



## Potential Liability Issues When Supervising Others

*Partner Smith is the lead of his group and supervises several associates, paralegals and office staff. Can Partner Smith be held liable for those he supervises?*

### **Supervision of Other Lawyers**

Lawyers who supervise others may be potentially liable for the errors and omissions of the lawyers they supervise, and may be disciplined for failing to adequately supervise them. The duty to supervise is articulated in Rule 5.1 of the Model Rules of Professional Conduct. Rule 5.1(b) states that a lawyer with direct supervisory authority over another lawyer is required to make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct. Rule 5.1(c) provides that a lawyer may be disciplined for another lawyer's violation of the Rules of Professional 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.

In California, for example, there is no disciplinary rule directly imposing a duty to supervise, but the discussion accompanying Rule 3-110 addresses the requirement of performing legal services competently and refers to a duty to supervise stating, "The duties set forth in Rule 3-110 include the duty to supervise the work of subordinate attorney and non-attorney employees or agents." The discussion of the duty of supervision included references to various California cases addressing that issue. In *Crane v. State Bar*, 30 Cal.3d 117, 122-123, 177 Cal.Rptr. 670, 635 P.2d 163 (1981), the Court held, "An attorney is responsible for the work product of his employees which is performed pursuant to his direction and authority."

Lawyers have also been held responsible for failing to supervise subordinate attorneys who signed the names of witnesses to witness statements without their permission, submitted discovery containing misstatements of the witness' knowledge, voluntarily dismissing two cases without the knowledge or consent of the clients and without advising the clients of the consequences of the dismissal of their cases, and inaccurately informing a client of the status of the client's case.

In *Gadda v. State Bar*, 50 Cal.3d 344, 353 (1990), the California Supreme Court rejected the argument of an attorney who had failed to supervise another to whom he had delegated work, that a supervising attorney can be found only as blameworthy as the associate he or she supervises. As the duty of supervision is separate and distinct from the underlying duties of a junior attorney to act competently, the supervising attorney may be disciplined for inadequate supervision, even if the supervised attorney is not disciplined. Also, in *Gautam v. DeLuca*, 215 N.J.Super. 388 (1987), the court held that an attorney's failure to properly supervise the work of his associate may constitute negligence particularly where the associate is hindered or disabled by an illness. A reasonable trier of fact could conclude that the attorney was guilty of malpractice because he took no action to safeguard the rights of his law firm's clients despite his knowledge of the associate's disabling sickness. Finally, in *Madden v. Aldrich*, 346 Ark. 405 (2001), a couple retained a law firm in connection with an adoption. The attorney who handled the matter, an employee of the firm, was actually conducting an adoption scam. The Supreme Court held that the owner of the firm was liable to the couple for negligence in failing to supervise the attorney she employed.

### ***Supervision of Non-Lawyer Employees***

What about supervision of non-lawyer employees? There are a variety of incidents where there can be consequences to law firms for failing to provide adequate supervision of non-lawyer employees. A few examples include: an office manager who signs a client's name to a release of claim without informing the client of the offer of settlement or obtaining the client's consent; a paralegal falsely telling a client that a case had been filed and that it was "moving along" when the case had never been filed; and an employee who embezzled \$10,000 of entrusted client funds.

### ***Policies and Procedures***

Although your firm may be more productive when you delegate work to associates, paralegals and assistants, be sure you have adequate policies and procedures in place for monitoring the work of your subordinates. These procedures include the following:

- Assign a partner to every matter handled by the firm for supervision. The supervising partner should have the authority to require a partner other than the introducing partner oversee the engagement.
- The partner responsible for a matter should have experience appropriate for the engagement before being assigned to the engagement.
- Although experience is desirable, an associate assigned to a matter under the supervision of an experienced partner need not have prior experience in handling that kind of matter, as long as the experienced partner is available to supervise the inexperienced associate and actively supervises the handling of the engagement.
- Every associate or non-partner attorney at the firm should be assigned to a partner for supervision.
- The firm should have a procedure for associates and partners to consult with a designated person regarding disagreements with the handling of a client or matter.
- The firm should have policies and procedures to encourage all employees to identify and report suspected alcohol or drug impairment problems involving any employee of the firm. The firm should designate a person to whom all employees can report suspected alcohol or drug impairments, in confidence, involving any employee of the firm.
- The firm should conduct regular, comprehensive performance reviews of associates.
- Implementing such procedures will help minimize risk and potential for malpractice claims.

## Risk Management Tips

- Be aware of any specific state rules, regulations or caselaw concerning supervision of others including attorneys and non-attorney employees.
- It is important to have policies and procedures in place for monitoring the work of those you supervise.
- Should you have questions concerning these issues, consider consulting with an attorney or risk management professional.

**We invite Allied World policyholders to access additional information on this and other Risk Management Topics.** The lawyers' risk management website, <http://awac.lawyerlaw.com>, contains resources as well as related topics.

Also, the **Risk Management Hotline** is included for up to 2 free hours per year, per firm of confidential advice regarding risk management questions that your law firm may have. If you are an Allied World policyholder, the hotline can be accessed through the risk management website, <http://awac.lawyerlaw.com>. Once you log on to the website, the link to contact the hotline is on the upper left side, under the Allied World logo.

If you are not a current Allied World policyholder and would like information on our program and our risk management services, please contact your agent or broker.

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