

# Professional Responsibility

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## Law Firms & Lawyers In Special Roles

1. Attorney Applebaum is recognized as an expert in securities regulation law. Corporation retained Applebaum's law firm to qualify Corporation's stock for public sale. After accepting the matter, Applebaum decided that he preferred to spend his time on cases with larger fee potential, so he assigned responsibility for the Corporation matter to Attorney Becker, an associate in Applebaum's office who had recently been admitted to the bar. Becker protested to Applebaum that he, Becker, knew nothing about securities regulation law and that he had too little time to prepare himself to handle the Corp matter competently without substantial help from Applebaum. Applebaum responded, "I don't have time to help you. Everyone has to start somewhere." Applebaum directed Becker to proceed. Was Applebaum's conduct proper in this matter?
  - a. Yes, because as a member of the bar, Becker is licensed to handle any legal matter.
  - b. Yes, because Applebaum may withdraw from a case if work on it would cause him unreasonable financial hardship.
  - c. No, because Applebaum knew Becker was not competent to handle the matter, and Applebaum failed to provide supervision adequate to protect the client's interest.
  - d. No, because Corporation had not given Applebaum permission to assign Becker to work on the matter.

2. Attorney places Associate, recently admitted to the bar, in complete charge of the work of the paralegals in Attorney's office. That work consisted of searching titles to real property, an area in which Associate had no familiarity. Attorney instructed Associate to review the searches prepared by the paralegals, and thereafter to sign Attorney's name to the required certifications of title if Associate was satisfied that the search accurately reflected the condition of the title. This arrangement enabled Attorney to lower office operating expenses. Attorney told Associate that Associate should resolve any legal questions that might arise and not to bother Attorney because Attorney was too busy handling major litigation. Is it proper for Attorney to assign Associate this responsibility?
  - a. Yes, if the paralegals are experienced in searching titles.
  - b. Yes, because Attorney is ultimately liable for the accuracy of the title searched.
  - c. No, unless it enables Attorney to charge lower fees for title certification.
  - d. No, because Attorney is not adequately supervising the work of Associate.
3. Applebaum & Becker, a general partnership, is a litigation firm that hires new law school graduates as associates. These new lawyers are largely left to their own resources to practice law. Applebaum & Becker accepts many small cases and assigns them to associates for training purposes. No senior partners are assigned to supervise this work. Client retained Applebaum & Becker to pursue a claim for breach of contract against City. Associate, a first year associate, was assigned Client's case. Associate failed to comply with the applicable 30-day notice requirement for filing a claim against City, and thus Client lost the chance to recover \$5,000. Which of the following statements are correct?
  - The firm is subject to discipline for failure to supervise Associate.
  - The individual partners of Applebaum & Becker are subject to discipline for failure to make reasonable efforts to establish a system providing reasonable assurance that all lawyers in the firm comply with the rules of professional conduct.
  - Associate is subject to discipline for incompetent representation.
  - Both the firm and Associate are subject to civil liability for Client's loss.

4. Associate was recently hired by the Smith Law Firm. Applebaum, a partner at the Smith Law Firm, has asked Associate to draft a complaint in a new case. Associate, who has researched the potential claims for the complaint, concluded that the claims **may** be frivolous. Applebaum has thoroughly reviewed Associate's research and determined that, although the claims are weak, they are not frivolous. Thus, Applebaum instructs Associate to file the complaint. If it turns out that the claims were frivolous, would Associate be subject to discipline? Would Applebaum be subject to discipline?
5. An attorney has a highly efficient staff of paraprofessional legal assistants, all of whom are graduates of recognized legal assistant educational programs. Recently, the statute of limitations ran against a claim of a client of the attorney's when a legal assistant negligently misplaced the client's file and suit was not filed within the time permitted by law. Which of the following is correct?
  - a. The attorney is subject to civil liability and is also subject to discipline on the theory of respondent superior.
  - b. The attorney is subject to civil liability or is subject to discipline at the client's election.
  - c. The attorney is subject to civil liability but is NOT subject to discipline unless the attorney failed to supervise the legal assistant adequately.
  - d. The attorney is NOT subject to civil liability and is NOT subject to discipline if the attorney personally was not negligent.
6. A law firm has 300 lawyers in 10 states. It has placed the supervision of all routine administrative and financial matters in the hands of a nonlawyer administrator. The administrator is paid a regular monthly salary and a year-end bonus of 1% of the law firm's net income from fees. Organizationally, the administrator reports to the managing partner of the law firm. This partner deals with all issues related to the law firm's supervision of the practice of law. Is it proper for the partner to participate in the law firm's use of the administrator's services in this fashion?
  - a. Yes, unless the administrator has access to client files.
  - b. Yes, if the administrator does not control the professional judgment of the lawyers in the firm.
  - c. No, because the law firm is sharing legal fees with a nonlawyer.

- d. No, because the law firm is assisting a nonlawyer in the unauthorized practice of law.
7. Law Firm, a professional corporation with five lawyer shareholders, employs 25 additional lawyers. Which of the following are proper?
- Employees who are members of the bar are not made shareholders until they have been with Law Firm for 10 years.
  - Manager, who is the office manager and not a member of the bar, is executive vice president of Law Firm.
  - Widow, whose husband was a lawyer shareholder in Law Firm until his death two years ago, continues to hold husband's shares in Law Firm until their child finishes law school.
8. Acton, a certified public accountant, has proposed to Attorney, a recognized specialist in the field of tax law, that Acton and Attorney form a partnership for the purpose of providing clients with tax-related legal and accounting services. Both Acton and Attorney have deserved reputations for being competent, honest, and trustworthy. Acton further proposes that the announcement of the proposed partnership, the firm stationery, and all public directory listings clearly state that Acton is a certified public accountant and that Attorney is a lawyer. Is Attorney subject to discipline if he enters into the proposed partnership with Acton?
- a. Yes, because one of the activities of the partnership would be providing legal services to clients.
  - b. Yes, because Attorney would be receiving fees paid for other than legal services.
  - c. No, because the partnership will assure to the public high-quality services in the fields of tax law and accounting.
  - d. No, if Attorney is the only person in the partnership who gives advice on legal matters.

Would your answer change if the partnership will be providing only accounting services?

9. Dewey, a lawyer, has just joined the Law Offices of Applebaum and Becker, a professional corporation engaged solely in the practice of law. Dewey is a salaried associate and is not a member or shareholder of the professional corporation. Applebaum's spouse, Wickersham, who is not a lawyer, is vice-president of the corporation and office manager. All of the other officers are lawyers in the firm. All of the corporate shares are held by lawyers in the corporation, except for ten shares held by the executor under the will of a lawyer-member who died one month previously and whose will is now being probated. Dewey knows that Wickersham is an officer and not a lawyer. Is Dewey subject to discipline?
- Yes, because Wickersham is an officer of the corporation.
  - Yes, if a nonlawyer holds the stock as the executor of the will of the deceased member.
  - No, because Dewey is a salaried employee and not a member or shareholder of the corporation.
  - No, if Wickersham does not participate in any decision regarding a client or a client's case.
10. Attorney has recently started her own law firm with four other lawyers as associates. The law firm has moved into an office in a new building which is owned by Bank. Attorney has borrowed heavily from Bank to finance her new law firm. In addition, Bank provides the law firm with accounting services through its computer. At Bank's suggestion, an employee of Bank, who is not a lawyer, serves as a part-time office manager for the law firm without compensation from the firm. The duties of the office manager are to advise the firm generally on fees and time charges, program matters for the computer services, and consult with Attorney on accounting and billing practices to ensure solvency. Is the arrangement with Bank proper?
- Yes, unless secrets or confidences of clients may be disclosed to Bank.
  - Yes, because the office manager is paid by Bank.
  - No, because a nonlawyer will be advising the law firm on fees and time charges.
  - No, because Bank will be involved in the practice of law.

11. Attorney is a member of the bar and a salaried employee of the trust department of Bank. As part of his duties, he prepares a monthly newsletter concerning wills and taxes which Bank sends to all of its customers. The newsletter contains a recommendation to the customer to review his or her will in light of information contained therein and, if the customer has any questions, to bring the will to Bank's trust department where a non-lawyer trust officer will answer any questions without charge. If the trust officer is unable to answer the customer's questions, the trust officer refers the customer to Attorney. Is Attorney subject to discipline for the foregoing?
12. Plaintiff, who is not a lawyer, is representing himself in small claims court in an action to recover his security deposit from his former landlord. Plaintiff told Attorney, a close friend who lived nearby him, about this case, but did not ask Attorney for any advice. Attorney said, "I'll give you some free advice. It would help your case if the new tenants would testify that the apartment was in good shape when they moved in, and, contrary to the allegation of your former landlord, it was not, in fact, repainted for them." Plaintiff followed Attorney's advice and won his case. Is Attorney subject to discipline for assisting Plaintiff in preparing for his court appearance?
  - a. Yes, because Attorney assisted Plaintiff in the practice of law.
  - b. Yes, because Attorney offered unsolicited, in-person legal advice.
  - c. No, because Plaintiff was representing himself in the proceedings.
  - d. No, because Attorney was not compensated for his advice.
13. Attorney Adelman represents the wife in a marriage dissolution proceeding that involves bitterly contested issues of property division and child custody. The husband is represented by another lawyer, Lehrer. After one day of trial, the husband, through Lehrer, made a settlement offer. Because of the husband's intense dislike for Adelman, the proposed settlement requires that Adelman agree not to represent the wife in any subsequent proceeding, brought by either party, to modify or enforce the provisions of the decree. The wife wants to accept the offer, and Adelman believes that the settlement offer made by the husband is better than any award the wife would get if the case went to judgment. Is it proper for Adelman to agree that she will not represent the wife in any subsequent proceeding?
  - a. Yes, because the restriction on Adelman is limited to subsequent proceedings in the same matter.

- b. Yes, if Adelman believes that it is in the wife's best interests to accept the proposed settlement.
  - c. No, because the proposed settlement would restrict Adelman's right to represent the wife in the future.
  - d. No, unless Adelman believes that the wife's interests can be adequately protected by another lawyer in the future.
14. Upon graduating law school, Dewey is hired by the law firm of Applebaum & Becker, located in the city of Metropolis. Applebaum, a partner at the firm, asks Dewey to sign an employment contract. The contract contains the following clause: "Upon terminating employment, Dewey agrees not to practice law at any firm within two miles of Metropolis for a period of one year."
- a. Is Applebaum subject to discipline if she requires Darrow to sign the contract?
  - b. Is Dewey subject to discipline if he signs the contract?
15. Applebaum & Becker is a law firm specializing in real estate transactions. For years, Applebaum & Becker has used independent title insurance companies for its clients' real estate closings. The firm is considering starting its own title insurance company, which will be incorporated separately from the law firm but will be housed in the same building. May the firm do so and what steps should it take to avoid violation of Rule 5.7?
16. The Applebaum Law Firm's estate planning department has been losing money for years. Consequently, the firm decides to sell its entire estate planning practice—including all estate planning clients—to the Becker Law Firm, which specializes in estate planning.
- What duties does the Applebaum firm owe to its estate planning clients?
  - May the Applebaum firm sell only those clients with assets below \$1 million?
  - May the Becker firm defray the acquisition costs by raising fees on clients it receives from Applebaum?

17. Judge Becker is the Chief Judge of the County Court. As part of her job, Becker randomly assigns cases to the other seven county court judges. Becker randomly assigned the case of A v. B to Judge Applebaum. Judge Applebaum has presided over all proceedings in A v. B. Becker has played no role in the case other than the assignment. While the case of A v. B is still pending, Judges Applebaum and Becker join the Smith Law Firm, which represents A.
- May Judge Becker represent A in A v. B?
  - May Judge Applebaum represent A in A v. B? If not, may the Smith Law Firm continue to represent A?
  - Was it proper for Judge Applebaum to negotiate employment with the Smith Law Firm while A v. B was pending?
  - Would it have been proper for Judge Applebaum's law clerk to negotiate employment with the Smith Law Firm while A v. B was pending?