

New Rules of Professional Conduct Raise Issues Of Attorney Supervision, Use of Nonlawyer Personnel

By the NHBA Ethics Committee

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The Association's Ethics Committee recently prepared a revised and updated version of the 1977 Guidelines, designed to bring the same into conformity with the new *Rules of Professional Conduct*. The revised Guidelines were recently endorsed by the Association's Board of Governors and forwarded to the Supreme Court for consideration. The Board's endorsement did leave open the issue of whether attorneys wishing to do so should be permitted to include a listing of their nonlawyer assistants (appropriately identified as such) on their firm letterhead if appropriate safeguards are observed. This issue will presumably be adopted by the Court, and the revised Guidelines eventually incorporated into an updated Rule 35.

Copies of the revised Guidelines will be generally available as soon as they have been adopted in final form by the Court. In the meantime the 1977 Guidelines, while now somewhat anachronistic in their references to the former Code of Professional Responsibility, still contain a valuable discussion of the key principles which may be usefully applied to ethical dilemmas faced by New Hampshire attorneys and their nonlawyer assistants on a day-to-day basis. In addition, pending future Supreme Court action the Guidelines, as embodied in Rule 35, retain the force of law and as such are still binding upon all New Hampshire attorneys. A future article will discuss the provisions of the revised Guidelines in greater detail once the same have been finalized.

Paralegals, law clerks, title abstractors and other nonlawyer personnel employed by the lawyer in rendering legal services to the client are an indispensable component of modern law practice. If proper safeguards are observed, the use of such personnel can be beneficial to client as well as attorney by enabling the lawyer to provide high quality legal services in a more timely, efficient and economical fashion than would otherwise be the case.

Attorney Standards of Conduct In Supervising the Work of Legal Assistants

The new *New Hampshire Rules of Professional Conduct*, adopted by our Supreme Court on January 16, 1986, effective February 1, recognize the key role played by nonlawyer assistants in the delivery of legal services. Specifically, Rule 5.3 establishes standards of conduct to be observed by the attorney in supervising the work of his or her nonlawyer assistants. The Rule requires that firm partners "make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the [nonlawyer assistant's] conduct is compatible with the professional obligations of the lawyer." Further, the attorney charged with the task of supervising the assistant's work on a day-to-day basis is similarly charged with making reasonable efforts to ensure such conduct by his or her assistant. Finally, lawyers may be held responsible for conduct by a nonlawyer assistant which, if engaged in by a lawyer, would be a violation of the Rules of Professional Conduct, if the lawyer ordered or ratified the conduct or was a partner or supervising attorney and failed to take reasonable remedial action if the lawyer knew of the objectionable conduct at a time when its consequences could have been avoided or mitigated.

In view of the heavy responsibilities this Rule places upon lawyers with respect to the supervision and control of their legal assistants, all attorneys who work in a firm engaging nonlawyer personnel should familiarize themselves with this Rule, and take appropriate steps to ensure that all legal assistants for whose conduct they could conceivably be held responsible are appropriately supervised and held to standards of conduct consistent with the responsibilities of lawyers under the new Rules.

Guidelines for Utilization Of Legal Assistants

To provide additional guidance to attorneys and their lay assistants in this area, the Bar Association in 1977 adopted a set of "Guidelines for the Utilization By Lawyers of the Services of Legal Assistants" under the former *Code of Professional Responsibility*. These Guidelines were subsequently adopted as Rule 35 of the New Hampshire Supreme Court. The Guidelines and accompanying Comments deal with issues such as identification of conduct constituting the unauthorized practice of law by a legal assistant (including appearances in administrative or judicial proceedings); the scope of the assistant's permissible activities in aiding the attorney in the performance of legal services; the protection of client confidences and secrets; and the regulation of business, financial and compensation arrangements and practices involving lawyers and their nonlawyer assistants. The Guidelines also address the manner in which the legal assistant is permitted or required to present him or herself when dealing with clients and the public, including issues such as business cards, letterhead listings and the identification of the assistant as such in correspondence, telephone conversations and the like.