

Tip of the Month

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Basic Training: Avoiding the Ethical Minefields of Nonlawyer Assistance In Your Practice

Balancing legal work and deadlines with the business side of law firm management can be challenging. For this reason, you need a professional staff that is well-equipped to assist you in various tasks from client intake and billing to social media. While it may be tempting to delegate work to capable legal assistants and paralegals, be wary of the Rules of Professional Conduct concerning supervision of nonlawyer assistants.

The ABA recently released [Formal Opinion 506](#) providing lawyers guidance for legal assistants performing client intake tasks. The Opinion highlights Model Rule 5.3 concerning management and supervision of nonlawyers focusing on the lawyer's duty to ensure that any nonlawyer assistance is performed in a way that is compatible with the lawyer's duties. With respect to client intake, nonlawyer assistants can perform many helpful duties. For instance, they may check conflicts of interest, collect basic information from prospective clients, and explain the potential fees and costs if the lawyer is retained. However, the lawyer must ensure that the prospective client is always offered an opportunity to meet with the lawyer and discuss the potential scope of representation and fee arrangement. Notably, the Opinion addressed whether a nonlawyer could answer any specific client questions. The answer will depend on the nature of the questions because Model Rule 5.5, the rule concerning the unauthorized practice of law, could be implicated in your jurisdiction.

Formal Opinion 506 cautions that although the benefits of using nonlawyer assistants are many, "without proper policies, training and supervision in place, [delegation of client intake] could lead to ethical consequences for clients and lawyers." Although the ABA made this statement in the context of client intake, it certainly translates to all work you may delegate, including with respect to the firm's social media. While some lawyers may gladly delegate management of social media accounts to younger staff members who may be familiar with the various platforms, lawyers must remember their supervisory duties under Rule 5.3. Appropriate instruction and supervision as to what can be posted (a picture of the firm volunteering together) versus what cannot be posted (confidential client information or settlement values) is of paramount importance. After all, it is your license on the (front) line. Remember – delegation of these responsibilities is not a defense to violating ethics rules.

As always, be sure to check your local jurisdiction concerning any further rules or restrictions regarding the use of nonlawyer assistants. And, be sure to train and supervise your nonlawyer assistants to conduct themselves in a way that is consistent with your professional obligations and to know when to call for reinforcements.