

Rule 5.3 Responsibilities Regarding Nonlawyer Assistants. [Sorted by Commenter]						
No.	Commenter	Position ¹	Comment on Behalf of Group?	Rule Paragraph	Comment	RRC Response
1	COPRAC	A	Yes		Support as drafted.	No response required.
2	San Diego County Bar Association	A	Yes		Support as drafted.	No response required.
3	Office of Chief Trial Counsel	A	Yes		OCTC supports this rule as it is a codification of existing California law. However, Comment [3] should be stricken.	No response required. The Commission disagrees and believes the comment provides appropriate guidance in applying the rule.

TOTAL = 3 Agree = 3
 Disagree = 0
 Modify = 0
 NI = 0

¹ A = AGREE with proposed Rule D = DISAGREE with proposed Rule M = AGREE ONLY IF MODIFIED NI = NOT INDICATED

Rule 5.3 Responsibilities Regarding Nonlawyer Assistants (Commission's Proposed Rule – Clean Version)

With respect to a nonlawyer employed or retained by or associated with a 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 the nonlawyer'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; and
- (c) a lawyer shall be responsible for conduct of such a person that would be a violation of these Rules or the State Bar Act if engaged in by a lawyer if:
 - (1) the lawyer orders or, with knowledge of the specific conduct, ratifies the conduct involved; or
 - (2) the lawyer is a partner, or individually or together with other lawyers 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

- [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 confidential information relating to representation of the client, and should be responsible for their work product. (See, e.g., *Waysman v. State Bar* (1986) 41 Cal.3d 452 [224 Cal.Rptr. 101]; *Trousil v. State Bar* (1985) 38 Cal.3d 337, 342 [211 Cal.Rptr. 525]; *Palomo v. State Bar* (1984) 36 Cal.3d 785 [205 Cal.Rptr. 834]; *Crane v. State Bar* (1981) 30 Cal.3d 117, 122 [177 Cal.Rptr. 670]; *Black v. State Bar* (1972) 7 Cal.3d 676, 692 [103 Cal.Rptr. 288]; *Vaughn v. State Bar* (1972) 6 Cal.3d 847, 857-858 [100 Cal.Rptr. 713]; *Moore v. State Bar* (1964) 62 Cal.2d 74, 81 [41 Cal.Rptr. 161].) The measures employed in instructing and supervising nonlawyers should take account of the fact that they may not have legal training.

- [2] Paragraph (a) requires lawyers with managerial authority within a law firm to make reasonable efforts to establish internal policies and procedures designed to provide reasonable assurance that nonlawyers in the firm will act in a way compatible with these Rules and the State Bar Act. See Comment [2] to Rule 5.1. Paragraph (a) applies to lawyers with managerial authority in corporate and government legal departments and legal service organizations as well as to partners and other managing lawyers in private law firms.
- [3] Paragraph (c) specifies the circumstances in which a lawyer is responsible for conduct of a nonlawyer that would be a violation of these Rules or the State Bar Act if engaged in by a lawyer.