

1 **Ethical Supervision of Non-lawyer Staff**

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2 **Rule 32:5.3(a) Responsibilities RE: Non-lawyer Assistance**

Attorney with managing authority:

- Reasonable effort to ensure measures in effect to...
- Reasonably assure non-lawyer conduct compatible with lawyer's professional obligations.

Create process to select, train, and monitor non-lawyers.3 **32:5.1: Managing/Supervisory Attorneys**

- A partner in a law firm/lawyer with comparable managerial authority shall make reasonable efforts to ensure measures giving reasonable assurance all lawyers conform to ethics rules.
- Comment [1] This includes lawyers having comparable managerial authority in government agencies
- Comment [2] lawyers with managerial authority take reasonable efforts to establish internal policies and procedures designed to provide reasonable assurance that all lawyers conform to the Iowa Rules of Professional Conduct.

4 **Rule 32:5.3 (b) Responsibilities RE: Non-lawyer Assistance**Attorney directly supervising non-lawyer:

- Reasonable effort to ensure conduct compatible with lawyer's professional obligations.

"Boots on the ground supervision"

Train, monitor, correct: actions of non-lawyers.

5 **Rule 32:5.3(c) Responsibility for Conduct of Nonlawyer Assistance**Lawyer responsible for non-lawyer if action would be a rule violation if the lawyer did it and...

- lawyer orders conduct
- lawyer ratifies action w/ knowledge of specific conduct

Partner/managerial authority/direct supervisor over non-lawyer

- Knows of conduct at time could avoid/mitigate consequences
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- Fails to take reasonable remedial action

6 **Rule 32:5.3 Comment [2]- non-lawyers inside the firm**

- Includes: secretaries, investigators, student interns, paraprofessionals
- Includes employees and independent contractors

- Lawyer must give instruction/supervision re: ethical obligations of their employment
 - Don't disclose information re: client representation
 - Responsibility for their work product
- Measures take account non-lawyers lack legal training & not subject to professional discipline
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7 **Rule 32:5.3 Comment [3]- non-lawyers outside the firm**

- Those who act for lawyer in rendition of legal services
- Includes services like data storage, private investigators, scanning services
- Use "reasonable efforts" to ensure service in manner compatible with ethical obligations of lawyer
- Lawyer must give instruction/supervision re: obligation not to disclose client information
 - Rule 32:1.6(d)- reasonable efforts to prevent unauthorized disclosure/access to client information

8 **Rule 32:5.3 Comment [4]- client- selected non-lawyer service provider**

- Should ordinarily agree with client on allocation of responsibility for monitoring the service provider.
 - Rule 32:1.2 – Lawyer shall abide by client's decisions concerning objectives of representation and consult with client as to means by which they are pursued.

9 **Rule Takeaways....**

Ethical liability occurs when you:

- 1) Fail to train non-lawyers on ethical duties
- 2) Fail to monitor for unethical actions of non-lawyers.
- 3) Fail to deal with/correct non-lawyer violations when they occur.
- 4) Use non-lawyers to do things that are unethical for you to do.
- 5)

10 **Rule 32:1.6: CONFIDENTIALITY OF INFORMATION**

- (d) A lawyer shall make reasonable efforts to prevent inadvertent/unauthorized disclosure or access to information relating to the representation of a client.
- comment[18] Lawyer to act competently to safeguard ...against inadvertent/unauthorized disclosure by the lawyer or other persons participating in the representation who are subject to the lawyer's supervision.
- The unauthorized access ...does not constitute a violation of paragraph (c) if the lawyer has made reasonable efforts to prevent the access or disclosure.

11 **Special rule for prosecutors...**

12 **Special Duty of Prosecutors 32:3.8(f)**

- reasonable care to prevent investigators/ law enforcement personnel/ employees/other persons assisting/ associated making extrajudicial statement prosecutor would be prohibited from making under rule 32:3.6 or this rule.
 - 32:3.6 Trial Publicity- extrajudicial statement
 - reasonably should know will be disseminated

- substantial likelihood material prejudice adjudicative proceeding
- Applies to prosecutor's employees and law enforcement
- For outside entities- appropriate cautions to law enforcement.

13 **Cases**14 **IA S.Ct. Disciplinary Bd. v. Barnhill, 847 N.W.2d 466 (Iowa 2014)**

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- Prior knowledge non-lawyer employee embezzled from the firm.
- Allowed employee to continue to write checks by signing attorney's name on client trust account.
- Attorney failed monitor payments from account or reconcile account.
- Employee wrote check to herself.
- Found violation 32:5.3
 - No reasonable supervision of non-lawyer employee

15 **IA S.Ct. Disciplinary Bd. v. Mathahs, 918 N.W.2d 487 (Iowa 2018)**

- 32:5.3(b)- lack supervision of non-lawyer employee failing ensure accurate preparation of billing statements for court appointed criminal defense services.
 - Billed multiple clients for mileage for same trip
 - Billed inaccurate hours
 - Allowed employee work remotely after knew assistant had problems with attentiveness
 - Insufficient care to prevent repeat of mistakes
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16 **IA S.Ct. Disciplinary Bd. v. Dunahoo, 799 N.W.2d 524 (Iowa 2011)**

- Legal assistant incorrectly advised client they needed to submit \$1200 payment to have bankruptcy petition filed
- Attorney, unknown to assistant, had set fee at \$1000 and had collected \$500.
- S.Ct. found plausible subordinate made mistake not due to inattentive instruction or supervision.
- Held evidence insufficient to prove failed to take reasonable efforts to supervise- 32:5.3(b)

17 **In re Johnston, 872 N.W.2d 300 (N.D. 2015)**

- Attorney disciplined for having paralegal work on same matter that paralegal had worked on for opposing counsel in prior employment.
- Violation of Rule 5.3(a)- failure to put measures in effect to assure non-lawyer conduct compatible with professional obligations.