



## ABA Model Rule 5.3(a) & (b)

- Ethical to have non-lawyers (both inside and outside firm/organization) assist in rendering legal services.
- Firm/Company must have “measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer.”
- “[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.”

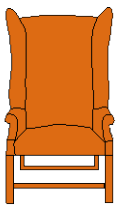


## ABA Model Rule 5.3 (a) & (b)

Lawyer is responsible for conduct of a non-lawyer that would be a violation of the Rules of Professional 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.

5.3(c)



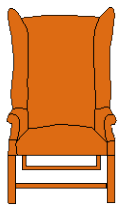
## Comment 4 to Rule 5.3

- “Where the client directs the selection of a particular nonlawyer service provider outside the firm, the lawyer ordinarily should agree with the client concerning the allocation of responsibility for monitoring as between the client and the lawyer.”
- When making such an allocation in a matter pending before a tribunal, lawyers and parties may have additional obligations that are a matter of law beyond the scope of these Rules.
- Discovery Violations



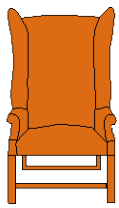
## Comment 3 – Outside Nonlawyers

- Lawyer must “make reasonable efforts to ensure that the services are provided in a manner that is compatible with the lawyer’s professional obligations.”
- Should “communicate directions appropriate under the circumstances to give reasonable assurance that the nonlawyer’s conduct is compatible with the professional obligations of the lawyer.”
- Examples: (1) hiring an eDiscovery provider, (2) using an Internet-based service to store client information, (3) utilizing court reporting services.



# CA Bar Formal Opinion No. 2010-179

- Blanket ethics opinion on the subject of the storage and transference of electronic data across various technologies.
- “[A]n attorney must take appropriate steps to evaluate: 1) the level of security attendant to the use of that technology, including whether reasonable precautions may be taken when using the technology to increase the level of security; 2) the legal ramifications to a third party who intercepts, accesses or exceeds authorized use of the electronic information; 3) the degree of sensitivity of the information; 4) the possible impact on the client of an inadvertent disclosure of privileged or confidential information or work product; 5) the urgency of the situation; and 6) the client’s instructions and circumstances, such as access by others to the client’s devices and communications.”



# ABA Model Rule 1.1

- Lawyer's Duty of Competence
- Comment 8: "To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology, engage in continuing study and education and comply with all continuing legal education requirements to which the lawyer is subject."