

APPENDIX A

ER 1.1. Competence

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

Comment

Legal Knowledge and Skill

[1] In determining whether a lawyer employs the requisite knowledge and skill in a particular matter, relevant factors include the relative complexity and specialized nature of the matter, the lawyer's general experience, the lawyer's training and experience in the field in question, the preparation and study the lawyer is able to give the matter and whether it is feasible to refer the matter to, or associate or consult with, a lawyer of established competence in the field in question. In many instances, the required proficiency is that of a general practitioner. Expertise in a particular field of law may be required in some circumstances.

[2] A lawyer need not necessarily have special training or prior experience to handle legal problems of a type with which the lawyer is unfamiliar. A newly-admitted lawyer can be as competent as a practitioner with long experience. Some important legal skills, such as the analysis of precedent, the evaluation of evidence and legal drafting, are required in all legal problems. Perhaps the most fundamental legal skill consists of determining what kind of legal problems a situation may involve, a skill that necessarily transcends any particular specialized knowledge. A lawyer can provide adequate representation in a wholly novel field through necessary study. Competent representation can also be provided through the association of a lawyer of established competence in the field in question.

[3] In an emergency a lawyer may give advice or assistance in a matter in which the lawyer does not have the skill ordinarily required where referral to or consultation or association with another lawyer would be impracticable. Even in an emergency, however, assistance should be limited to that reasonably necessary in the circumstances, for ill-considered action under emergency conditions can jeopardize the client's interest.

[4] A lawyer may accept representation where the requisite level of competence can be achieved by reasonable preparation. This applies as well to a lawyer who is appointed as counsel for an unrepresented person. See also ER 6.2.

Thoroughness and Preparation

[5] Competent handling of a particular matter includes inquiry into and analysis of the factual and legal elements of the problem, and use of methods and procedures meeting the standards of competent practitioners. It also includes adequate preparation. The required attention and preparation are determined in part by what is at stake; major litigation and complex transactions

ordinarily require more ~~elaborate~~**extensive** treatment than matters of lesser **complexity and consequence**. **An agreement between the lawyer and the client regarding the scope of the representation may limit the matters for which the lawyer is responsible. See ER 1.2(c).**

Maintaining Competence

[6] To maintain the requisite knowledge and skill, a lawyer should **keep abreast of changes in the law and its practice**, engage in continuing study and education **and comply with all continuing legal education requirements to which the lawyer is subject**. ~~If a system of peer review has been established, the lawyer should consider making use of it in appropriate circumstances.~~

[7] **A lawyer, whether appointed or retained, who represents a defendant in a capital case shall comply with the standards for appointment of counsel in capital cases set forth in the Arizona Rules of Criminal Procedure.**—

ER 5.1. Responsibilities of a ~~Partner or~~ Partners, Managers, and Supervisory Lawyers

(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~~ **Rules** of ~~professional~~ **Professional** ~~conduct~~ **Conduct**.

(b) A lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the ~~rules~~ **Rules** of ~~professional~~ **Professional** ~~conduct~~ **Conduct**.

(c) A lawyer shall be responsible for another lawyer's violation of the ~~rules~~ **Rules** of ~~professional~~ **Professional** ~~conduct~~ **Conduct** if:

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

(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.

Comment

[1] ~~Paragraphs~~ **Paragraph** (a) and (b) refer ~~applies~~ to lawyers who have ~~supervisory managerial~~ authority over the professional work of a firm or legal department of a government agency. **See ER 1.0(c)**. This includes members of a partnership, ~~and the shareholders in a law firm organized as a professional corporation, and members of other associations authorized to practice law~~; lawyers having ~~supervisory-comparable managerial~~ authority in **a legal services organization or a** the law department of an enterprise or government agency; and lawyers who have intermediate managerial responsibilities in a firm. **Paragraph (b) applies to lawyers who have supervisory authority over the work of other lawyers in a firm.**

[2] **Paragraph (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, but are not limited to, 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] ~~The~~ **Other** measures **that may be** required to fulfill the responsibility prescribed in ~~paragraphs~~ **paragraph** (a) and (b) can depend on the firm's structure and the nature of its practice. In a small firm **of experienced lawyers**, informal supervision and ~~occasional admonition~~ **periodic review of compliance with the required systems** ordinarily ~~might be sufficient~~ **will suffice**. In a

large firm, or in practice situations in which ~~intensely~~ difficult ethical problems frequently arise, more elaborate ~~procedures~~ **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. See ER 5.2. Firms, whether large or small, may also rely on continuing legal education in professional ethics. In any event, the ethical atmosphere of a firm can influence the conduct of all its members and a ~~lawyer having authority over the work of another~~ **the partners** may not assume that ~~the subordinate lawyer~~ **all lawyers associated with the firm** will inevitably conform to the ~~rules~~ **Rules**.

[4] Paragraph (c)(1) expresses a general principle of **personal** responsibility for acts of another. See also ER 8.4(a).

[5] Paragraph (c)(2) defines the duty of a **partner or other** lawyer having **comparable managerial authority in a law firm, as well as a lawyer who has** direct supervisory authority over performance of specific legal work by another lawyer. Whether a lawyer has ~~such~~ supervisory authority in particular circumstances is a question of fact. Partners ~~of a private firm 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 ~~direct authority over 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 ~~the partner's that lawyer's~~ involvement and the seriousness of the misconduct. ~~The 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.

[6] Professional misconduct by a lawyer under supervision could reveal a violation of paragraph (b) on the part of the supervisory lawyer even though it does not entail a violation of paragraph (c) because there was no direction, ratification or knowledge of the violation.

[7] Apart from this ~~rule~~ **Rule** and ER 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~~ **Rules**.

[8] **The duties imposed by this Rule on managing and supervising lawyers do not alter the personal duty of each lawyer in a firm to abide by the Rules of Professional Conduct. See ER 5.2(a).**

ER 5.2. Responsibilities of a Subordinate Lawyer

- (a) A lawyer is bound by the ~~rules~~ **Rules** of ~~professional~~ **Professional** ~~conduct~~ **Conduct** notwithstanding that the lawyer acted at the direction of another person.
- (b) A subordinate lawyer does not violate the ~~rules~~ **Rules** of ~~professional~~ **Professional** ~~conduct~~ **Conduct** if that lawyer acts in accordance with a supervisory lawyer's reasonable resolution of an arguable 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~~ **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 question is reasonably arguable, 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 ER 1.7, the supervisor's reasonable resolution of the question should protect the subordinate professionally if the resolution is subsequently challenged.

ER 5.3. Responsibilities Regarding Nonlawyer Assistants

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;
- (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 the ~~rules~~ **Rules** of ~~professional~~ **Professional** ~~conduct~~ **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

(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

[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. **Law enforcement officers generally are not considered associated with government lawyers, for purposes of this Rule.** A lawyer ~~should~~ **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] **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 the Rules of Professional Conduct. See ER 5.1, Comment [1]. Paragraph (b) applies to lawyers who have supervisory authority over the work of a nonlawyer. Paragraph (c) specifies the circumstances in which a lawyer is responsible for conduct of a nonlawyer that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer.**