

A Guide to Trust Accounting and Financial Recordkeeping in South Carolina

**Adopted by the South Carolina Bar Professional Responsibility Committee
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When lawyers are entrusted with money or property from, on behalf of, or for clients, they must preserve the integrity and safety of it. There are two sources for guidelines in how that money is to be maintained, accounted for, and distributed. The first is Rule 1.15 of the Rules of Professional Conduct. This safekeeping of property rule has six basic requirements for receipt and maintenance of client funds. They are:

- Client funds must be kept separate from your own funds;
- Client funds must be maintained in the state where your office is, unless the client consents to other arrangements;
- Client funds must be specifically identified and safeguarded;
- Complete records regarding the funds must be kept and you must preserve those records for six years;
- You must promptly notify the client of the receipt of the funds and promptly deliver the funds to the client or a third party with a legitimate interest in the funds; and,
- You must promptly and fully account for all client funds received and disbursed.

The second set of guidelines for handling client funds is found in Rule 417, SCACR. Rule 417 is essentially a list of financial records that you are required to maintain regarding your law practice. This rule is a court order, the violation of which subjects the lawyer to disciplinary action. The Supreme Court adopted this rule in January 1997. Since that time, the Court has regularly imposed sanctions, including disbarment, on lawyers who were found to have violated Rule 417.

The Court has held that when there is clear and convincing evidence of trust account violations or other inadequate recordkeeping, the lawyer must produce records sufficiently detailed to overcome that evidence.¹ In other words, a lack of adequate records creates a presumption of trust account mismanagement. You and all staff members handling funds or preparing financial records should be well versed in the requirements of Rule 417. If you have not met with your accountant or bookkeeper to review and explain the requirements of Rule 417, you should do so immediately to confirm that you are in compliance.

¹ *In re Miles*, 516 S.E.2d 661, 335 S.C. 242 (1999).

Commingling

A lawyer who receives funds on behalf of a client has to keep those funds in a trust account until distribution. A trust account is a fiduciary account. Money held in trust on behalf of clients must be kept separate and apart from the operating funds of the law firm and your personal funds. Combining client trust money with your own money is called commingling and is prohibited by Rule 1.15. Earned fees to be used for the operation of the law office are placed in the general (or “operating”) account. Once a fee is earned, it must be withdrawn from the trust account. To leave it in the trust account is commingling.

Some lawyers will keep a cushion in their trust accounts to avoid bouncing checks. While a nominal amount sufficient to cover incidental bank charges (such as checkbook orders) is acceptable, any amount over that is commingling.² Ethics 2000 revises Rule 1.15 to make it clear that you may deposit your own funds in your client trust account for the sole purpose of paying service charges on that account, but only in an amount necessary for that purpose. The better practice is to make arrangements with your bank to have any service charges on the trust account drafted from your operating or general account.

You are not supposed to issue a trust account check until funds have been received and credited to the account.³ Additionally, lawyers and their bookkeepers should be meticulous in their record keeping and calculating so that mathematical errors resulting in insufficient funds are avoided. Therefore, there should never be a circumstance in which you must rely on a cushion of your own money in your client trust account.

Recordkeeping

The recordkeeping rule (Rule 417) sets out clearly the minimum required financial records that you must prepare and maintain. Oftentimes, bookkeeping and banking responsibilities are delegated to paralegals or other nonlawyers in the office. Each member of the legal team at some point is likely to create, receive, or process financial records. Therefore, everyone must be familiar with the recordkeeping requirements. It is your obligation under Rule 5.3 (Supervision of Nonlawyers) to educate your staff about the recordkeeping requirements.

There are two primary reasons this is important. First, if there is ever a question about the integrity of client funds or about financial mismanagement, disciplinary

² *Matter of Rogol*, 355 SC 627, 586 SE2d 593 (2003).

³ This restriction is modified somewhat by Ethics 2000, which contains a “good funds” provision. That provision and its limitations are discussed in Part 2(b), below.

authorities will subpoena the financial records. If you are unable to produce complete records in full compliance with Rule 417, you will be subject to sanction even if ultimately there is no mismanagement. Second, the only way to detect misappropriation of client funds or law firm funds is diligent and comprehensive recordkeeping and financial review.

According to Rule 1.15, RPC, a lawyer's trust account must be maintained in the state where the lawyer's office is located, unless the client agrees otherwise. Rule 417 requires that the lawyer's financial records be located in this state as well. Those records can be kept in paper form or electronically or photographically, but they must be readily accessible. The financial records relating to a particular client must be maintained by the lawyer for a period of six years from the date of termination of the representation.

Rule 417 applies to all bank accounts "concern[ing] or affect[ing] the lawyer's practice of law." This includes not only trust accounts and operating accounts, but also any personal accounts if you use them for law office purposes. You are required to maintain the following records of all accounts.

- Account journal(s)
- Client trust account ledgers
- All records of deposits (deposit tickets/slips & receipts)
- All records of withdrawals (checks, counter withdrawals, bank transfers)
- All trust account disbursement statements
- All retainer and compensation agreements
- All accountings to clients and third parties
- All bills for fees and expenses
- Checkbook registers or check stubs
- All cancelled checks (or their equivalent)
- All bank statements
- Monthly reconciliations
- Any other financial documents from client files

Tri-Part Reconciliation

From the requirement that you keep copies of your monthly account reconciliations, you can infer that you must reconcile your accounts every month. This is a relatively simple process of comparing your records to the bank's as reflected on your monthly statement. This is the first part of the reconciliation. The second part is that you should be able to reconcile your client cards or reports so that when you total up the funds held for each client this will total the amount your records show are in the bank. Most banks provide a form with the monthly statement that you can use to

balance your account by hand. Bookkeeping software can do this for you; however, someone has to enter the data when the monthly statement arrives.

Having a reconciled client card or report for each client is crucial to avoiding trust account problems. The client card or report gives you an instant view of the funds being held for each client. You should review these monthly and make sure that the sum of the funds shown on the client cards or reports add up to and equal what the bank says you have in the trust account and on your accounting system. **Remember: you, not your staff, are responsible for your client's money. It is your license to practice law that is on the line.**

If someone other than yourself reconciles your account every month, such as a staff person or outside accountant, you should ensure that they understand the fiduciary aspects of the trust account. You should provide them with a list of warning signs that might indicate an innocent or deliberate error. When an error is discovered, you should prepare a written memorandum of what occurred and how the problem was resolved. Some of those warning signs include:

- Deposits in your records not reflected on the statement or not credited within one business day of the date in your records
- Checks written on the trust account that have not cleared the bank within a month
- Deposits or checks with amounts that differ from your records
- Checks written significantly out of sequence
- Skips in check sequence without documentation of a voided check
- Unexplained debits or credits to the account through funds transfers
- NSF or overdraft charges
- Unexpected bank charges not covered by funds maintained in the account for that purpose

Rule 417 also contains two provisions specific to trust accounts. First, you must deposit all funds received intact. In other words, you cannot split a deposit. If you receive a retainer check that includes an advance payment of costs, you cannot split the deposit by placing the fee portion in the operating account and the costs portion in the trust account. The entire amount must be deposited into the trust account and then a check payable to the operating account for the amount of the earned fees paid should be written from the trust account. This makes it easier to track incoming funds.

Records of deposit into the trust account must be "sufficiently detailed to identify each item," including the client name or case number (or both if the client has multiple cases with the firm). Frequently lawyers produce carbon deposit slip books in response to financial mismanagement allegations that do not contain the required information.

The source of cash, money orders, cashier's checks, and even regular checks is not noted. Many times when the lawyer does include a client reference, it is not sufficiently identifiable ("Smith" for example). You can deposit more than one check or multiple cash receipts with the same deposit slip, but when you do, you should list each item singly with a full name and case number for identification purposes. Records of deposit include deposit receipts in addition to copies of deposit slips. Don't forget to attach the original deposit receipt to the carbon of the deposit slip and make a copy to attach to each client ledger.

The second provision specific to trust accounts found in Rule 417 is the requirement that withdrawals be made only by check to a named payee or by authorized bank transfer. A lawyer may not withdraw cash at the counter or at an automated teller machine. A lawyer may not write a check from the trust account payable to cash. If the client does not have an account or other means to negotiate a check, the lawyer should assist the client in getting the trust account check cashed at the lawyer's bank. That check must be written payable to the client or other named payee. The lawyer cannot disburse funds to a client or a third party in cash. As internet banking becomes a common bookkeeping tool for busy lawyers, opportunities to run afoul of this restriction increase. It might be easier to transfer your earned fees from the trust account to the operating account or a personal account electronically, but it is risky. If you do it this way, you should keep meticulous records and you should maintain in writing all of the information that you would have if you had made the transfer by check.

Misappropriation

It should be self-evident that a lawyer must never convert client funds to his own use. Unfortunately, each year the Court must address this situation in disciplinary cases. Misappropriation also subjects the lawyer to civil and criminal liability. Partners of a lawyer disbarred for misappropriation might spend years recouping their losses and might even be held ethically accountable. Associates who work for a lawyer disbarred for misappropriation lose their jobs. What's worse is their employment reference is a disbarred lawyer known for dishonest and criminal conduct. All lawyers, whether partners or associates, must be conscious of the financial situations in their law offices. Getting innocently caught up with a lawyer who steals client money can significantly hamper your career.

On the other hand, we are reading more and more in the newspapers and in the advance sheets about paralegals who steal from clients or from their law firms. Lawyers should carefully check the background of each potential employee. A lawyer who gives diligent attention to the processing of client and firm funds and to financial recordkeeping will be alerted to financial misconduct of nonlawyer employees. A lawyer

who doesn't could be held financially and ethically accountable for the wrongful conduct of the nonlawyer employee.

There are several warning signs that a member of the legal team might be misappropriating money:

- Blank or incomplete check stubs or deposit slips;
- Missing checks;
- Accounts that do not balance;
- Checks returned for insufficient funds;
- Unidentified counter withdrawals or electronic transfers;
- Checks clearing out of sequence;
- Records of excessive voided checks;
- Checks made payable to an unfamiliar vendor;
- Excessive checks to a particular vendor;
- Possessiveness, secretiveness, or defensiveness of the lawyer or employee responsible for bookkeeping;
- Lack of monthly reconciliations of bank accounts;
- Unopened bank statements or unopened bills;
- Frequent trips to the bank;
- Complaints from vendors or third parties that they are not being timely paid or that they did not receive a check that had been issued;
- Past due law office bills such as phone or other utility bills;
- Operating account or personal account checks written to the trust account;
- Monthly checks for the same amount (such as a car or mortgage payment);
- Unusual urgency about resolving a case (settlement, closing, etc.);
- Signs of a lifestyle beyond the means of the lawyer or employee;
- Signs of depression or alcohol or drug abuse.

While there may be a logical explanation for each of these circumstances, many cases of misappropriation of large sums of client or firm funds could have been avoided if these warning signs had been heeded.

Ethics 2000

The revisions to the Rules of Professional Conduct that become effective on October 1, 2005 contain several provisions that alter trust account practices. If you have not studied the new rules, you should do so as soon as possible. Your review of Ethics 2000 should not be limited to the revisions discussed here. For purposes of these materials, we are addressing revisions that affect trust account practices only.

First, the rule that fees must be reasonable (Rule 1.5) now includes expenses. Expenses that the client will be responsible for must be relayed to client when the basis of the rate or fee is relayed (before or within a reasonable time after commencing the representation). Rule 1.5 also adds a requirement that the scope of the representation be relayed to the client at the outset. Court rejected the Bar's recommendation of a

requirement that all fee agreements be in writing. However, with regard to contingency agreements, which were required to be in writing under the prior version of Rule 1.5, now must be signed by the client. Written contingency fees must also now clearly notify the client of any expenses the client will be expected to pay in addition to the explanation of how fees will be calculated.

As stated above, under the case law, lawyers are prohibited from keeping their own funds in their trust accounts as a cushion against bounced checks. Ethics 2000 revises Rule 1.15 to affirm this restriction, but allow for coverage of bank fees. The revision includes paragraph (b), which states that a lawyer "may deposit the lawyer's own funds in a client trust account for the sole purpose of paying service charges on that account, but only in an amount necessary for that purpose."

Another provision that essentially codifies the Court's rulings in disciplinary cases is the modified Rule 1.15(c), which requires that you deposit into your client trust account all unearned legal fees and expenses paid in advance. You may only withdraw those funds as fees are earned or expenses are incurred.

Ethics 2000 also addresses how lawyers should handle disputed funds. When you receive funds claimed by more than one person (including yourself or your client), you are required to promptly disburse undisputed portions of the funds and hold the disputed amount separately until the dispute is resolved. This has always been the requirement, but the revised version of Rule 1.15(e) had more clear language.

With the revisions, a good funds rule has been added that allows a lawyer to treat certain negotiable instruments as cash. Ordinarily, you may not disburse funds from your trust account unless the funds are actually collected funds, meaning the check has cleared and your account has been credited for the deposit. However, a lawyer may treat cash, verified and documented electronic fund transfers, or other deposits treated by the depository bank as equivalent to cash as equivalent to collected funds. Certain negotiable instruments, including properly endorsed government checks, certified checks, and cashiers checks, once deposited, can be disbursed without verification that the account has been credited. The good funds provision also includes "any other instrument payable at or through a bank, if the amount of such instrument does not exceed \$5,000 and the lawyer has reasonable and prudent belief that the deposit of the instrument will be collected promptly." If it turns out that the funds are not

collected, the lawyer is required to deposit replacement funds in the account as soon as practical but no later than five working days after notice of that the funds have not been collected.

New subsection (g) prohibits a lawyer from using the balance in the trust account to get credit or for other personal benefit or for the benefit of someone other than the client.

Another significant revision to Rule 1.15 is the new mandatory overdraft or insufficient funds reporting requirement found in section (h). Under this provision, you are required to file a written directive with your bank that it report to the Commission on Lawyer Conduct when any instrument drawn on your account is presented for payment against insufficient funds. If your bank refuses, you have to find another bank. The Office of Disciplinary Counsel will now have information to investigate any incident where a lawyer's trust account balance falls below zero or when a lawyer's trust account check bounces. This is likely to identify instances of financial mismanagement and misappropriation before significant client and bank losses.

The trust account provisions discussed here are only a small portion of the sweeping changes presented by the Ethics 2000 process. The revisions include changes to the rules regarding limiting the scope of representation, communication with clients, confidentiality, conflicts of interests, duties to client with diminished capacity and prospective clients, termination of representation, sale of a law practice, candor to the courts and communication with jurors, communication with people other than the client, and many other important areas. Any lawyer who has not reviewed the revised Rules of Professional Conduct should do so immediately and should provide detailed education to all associates and nonlawyer assistants working in the law office.

Checklist of Recommendations to Ensure Compliance with Recordkeeping and Trust Account Rules

- Written policies** for handling funds and recordkeeping
- Staff training on handling funds and recordkeeping
- Personal meeting with bank officer regarding attorney's obligations, including overdraft reporting requirement
- Written fee agreements or letters of confirmation in all cases
- Include scope of representation, fee calculation & explanation of costs
- Monthly** reconciliation of all law office accounts
- Notification to attorney of un-cleared checks & check/deposit errors
- Annual review by outside CPA
- All receipts from or on behalf of clients deposited into trust account
- All firm funds withdrawn from trust account when earned

- _____ Checks or check writing software are secured
- _____ Maintain accounting journal for each account
- _____ Check stubs/check register with date, payee, amount, & case ID
- _____ Client identification on memo line of all checks
- _____ All receipts deposited intact
- _____ Note client identification on all deposit slips and deposit receipts
- _____ **No signature stamps**
- _____ **Only attorneys sign checks**
- _____ No cash disbursements or checks payable to cash
- _____ Electronic transfers only when absolutely necessary & maintain good records
- _____ Receipts given to clients & duplicates retained
- _____ Copies of front & back of all checks & money orders received
- _____ No disbursement until the deposit clears
- _____ **Two sets of eyes** on all transactions
- _____ Written directive on file with bank to report to CLC all NSF checks & overdrafts
- _____ Maintain copies of all financial records for six years:

- _____ Account journals
- _____ Client trust account ledgers
- _____ Copies of deposit slips
- _____ Original deposit receipts
- _____ Check duplicates or check stubs
- _____ Original or copies of canceled checks
- _____ Records of wires & electronic transfers
- _____ Records of counter withdrawals (other than from trust account)
- _____ Disbursement statements (settlement ledgers, HUDs, etc)
- _____ Retainer and compensation agreements or letters
- _____ Billing statements
- _____ Invoices from vendors
- _____ Accountings to third parties (including courts)
- _____ Bank statements for all accounts
- _____ Reconciliation reports for all accounts
- _____ Memos regarding bank errors, math errors, account correction, etc.

RULE 1.15: SAFEKEEPING PROPERTY

(a) A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. Funds shall be kept in a separate account maintained in the state where the lawyer's office is situated, or elsewhere with the consent of the client or third person. Other property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of six years after termination of the representation.

(b) A lawyer may deposit the lawyer's own funds in a client trust account for the sole purpose of paying service charges on that account, but only in an amount necessary for that purpose.

(c) A lawyer shall deposit into a client trust account unearned legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred.

(d) Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property.

(e) When in the course of representation a lawyer is in possession of property in which two or more persons (one of whom may be the lawyer) claim interests, the property shall be kept separate by the lawyer until the dispute is resolved. The lawyer shall promptly distribute all portions of the property as to which the interests are not in dispute.

(f) A lawyer shall not disburse funds from an account containing the funds of more than one client or third person unless the funds to be disbursed have been deposited in the account and are collected funds; provided, however, a lawyer may treat as equivalent to collected funds cash, verified and documented electronic fund transfers, or other deposits treated by the depository bank as equivalent to cash, properly endorsed government checks, certified checks, cashiers checks or other checks drawn by a bank, and any other instrument payable at or through a bank, if the amount of such other instrument does not exceed \$5,000 and the lawyer has reasonable and prudent belief that the deposit of such other instrument will be collected promptly. If the actual collection of deposits treated as the equivalent of collected funds does not occur, the lawyer shall, as soon as practical but in no event more than five working days after notice of noncollection, deposit replacement funds in the account.

(g) A lawyer shall not use or pledge any entrusted property to obtain credit or other personal benefit for the lawyer or any person other than the legal or beneficial owner of that property.

(h) Every lawyer maintaining a law office trust account shall file with the financial institution a written directive requiring the institution to report to the Commission on Lawyer Conduct when any properly payable instrument drawn on the account is presented for payment against insufficient funds. No law office trust account shall be maintained in a financial institution that does not agree to make such reports. The inadvertent failure of the institution to provide the report required by this rule shall not be construed to establish a breach of duty of care, or contract with, the Court or any third party who may sustain a loss as a result of an overdraft of a lawyer trust account.

Comment

[1] A lawyer should hold property of others with the care required of a professional fiduciary. Securities should be kept in a safe deposit box, except when some other form of safekeeping is warranted by special circumstances. All property that is the property of clients or third persons, including prospective clients, must be kept separate from the lawyer's business and personal property and, if monies, in one or

more trust accounts. Separate trust accounts may be warranted when administering estate monies or acting in similar fiduciary capacities. A lawyer should maintain on a current basis books and records in accordance with prudent accounting practice and must comply with any recordkeeping rules established by law or court order. See, e.g., Rule 417, SCACR (Financial Recordkeeping).

[2] While normally it is impermissible to commingle the lawyer's own funds with client funds, paragraph (b) provides that it is permissible when necessary to pay service charges on that account. Accurate records must be kept regarding which part of the funds are the lawyer's.

[3] Lawyers often receive funds from which the lawyer's fee will be paid. The lawyer is not required to remit to the client funds that the lawyer reasonably believes represent fees owed. However, a lawyer may not hold funds to coerce a client into accepting the lawyer's contention. The disputed portion of the funds must be kept in a trust account and the lawyer should suggest means for prompt resolution of the dispute, such as arbitration. The undisputed portion of the funds shall be promptly distributed.

[4] Paragraph (e) also recognizes that third parties may have lawful claims against specific funds or other property in a lawyer's custody, such as a client's creditor who has a lien on funds recovered in a personal injury action. A lawyer may have a duty under applicable law to protect such third-party claims against wrongful interference by the client. In such cases, when the third-party claim is not frivolous under applicable law, the lawyer must refuse to surrender the property to the client until the claims are resolved. A lawyer should not unilaterally assume to arbitrate a dispute between the client and the third party, but, when there are substantial grounds for dispute as to the person entitled to the funds, the lawyer may file an action to have a court resolve the dispute.

[5] The obligations of a lawyer under this Rule are independent of those arising from activity other than rendering legal services. For example, a lawyer who serves only as an escrow agent is governed by the applicable law relating to fiduciaries even though the lawyer does not render legal services in the transaction and is not governed by this Rule.

[6] The Lawyers' Fund for Client Protection provides a means through the collective efforts of the bar to reimburse persons who have lost money or property as a result of dishonest conduct of a lawyer. Under Rule 411, SCACR, each active or senior member of the Bar is required to make an annual contribution to this fund.

RULE 417
FINANCIAL RECORDKEEPING

(a) A lawyer who practices in this state shall maintain current financial records as provided in this rule, and shall retain the following records for a period of six (6) years after termination of the representation:

(1) receipt and disbursement journals containing a record of deposits to and withdrawals from bank accounts which concern or affect the lawyer's practice of law, specifically identifying the date, source, and description of each item deposited, as well as the date, payee and purpose of each disbursement;

(2) ledger records for all trust accounts required by Rule 1.15 of the Rules of Professional Conduct, showing, for each separate trust client or beneficiary, the source of all funds deposited, the names of all persons for whom the funds are or were held, the amount of such funds, the descriptions and amounts of charges or withdrawals, and the names of all persons to whom such funds were disbursed;

(3) copies of retainer and compensation agreements with clients as required by Rule 1.5 of the Rules of Professional Conduct;

(4) copies of accountings to clients or third persons showing the disbursement of funds to them or on their behalf;

(5) copies of bills for legal fees and expenses rendered to clients;

(6) copies of records showing disbursements on behalf of clients;

(7) checkbook registers or check stubs, bank statements, records of deposit, and prenumbered canceled checks or their equivalent;

(8) copies of monthly reconciliations of the lawyer's trust accounts with the statements received from the financial institutions; and

(9) copies of those portions of clients' files that are reasonably necessary for a complete understanding of the financial transactions pertaining to them.

(b) With respect to trust accounts required by Rule 1.15 of the Rules of Professional Conduct:

(1) receipts shall be deposited intact and records of deposit should be sufficiently detailed to identify each item; and

(2) withdrawals shall be made only by check payable to a named payee and not to cash, or by authorized bank transfer.

(c) Records required by this rule may be maintained by electronic, photographic, computer or other media provided that they otherwise comply with this rule and provided further that printed copies can be produced. These records shall be located at the lawyer's principal office in the state or in a readily accessible location.

(d) Upon dissolution of any partnership or limited liability company of lawyers or of any legal professional corporation, the partners, members or shareholders shall make appropriate arrangements for the maintenance of the records specified in paragraph (a) of this rule.

(e) Upon the transfer or discontinuance of a law practice, the lawyer shall make appropriate arrangements for the maintenance of the records specified in paragraph (a) of this rule.

RULE 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 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.

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. A lawyer 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 Comment [1] to Rule 5.1. 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.