

Rule 5.1 Responsibilities of Partners, Managers, and Supervisory Lawyers
(Commission's Proposed Rule – Clean Version)

- (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 comply with these Rules and the State Bar Act.
- (b) A lawyer having direct supervisory authority over another lawyer 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 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 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**
- Paragraph (a) – Duties Of Partners and Managers To Reasonably Assure Compliance with the Rules.*
- [1] Paragraph (a) applies to lawyers who have managerial authority over the professional work of a law firm. See Rule 1.0.1 (Law Firm definition).
- [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 all lawyers in the law firm will comply with these Rules and the State Bar Act. 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.
- [3] Paragraph (a) is also intended to apply to internal policies and procedures of a law firm that involve compensation and career development of lawyers in the law firm that may induce a violation of these Rules and the State Bar Act. See Rule 2.1 and Rule 8.4(a).
- [4] Whether particular measures or efforts satisfy the requirements of paragraph (a) may 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.
- [5] A partner, shareholder or other lawyer in a law firm who has intermediate managerial responsibilities, including lawyers with intermediate managerial responsibilities in a legal services organization, a law department of an enterprise or a governmental

agency, may not be required to implement particular measures under 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. However, such 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.

[6] Paragraph (a) also requires managers, including lawyers who are in charge of a public sector legal agency or the head of a legal department, to make reasonable efforts to assure that other lawyers in the agency or department comply with these Rules and the State Bar Act. The creation and implementation of reasonable guidelines relating to the assignment of cases and the distribution of workload among lawyers in the agency or department are examples of the kind of measures contemplated by the Rule. See, e.g., State Bar of California, GUIDELINES ON INDIGENT DEFENSE SERVICES DELIVERY SYSTEMS (2006).

[7] Paragraph (a) does not apply to lawyers who have intermediate managerial responsibilities in public sector legal agencies and law departments. See Comments [5] and [8].

Paragraph (b) – Duties of Lawyer as Supervisor

[8] Paragraph (b) applies to lawyers who have direct supervisory authority over the work of other lawyers whether or not the subordinate lawyers are members or employees of the law firm. Paragraph (b) applies to all supervisory lawyers including lawyers who are not partners in a partnership or shareholders in a professional law corporation.

Paragraph (b) also applies to lawyers who have intermediate managerial responsibilities in public sector legal agencies and law departments.

[9] A lawyer with supervisory responsibility over another lawyer has an obligation to make reasonable efforts to insure that the other lawyer complies with these Rules and the State Bar Act. Adequate supervision is particularly important when dealing with inexperienced lawyers.

[10] Whether a lawyer has direct supervisory authority over another lawyer in particular circumstances is a question of fact. A lawyer in charge of a particular client matter has direct supervisory authority over the work of other lawyers engaged in the matter.

Paragraph (c) – Responsibility for Another’s Lawyer’s Violation

[11] Paragraph (c)(1) applies to any lawyer who orders or knowingly ratifies another lawyer’s conduct that violates these Rules and the State Bar Act.

[12] Under paragraph (c)(2) a partner or other lawyer having comparable managerial authority in a law firm, and a lawyer who has direct supervisory authority over performance of specific legal work by another lawyer, may be responsible for the conduct of the other lawyer, whether or not the other lawyer is a member or employee of the law firm. 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. A supervisor is required to intervene to prevent avoidable consequences of misconduct if the supervisor knows that the misconduct occurred. Thus, if a supervising lawyer

knows that a subordinate misrepresented a matter to an opposing party in negotiation, the supervisor as well as the subordinate has a duty to correct the resulting misapprehension consistent with the lawyers' duty not to disclose confidential information under Rule 1.6 and Business and Professions Code section 6068(e).

- [13] A supervisory lawyer may violate 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.
- [14] 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. 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.
- [15] This Rule does not alter the personal duty of each lawyer in a law firm to comply with the Rules of Professional Conduct. See Rule 5.2(a).