them to realize the ideals and core values of the profession;

6. Should devote professional time to serve the public good, particularly by representing clients pro bono; and

7. Should undertake a continuing reflective engagement, over a career, on the relative importance of income and wealth in light of the six other principles of professionalism.”

Quoted without their footnotes from, Neil Hamilton and Lisa Monpetit Brabbit, Fostering Professionalism through Mentoring, Volume 57, Issue 1, Journal of Legal Education 102, 103-105 (March 2007).
Remembering Why Integrity Is Practical and Prudent in Business and the Professions

- Trusting Relationships (Covey)
- Mutually Beneficial Relationships (Nash)
- Longer-term Strategic Opportunities
III. How to Use and Include Industry Practices and Standards

Some are Compliance-based

Many are Integrity-based

“Raising the Bar” calls us to use both
Roger Cramton has made the following observations about situations he has studied:

“...I have studied corporate fraud situations over many years and have served as an expert consultant on lawyer conduct in a substantial number of civil cases in which law firms were charged with assisting a corporate fraud. I have been fascinated by the lawyer’s role as a business counselor in preventing or failing to prevent a corporate fraud from occurring. In every major corporate fraud, lawyers have played an essential role: structuring and documenting the fraudulent transactions, providing legal opinions required for the transactions to occur, and drafting and approving the required securities filings concerning the transactions, offerings and financials.” (emphasis added).

Laura Nash, in *Good Intentions Aside: Unethical Activities from Business Life* [in paraphrased or edited form]

1. Greed

2. Cover-ups and misrepresentations

3. Misleading claims

4. Reneging or cheating on negotiated terms

5. Establishing policy that is likely to cause others to lie
6. Lock-step obedience to authority

7. Sacrificing the innocent and helpless

8. Suppression of basic rights: freedom of speech, choice, and personal relationships

9. Failing to speak up when unethical practices occur

10. Neglect of one’s family, or neglect of personal needs

Stewart Independent Agency Standards

Maintain honesty and integrity above all else.

Stay firmly customer focused.

Employ dedicated and well-trained associates.

Reconcile all escrow (trust) accounts in a timely manner each month.

Maintain internal control procedures to ensure efficient and secure real estate settlements.

Use Stewart as a preferred business partner.
Maintain an acceptable policy loss ratio

Issue title policies as soon as possible after closing

Report policies and remit payments to Stewart promptly

Maintain a business model that supports the long term success of your agency

Stay current on Stewart Underwriting Bulletins along with local, state and national rules and regulations

Comply with all terms of the Stewart Underwriting Agreement
Title Insurance and Settlement Company Best Practices
Wednesday January 2, 2013
American Land Title Association

[Mission Statement omitted]

Best Practice: Establish and maintain current license(s) as required to conduct the business of title insurance and settlement services.

Best Practice: Adopt and maintain appropriate written procedures and controls for Escrow Trust Accounts allowing for electronic verification of reconciliation.

Best Practice: Adopt and maintain a written privacy and information security program to protect Non-public Personal Information as required by local, state, and federal law.
Best Practice: Adopt standard real estate settlement procedures and policies that ensure compliance with Federal and State Consumer Financial Laws as applicable.

Best Practice: Adopt and maintain written procedures related to title policy production, delivery, reporting and premium remittance.

Best Practice; Maintain appropriate professional liability insurance and fidelity coverage.

Best Practice: Adopt and maintain procedures for resolving consumer complaints.
IV. Applying it All to the Lawyer’s Rules of Professional Conduct
Selected Key Lawyer Rules of Professional Conduct

Ohio Rules of Professional Conduct

Effective February 1, 2007; as amended effective January 1, 2012
Competence, Diligence, Honesty

Rule 1.1  Competence

Rule 1.2  Scope of Representation

Rule 1.3  Diligence

Rule 1.4  Communication

Rule 1.5  Fees and Expenses

Rule 1.15  Safekeeping Funds & Property
RULE 4.1: TRUTHFULNESS IN STATEMENTS TO OTHERS

In the course of representing a client a lawyer shall not knowingly do either of the following:

(a) make a false statement of material fact or law to a third person;

(b) fail to disclose a material fact when disclosure is necessary to avoid assisting an illegal or fraudulent act by a client.
Comment

Misrepresentation

[1] A lawyer is required to be truthful when dealing with others on a client’s behalf. A misrepresentation can occur if the lawyer incorporates or affirms a statement of another person that the lawyer knows is false. Misrepresentations can also occur by partially true but misleading statements or omissions that are the equivalent of affirmative false statements. For dishonest conduct that does not amount to a false statement or for misrepresentations by a lawyer other than in the course of representing a client, see Rule 8.4.

Statements of Fact

[2] This rule refers to statements of fact. Whether a particular statement should be regarded as one of fact can depend on the circumstances. Under generally accepted conventions in negotiation, certain types of statements ordinarily are not taken as statements of material fact. Estimates of price or value placed on the subject of a transaction and a party’s intentions as to an acceptable settlement of a claim are ordinarily in this category, and so is the existence of an undisclosed principal except where nondisclosure of the principal would constitute fraud. Lawyers should be mindful of their obligations under applicable law to avoid criminal and tortious misrepresentation.

to past illegal or fraudulent client acts of which the lawyer later becomes aware, Rule 1.6(b)(3) permits, but does not require, a lawyer to reveal information reasonably necessary to mitigate substantial injury to the financial or property interests of another that has resulted from the client's commission of an illegal or fraudulent act, in furtherance of which the client has used the lawyer's services.
Disclosure to Prevent Illegal or Fraudulent Client Acts

[3] Under Rule 1.2(d), a lawyer is prohibited from counseling or assisting a client in conduct that the lawyer knows is illegal or fraudulent. Rule 4.1(b) requires a lawyer to disclose a material fact, including one that may be protected by the attorney-client privilege, when the disclosure is necessary to avoid the lawyer’s assistance in the client’s illegal or fraudulent act. See also Rule 8.4(c). The client can, of course, prevent such disclosure by refraining from the wrongful conduct. If the client persists, the lawyer usually can avoid assisting the client’s illegal or fraudulent act by withdrawing from the representation. If withdrawal is not sufficient to avoid such assistance, division (b) of the rule requires disclosure of material facts necessary to prevent the assistance of the client’s illegal or fraudulent act. Such disclosure may include disaffirming an opinion, document, affirmation, or the like, or may require further disclosure to avoid being deemed to have assisted the client’s illegal or fraudulent act. Disclosure is not required unless the lawyer is unable to withdraw or the client is using the lawyer’s work product to assist the client’s illegal or fraudulent act.

[4] Division (b) of this rule addresses only ongoing or future illegal or fraudulent acts of a client. With respect
Rule 8.4: Misconduct

It is professional misconduct for a lawyer to do any of the following:

(a) violate or attempt to violate the Ohio Rules of Professional Conduct, *knowingly* assist or induce another to do so, or do so through the acts of another;

(b) commit an *illegal* act that reflects adversely on the lawyer’s honesty or trustworthiness;

(c) engage in conduct involving dishonesty, *fraud*, deceit, or misrepresentation;

(d) engage in conduct that is prejudicial to the administration of justice;
(e) state or imply an ability to influence improperly a government agency or official or to achieve results by means that violate the Ohio Rules of Professional Conduct or other law;

(f) knowingly assist a judge or judicial officer in conduct that is a violation of the Ohio Rules of Professional Conduct, the applicable rules of judicial conduct, or other law;

(g) engage, in a professional capacity, in conduct involving discrimination prohibited by law because of race, color, religion, age, gender, sexual orientation, national origin, marital status, or disability;

(h) engage in any other conduct that adversely reflects on the lawyer’s fitness to practice law.
Comment

[1] Lawyers are subject to discipline when they violate or attempt to violate the Ohio Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another, as when they request or instruct an agent to do so on the lawyer’s behalf. Division (a), however, does not prohibit a lawyer from advising a client concerning action the client is legally entitled to take.

[2] Many kinds of illegal conduct reflect adversely on fitness to practice law, such as offenses involving fraud and the offense of willful failure to file an income tax return. However, some kinds of offenses carry no such implication. Traditionally, the distinction was drawn in terms of offenses involving “moral turpitude.” That concept can be construed to include offenses concerning some matters of personal morality, such as adultery and comparable offenses, that have no specific connection to fitness for the practice of law. Although a lawyer is personally answerable to the entire criminal law, a lawyer should be professionally answerable only for offenses that indicate lack of those characteristics relevant to law practice. Offenses involving violence, dishonesty, breach of trust, or serious interference with the administration of justice are in that category. A pattern of repeated offenses, even ones of minor significance when considered separately, can indicate indifference to legal obligation.

[2A] Division (c) does not prohibit a lawyer from supervising or advising about lawful covert activity in the investigation of criminal activity or violations of constitutional or civil rights when authorized by law.

[3] Division (g) does not apply to a lawyer’s confidential communication to a client or preclude legitimate advocacy where race, color, religion, age, gender, sexual orientation, national origin, marital status, or disability is relevant to the proceeding where the advocacy is made.

[4] A lawyer may refuse to comply with an obligation imposed by law upon a good faith belief that no valid obligation exists. The provisions of Rule 1.2(d) concerning a good faith challenge to the validity, scope, meaning, or application of the law apply to challenges of legal regulation of the practice of law.

[5] Lawyers holding public office assume legal responsibilities going beyond those of other citizens. A lawyer’s abuse of public office can suggest an inability to fulfill the professional role of lawyers. The same is true of abuse of positions of private trust such as trustee, executor, administrator, guardian, agent, and officer, director, or manager of a corporation or other organization.
Rule 5.7 RESPONSIBILITIES REGARDING LAW-RELATED SERVICES

(a) A lawyer shall be subject to the Ohio Rules of Professional Conduct with respect to the provision of law-related services, as defined in division (e) of this rule, if the law-related services are provided in either of the following circumstances:

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

(2) in other circumstances by an entity controlled or owned by the lawyer individually or with others, unless the lawyer takes reasonable measures to ensure 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.

(b) A lawyer who controls or owns an interest in a business that provides a law-related service shall not require any customer of that business to agree to legal representation by the lawyer as a condition of the engagement of that business. A lawyer who controls or owns an interest in a business that provides law-related services shall disclose the interest to a customer of that business, and the fact that the customer may obtain legal services elsewhere, before performing legal services for the customer.
(c) A lawyer who controls or owns an interest in a business that provides a law-related service shall not require the lawyer’s client to agree to use that business as a condition of the engagement for legal services. A lawyer who controls or owns an interest in a business that provides a law-related service shall disclose the interest to the client, and the fact that the client may obtain the law-related services elsewhere, before providing the law-related services to the client.

(d) Limitations or obligations imposed by this rule on a lawyer shall apply to both of the following:

(1) every lawyer in a firm who knows that another lawyer in his or her firm controls or owns an interest in a business that provides a law-related service;

(2) every lawyer in a firm that controls or owns an interest in a business that provides a law-related service.

(e) The term “law-related services” denotes services that might reasonably be performed in conjunction with the provision of legal services and that are not prohibited as unauthorized practice of law when provided by a nonlawyer.
[1] When a lawyer performs law-related services, sometimes referred to as “ancillary business,” or controls an organization that does so, there exists the potential for ethical problems. Principal among these is the possibility that the person for whom the law-related services are performed fails to understand that the services may not carry with them the protections normally afforded as part of the client-lawyer relationship. The recipient of the law-related services may expect, for example, that the protection of client confidences, prohibitions against representation of persons with conflicting interests, and obligations of a lawyer to maintain professional independence apply to the provision of law-related services when that may not be the case.

[2] Rule 5.7 applies to the provision of law-related services by a lawyer even when the lawyer does not provide any legal services to the person for whom the law-related services are performed and whether the law-related services are performed through a law firm or a separate entity. The rule identifies the circumstances in which all of the Ohio Rules of Professional Conduct apply to the provision of law-related services. Even when those circumstances do not exist, however, the conduct of a lawyer involved in the provision of law-related services is subject to those rules that apply generally to lawyer conduct, regardless of whether the conduct involves the provision of legal services. See, e.g., Rule 8.4.

[3] When law-related services are provided by a lawyer under circumstances that are not distinct from the lawyer’s provision of legal services to clients, the lawyer in providing the law-related services must adhere to the requirements of the Ohio Rules of Professional Conduct as provided in division (a)(1). Even when the law-related and legal services are provided in circumstances that are distinct from each other, for example through separate entities or different support staff within the law firm, the Ohio Rules of Professional Conduct apply to the lawyer as provided in division (a)(2) unless the lawyer takes reasonable measures to assure that the recipient of the law-related services knows that the services are not legal services and that the protections of the client-lawyer relationship do not apply.
[4] Law-related services also may be provided through an entity that is distinct from that through which the lawyer provides legal services. If the lawyer individually or with others has control of such an entity’s operations or owns an interest in the entity, the rule requires the lawyer to take reasonable measures to assure that each person using the services of the entity knows that the services provided by the entity are not legal services and that the Ohio Rules of Professional Conduct that relate to the client-lawyer relationship do not apply. A lawyer’s control of an entity extends to the ability to direct its operation. Whether a lawyer has control will depend upon the circumstances of the particular case.

[5] When a client-lawyer relationship exists with a person who is referred by a lawyer to a separate law-related service entity controlled by the lawyer, individually or with others, the lawyer must comply with Rule 1.8(a).

[6] In taking the reasonable measures referred to in division (a)(2) to assure that a person using law-related services understands the practical effect or significance of the inapplicability of the Ohio Rules of Professional Conduct, the lawyer should communicate to the person receiving the law-related services, in a manner sufficient to ensure that the person understands the significance of the fact, that the relationship of the person to the business entity will not be a client-lawyer relationship. The communication should be made before entering into an agreement for provision of or providing law-related services and preferably should be in writing.
[7] The burden is upon the lawyer to show that the lawyer has taken reasonable measures under the circumstances to communicate the desired understanding.

[8] A lawyer should take special care to keep separate the provision of law-related and legal services to minimize the risk that the recipient will assume that the law-related services are legal services. The risk of such confusion is especially acute when the lawyer renders both types of services with respect to the same matter. Under some circumstances the legal and law-related services may be so closely entwined that they cannot be distinguished from each other, and the requirement of disclosure and consultation imposed by division (a)(2) of the rule cannot be met. In such a case a lawyer will be responsible for assuring that both the lawyer’s conduct and, to the extent required by Rule 5.3, that of nonlawyer employees in the distinct entity that the lawyer controls complies in all respects with the Ohio Rules of Professional Conduct.

[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.
[10] When a lawyer is obliged to accord the recipients of such services the protections of those rules that apply to the client-lawyer relationship, the lawyer must take special care to heed the proscriptions of the rules addressing conflict of interest [Rules 1.7 to 1.11, especially Rules 1.7(a)(2) and 1.8(a), (b) and (f)], and scrupulously adhere to the requirements of Rule 1.6 relating to disclosure of confidential information. The promotion of the law-related services must also in all respects comply with Rules 7.1 to 7.3, dealing with advertising and solicitation. In that regard, lawyers should take special care to identify the obligations that may be imposed as a result of a jurisdiction’s decisional law.

[11] When the full protections of all of the Ohio Rules of Professional Conduct do not apply to the provision of law-related services, principles of law external to the rules, for example, the law of principal and agent, govern the legal duties owed to those receiving the services. Those other legal principles may establish a different degree of protection for the recipient with respect to confidentiality of information, conflicts of interest and permissible business relationships with clients. See also Rule 8.4.

[12] Division (d) makes the prohibitions and disclosures imposed in divisions (b) and (c) applicable to all lawyers in a lawyer’s firm where the lawyer knows that another lawyer in the firm controls or owns an interest in a business that provides law-related services, and every lawyer in a firm that controls or owns an interest in a business that provides law-related services.
RULE 5.1: RESPONSIBILITIES OF PARTNERS, MANAGERS, AND SUPERVISORY LAWYERS

(a) [RESERVED]

(b) [RESERVED]

(c) A lawyer shall be responsible for another lawyer’s violation of the Ohio Rules of Professional Conduct if either of the following applies:

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

(2) the lawyer is a partner or has comparable managerial authority in the law firm or government agency 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.
Comment

[2] Lawyers with managerial authority within a firm or government agency should make reasonable efforts to establish internal policies and procedures designed to provide reasonable assurance that all lawyers in the firm or government agency will conform to the Ohio Rules of Professional Conduct. Such policies and procedures could 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.

[3] Other measures may be advisable depending on the firm’s structure and the nature of its practice. In a small firm of experienced lawyers, informal supervision and periodic review of compliance with the firm’s policies may be appropriate. In a large firm, or in practice situations in which difficult ethical problems frequently arise, more elaborate measures may be prudent. 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. See Rule 5.2. In any event, the ethical atmosphere of a firm can influence the conduct of all its members, and lawyers with managerial authority should not assume that all lawyers associated with the firm will inevitably conform to the rules. These principles apply to lawyers practicing in government agencies.
RULE 5.2: RESPONSIBILITIES OF A SUBORDINATE LAWYER

(a) A lawyer is bound by the Ohio Rules of Professional Conduct notwithstanding that the lawyer acted at the direction of another person.

(b) A subordinate lawyer does not violate the Ohio Rules of Professional Conduct if that lawyer acts in accordance with a supervisory lawyer’s reasonable resolution of a question of professional duty.

Comment

[1] Although a lawyer is not relieved of responsibility for a violation by the fact that the lawyer acted at the direction of a supervisor, that fact may be relevant in determining whether a lawyer had the knowledge required to render conduct a violation of the rules. 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.

[2] When lawyers in a supervisor-subordinate relationship encounter a matter involving professional judgment as to ethical duty, the supervisor may assume responsibility for making the judgment. Otherwise a consistent course of action or position could not be taken. If the question can reasonably be answered only one way, the duty of both lawyers is clear and they are equally responsible for fulfilling it. However, if the resolution is unclear, someone has to decide upon the course of action. That authority ordinarily reposes in the supervisor, and a subordinate may be guided accordingly. For example, if a question arises whether the interests of two clients conflict under Rule 1.7, the supervisor’s reasonable resolution of the question should protect the subordinate professionally if the resolution is subsequently challenged.
RULE 5.3: RESPONSIBILITIES REGARDING NONLAWYER ASSISTANTS

With respect to a nonlawyer employed by, retained by, or associated with a lawyer, all of the following apply:

(a) a lawyer who individually or together with other lawyers possesses managerial authority in a law firm or government agency shall make reasonable efforts to ensure that the firm or government agency has in effect measures giving reasonable assurance that the person’s conduct is compatible with the professional obligations of the 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;

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

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

(2) the lawyer has managerial authority in the law firm or government agency 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

[1] 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. The measures employed in supervising nonlawyers should take account of the fact that they do not have legal training and are not subject to professional discipline.

[2] Division (a) requires lawyers with managerial authority within a law firm or government agency to make reasonable efforts to establish internal policies and procedures designed to provide reasonable assurance that nonlawyers in the firm or government agency will act in a way compatible with the Ohio Rules of Professional Conduct. Division (b) applies to lawyers who have supervisory authority over the work of a nonlawyer. Division (c) specifies the circumstances in which a lawyer is responsible for conduct of a nonlawyer that would be a violation of the Ohio Rules of Professional Conduct if engaged in by a lawyer.
V. Summary and Conclusion

“Raising the Bar”

Step 1- Master the Level of Compliance

Step 2- Establish Attitudes and Culture of Integrity

Step 3- Master the Level of Integrity
Special Notice and Disclaimer

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