

## Rule 5.2: Responsibilities of a Subordinate Lawyer

### 1. Current Kentucky Rule with Official Comments:

#### SCR 3.130(5.2) Responsibilities of a subordinate lawyer

(a) A lawyer is bound by the Rules of Professional Conduct notwithstanding that the lawyer acted at the direction of another person.

(b) A subordinate lawyer does not violate the Rules of Professional Conduct if that lawyer acts in accordance with a supervisory lawyer's reasonable resolution of an arguable question of professional duty.

#### Supreme Court Commentary

[1] Although a lawyer is not relieved of responsibility for a violation by the fact that the lawyer acted at the direction of a supervisor, that fact may be relevant in determining whether a lawyer had the knowledge required to render conduct a violation of the Rules. For example, if a subordinate filed a frivolous pleading at the direction of a supervisor, the subordinate would not be guilty of a professional violation unless the subordinate knew of the document's frivolous character.

[2] When lawyers in a supervisor-subordinate relationship encounter a matter involving professional judgment as to ethical duty, the supervisor may assume responsibility for making the judgment. Otherwise a consistent course of action or position could not be taken. If the question can reasonably be answered only one way, the duty of both lawyers is clear and they are equally responsible for fulfilling it. However, if the question is reasonably arguable, someone has to decide upon the course of action. That authority ordinarily reposes in the supervisor, and a subordinate may be guided accordingly. For example, if a question arises whether the interests of two clients conflict under Rule 1.7, the supervisor's reasonable resolution of the question should protect the subordinate professionally if the resolution is subsequently challenged.

### 2. Proposed Kentucky Rule with Official Comments:

The Commission did not recommend any changes to Rule 5.2. Similarly, the Committee does not recommend any changes to KRPC 5.2 other than to change the caption Supreme Court Commentary to Comment.

**3. Discussion and Explanation of Recommendation:**

**a. Comparison of proposed Kentucky Rule with its counterpart ABA Model Rule.**

The Commission made no changes to this Rule. The Committee similarly recommends no changes to the current Kentucky Rule other than to change the caption Supreme Court Commentary to Comment.

**b. Detailed discussion of reason for variance from ABA Model Rule (if any).**

Not applicable.

Committee proposal adopted without change. Order 2009-05, eff 7-15-09.