

LAWYER TO LAWYER MENTORING PROGRAM
WORKSHEET X
INTRODUCTION TO PREVENTION OF THE UNAUTHORIZED PRACTICE OF LAW

Worksheet X is intended to facilitate a discussion about how to prevent the unauthorized practice of law with staff.

* * *

- Discuss the types of behavior that constitute the unauthorized practice of law in Indiana and to the extent possible, define the “practice of law.”
- Discuss the policy interests that are served by the prosecution of non-licensed persons engaging in the unauthorized practice of law.
- Discuss an attorney’s ethical obligation to prevent the unauthorized practice of law and provide specific tips on how to prevent non-lawyer personnel from inadvertently (or intentionally) engaging in it. See Prof. Cond. Rule 5.3.
- If mentoring in-house, discuss the office policies (if any) that are in place to prevent the unauthorized practice of law by non-lawyer staff. See Guidelines 9.1-9.10.
- Share with the new lawyer appropriate ways to monitor the work product and activities of support staff for which the new lawyer is ultimately responsible as an attorney.
- Discuss what constitutes adequate supervision of non-lawyer employees and the types of non-lawyer employees that attorneys have the obligation to supervise.
- Discuss the types of business relationships in which a lawyer could become involved which might potentially cause him to aid the unauthorized practice of law. See Prof. Cond. Rule 5.4.

RESOURCES

INDIANA RULES OF PROFESSIONAL CONDUCT

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 possess 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.

View comments at http://www.in.gov/judiciary/rules/prof_conduct/index.html#_Toc244572275

Rule 5.4. Professional Independence of a Lawyer

- (a) A lawyer or law firm shall not share legal fees with a nonlawyer, except that:
 - (1) an agreement by a lawyer with the lawyer's firm, partner, or associate may provide for the payment of money, over a reasonable period of time after the lawyer's death, to the lawyer's estate or to one or more specified persons;
 - (2) a lawyer who purchases the practice of a deceased, disabled, or disappeared lawyer may, pursuant to the provisions of Rule 1.17, pay to the estate or other representative of that lawyer the agreed upon purchase price; and
 - (3) a lawyer or law firm may include nonlawyer employees in a compensation or retirement plan, even though the plan is based in whole or in part on a profit-sharing arrangement.
- (b) A lawyer shall not form a partnership with a nonlawyer if any of the activities of the partnership consist of the practice of law.
- (c) A lawyer shall not permit a person who recommends, employs, or pays the lawyer to render legal services for another to direct or regulate the lawyer's professional judgment in rendering such legal services.
- (d) A lawyer shall not practice with or in the form of a professional corporation or association authorized to practice law for a profit, if:
 - (1) a nonlawyer owns any interest therein, except that a fiduciary representative of the estate of a lawyer may hold the stock or interest of the lawyer for a reasonable time during administration;
 - (2) a nonlawyer is a corporate director or officer thereof or occupies the position of similar responsibility in any form of association other than a corporation; or
 - (3) a nonlawyer has the right to direct or control the professional judgment of a lawyer.

View comments at http://www.in.gov/judiciary/rules/prof_conduct/index.html#_Toc244572276

Rule 5.5. Unauthorized Practice of Law; Multijurisdictional Practice of Law

- (a) A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.
- (b) A lawyer who is not admitted to practice in this jurisdiction shall not:
 - (1) except as authorized by these Rules or other law, establish an office or other systematic and continuous presence in this jurisdiction for the practice of law; or
 - (2) hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction.
- (c) A lawyer admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services on a temporary basis in this jurisdiction that:
 - (1) are undertaken in association with a lawyer who is admitted to practice in this jurisdiction and who actively participates in the matter;
 - (2) are in or reasonably related to a pending or potential proceeding before a tribunal in this or another jurisdiction, if the lawyer, or a person the lawyer is assisting, is authorized by law or order to appear in such proceeding or reasonably expects to be so authorized;
 - (3) are in or reasonably related to a pending or potential arbitration, mediation, or other alternative dispute resolution proceeding in this or another jurisdiction, if the services arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice and are not services for which the forum requires pro hac vice admission; or
 - (4) are not within paragraphs (c)(2) or (c)(3) and arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice.
- (d) A lawyer admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services in this jurisdiction that:
 - (1) are provided to the lawyer's employer or its organizational affiliates and are not services for which the forum requires pro hac vice admission; or
 - (2) are services that the lawyer is authorized to provide by federal law or other law of this jurisdiction.

View comments at http://www.in.gov/judiciary/rules/prof_conduct/index.html#_Toc244572276

INDIANA RULES OF PROFESSIONAL CONDUCT

USE OF NON-LAWYER ASSISTANTS

Introduction

Subject to the provisions in Rule 5.3, all lawyers may use non-lawyer assistants in accordance with the following guidelines.

Guideline 9.1. Supervision

A non-lawyer assistant shall perform services only under the direct supervision of a lawyer authorized to practice in the State of Indiana and in the employ of the lawyer or the lawyer's employer. Independent non-lawyer assistants, to-wit, those not employed by a specific firm or by specific lawyers are prohibited. A lawyer is responsible for all of the professional actions of a non-lawyer assistant performing services at the lawyer's direction and should take reasonable measures to insure that the non-lawyer assistant's conduct is consistent with the lawyer's obligations under the Rules of Professional Conduct.

Guideline 9.2. Permissible Delegation

Provided the lawyer maintains responsibility for the work product, a lawyer may delegate to a non-lawyer assistant or paralegal any task normally performed by the lawyer; however, any task prohibited by statute, court rule, administrative rule or regulation, controlling authority, or the Indiana Rules of Professional Conduct may not be assigned to a non-lawyer.

Guideline 9.3. Prohibited Delegation

A lawyer may not delegate to a non-lawyer assistant:

- (a) responsibility for establishing an attorney-client relationship;
- (b) responsibility for establishing the amount of a fee to be charged for a legal service; or
- (c) responsibility for a legal opinion rendered to a client.

Guideline 9.4. Duty to Inform

It is the lawyer's responsibility to take reasonable measures to ensure that clients, courts, and other lawyers are aware that a non-lawyer assistant, whose services are utilized by the lawyer in performing legal services, is not licensed to practice law.

Guideline 9.5. Identification on Letterhead

A lawyer may identify non-lawyer assistants by name and title on the lawyer's letterhead and on business cards identifying the lawyer's firm.

Guideline 9.6. Client Confidences

It is the responsibility of a lawyer to take reasonable measures to ensure that all client confidences are preserved by non-lawyer assistants.

Guideline 9.7. Charge for Services

A lawyer may charge for the work performed by non-lawyer assistants.

Guideline 9.8. Compensation

A lawyer may not split legal fees with a non lawyer assistant nor pay a non-lawyer assistant for the referral of legal business. A lawyer may compensate a non-lawyer assistant based on the

quantity and quality of the non-lawyer assistant's work and the value of that work to a law practice, but the non-lawyer assistant's compensation may not be contingent, by advance agreement, upon the profitability of the lawyer's practice.

Guideline 9.9. Continuing Legal Education

A lawyer who employs a non-lawyer assistant should facilitate the non-lawyer assistant's participation in appropriate continuing education and pro bono publico activities.

Guideline 9.10. Legal Assistant Ethics

All lawyers who employ non-lawyer assistants in the State of Indiana shall assure that such non-lawyer assistants conform their conduct to be consistent with the following ethical standards:

- (a) A non-lawyer assistant may perform any task delegated and supervised by a lawyer so long as the lawyer is responsible to the client, maintains a direct relationship with the client, and assumes full professional responsibility for the work product.
- (b) A non-lawyer assistant shall not engage in the unauthorized practice of law.
- (c) A non-lawyer assistant shall serve the public interest by contributing to the delivery of quality legal services and the improvement of the legal system.
- (d) A non-lawyer assistant shall achieve and maintain a high level of competence, as well as a high level of personal and professional integrity and conduct.
- (e) A non-lawyer assistant's title shall be fully disclosed in all business and professional communications.
- (f) A non-lawyer assistant shall preserve all confidential information provided by the client or acquired from other sources before, during, and after the course of the professional relationship.
- (g) A non-lawyer assistant shall avoid conflicts of interest and shall disclose any possible conflict to the employer or client, as well as to the prospective employers or clients.
- (h) A non-lawyer assistant shall act within the bounds of the law, uncompromisingly for the benefit of the client.
- (i) A non-lawyer assistant shall do all things incidental, necessary, or expedient for the attainment of the ethics and responsibilities imposed by statute or rule of court.
- (j) A non-lawyer assistant shall be governed by the Indiana Rules of Professional Conduct.
- (k) For purposes of this Guideline, a non-lawyer assistant includes but shall not be limited to: paralegals, legal assistants, investigators, law students and paraprofessionals.

http://www.in.gov/judiciary/rules/prof_conduct/index.html