

June 2026 WSBA *Bar News Ethics & the Law* Column

Do You Have a Minute? Supervising and Being Supervised

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I recently ran into a colleague who, in addition to a very successful career as a litigator, has managed both practice groups and offices at large firms. We got to talking about the challenges of managing lawyers in an era of “hybrid offices” and “remote work.”¹ Although my colleague and the lawyer’s firm had embraced both, my colleague lamented the practical challenges they can present. The lawyer noted that when they started practicing, it was common for associates to approach a notoriously irascible partner at the lawyer’s firm early in the morning and ask “do you have a minute?” The lawyer recalled that the “old school” partner would inevitably say “yes” and patiently answer associates’ questions about how they should approach a given issue. My colleague observed that while those kinds of interactions still happen in an era of increasingly geographically dispersed lawyers, those moments tend to be less spontaneous than in “the old days” and require a degree of planning by both the partners and associates involved.

In this column, we’ll discuss three facets of supervising and being supervised under, respectively, RPC 5.1 and 5.2. First, for context, we’ll briefly survey both rules. Second, we’ll note how hybrid offices and remote work have

altered the practical application of both. Finally, we'll suggest some practical approaches to risk management in this changed environment.

Before we do, three qualifiers are in order.

First, for present purposes, we'll focus on lawyers. That said, supervision of nonlawyers under RPC 5.3 and limited license legal technicians under RPC 5.10 involve many similar issues and solutions.²

Second, we'll focus on risk management and not employment law.³ Similarly, we won't distinguish between associates who are direct employees of law firms and those who, while integrated into firm operations, may instead be independent contractors.⁴ In the same vein, although we'll frame the discussion in terms of law firms, the general principles should apply with equal measure to corporate and governmental legal departments.⁵

Third, as noted we'll focus on risk management—which, for present purposes, we'll define as lowering the risk of “bad things” like regulatory discipline, disqualification, and malpractice claims.⁶ Good leadership and followership, however, can also translate into effective results for law firms and their clients.

RPC 5.1 and 5.2

RPC 5.1 addresses the responsibility of lawyer-supervisors while RPC 5.2 outlines the corresponding duties of lawyer-subordinates.

Both are based on their ABA Model Rule counterparts. When adopted by the ABA as part the original set of ABA Model Rules in 1983, the drafters effectively acknowledged that many lawyers practiced in law firms and that those firms typically had a hierarchical structure.⁷ Washington followed in 1985 when the RPC were adopted and replaced the former Code of Professional Responsibility.⁸ Although there were some relatively minor modifications in the 2000s, the core elements of both RPC 5.1 and 5.2 have remained essentially unchanged since their initial adoption.⁹

RPC 5.1 weaves together three distinct facets of supervision. RPC 5.1(a) charges lawyers with “managerial authority” at a law firm with the responsibility to “make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers in the firm conform to the Rules of Professional Conduct.” RPC 5.1(b) requires lawyers with “direct supervisory authority over another lawyer” to “make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct.” Finally, RPC 5.1(c) imposes personal responsibility on a supervisor when the lawyer directly orders

or ratifies another lawyer's misconduct or if either by virtue of management position or direct supervision fails to take reasonable remedial action at a time "when the consequences can be avoided or mitigated[.]"

RPC 5.2, in turn, blends two concepts for subordinate lawyers. RPC 5.2(a) underscores that "[a] subordinate lawyer is bound by the Rules of Professional Conduct notwithstanding that the lawyer acted at the direction of another person." RPC 5.2(b) tempers the former in recognition of a subordinate lawyer's position: "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."

Both rules recognize that "not one size fits all" and that the roles of supervisor and supervised will vary depending on firm size, practice, and experience. Comment 3 to RPC 5.1 neatly summarizes this notion:

In a small firm of experienced lawyers, informal supervision and periodic review of compliance with the required systems will ordinarily suffice. In a large firm, or in practice situations in which difficult ethical problems frequently arise, more elaborate measures may be necessary.

Changing Practice Settings

Although RPC 5.1 and 5.2 have remained essentially unchanged since their adoption in Washington in 1985, law practice has not. When these rules

were adopted, firms were smaller, practices with multiple offices were comparatively rare, and most business was conducted in-person. A Court of Appeals decision of roughly the same vintage as when these rules were adopted, for example, recounts how most of the partners of Washington’s largest law firm fit into a single conference room at the Olympic Hotel in Seattle.¹⁰ By contrast, recent advisory opinions from both the ABA and the WSBA have grappled with the challenges of supervising lawyers in hybrid offices that blend working in a traditional office and from home, working altogether remotely, and working regardless of location with sophisticated electronic tools ranging from cloud computing to artificial intelligence.¹¹ Although electronic tools allow lawyers today to practice relatively seamlessly without regard to geography, that more ephemeral reality has sharpened the challenges for supervisors and the supervised alike regardless how they are tethered to their law firms.

A recent case from Colorado offers a telling example of the problems that can occur when supervision is absent and the supervised are afraid to ask for help.¹² A second-year associate described in news reports as “burned out” and “nervous” was told to prepare a motion to set aside a judgment for a cost-conscious client.¹³ The partner assigning the work apparently didn’t offer much in the way of guidance because the associate, who had never prepared a motion

of that kind, rifled through the firm's word processing system looking for a template.¹⁴ Rather than go back to the partner, the associate turned instead to the "free" version of a consumer artificial intelligence tool to prepare the motion.¹⁵ Assuming the legal citations the tool generated were accurate, the associate filed the brief without checking them through a more conventional process.¹⁶ Unfortunately, the tool had made up the citations—which the judge soon discovered.¹⁷ When questioned by the judge, the lawyer didn't seek counsel from the firm and also didn't immediately fess-up.¹⁸ When he finally did, the judge struck the brief, denied the motion, and reported the associate to the Colorado disciplinary authorities.¹⁹ The law firm fired the associate,²⁰ who was also later suspended.²¹

The accent in the Colorado case was on the misuse of the AI tool rather than on office geography. The underlying failings of training, supervision, and trust, however, stand in stark relief regardless of whether the partner and the associate were across the hall or across the state.²² Those issues can be amplified with more dispersed lawyer geography unless the firms involved—partners and associates alike—don't connect in person, electronically, or through some meaningful combination.

Practical Approaches

The Wall Street Journal recently observed that “[r]emote and hybrid work have become defining features of the postpandemic economy.”²³ Coincidentally, that same day The Financial Times noted that law firms globally have joined in this fundamental shift.²⁴

As qualified at the outset, we’ll leave general management considerations to The Wall Street Journal and The Financial Times. Those general business publications, however, underscore both that these trends aren’t unique to law practice and aren’t going away. From the law firm risk management perspective, therefore, it is important to acknowledge that what worked for supervision before this fundamental shift likely needs adjustment now that everyone isn’t necessarily in the same office at precisely the same time. Approaches will vary by firm size, practice, and culture. On the risk management side, however, we’ll offer two suggestions—one for supervisors and one for those supervised.

Even in a time when law practice has become very electronic, partners should not underestimate the power of personal example. Just as associates learn by watching a partner conduct a skillful cross-examination, they also learn by observing a partner navigate a difficult issue of professional responsibility. In an era of hybrid offices and remote work, the opportunities for observation may

require a bit more forethought, but ideally they should happen as readily as in the days when partners and associates roamed the same office halls at the same time.

Associates, in turn, need to trust themselves—and their firm’s partners—enough not to be afraid to ask a question about professional conduct. Far from being annoyed by an interruption, the best partners—like the one in our opening example—will be giving of their time and sage in their advice. Again, hybrid offices and remote work may require a bit more planning, but a willingness to seek out advice proactively can avoid professional disasters like the unfortunate example of the Colorado associate discussed above.

ABOUT THE AUTHOR

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¹ The term “hybrid office” usually connotes working arrangements that blend time in traditional space with working from home. “Remote work,” by contrast, typically involves working outside traditional office space altogether. WSBA Advisory Opinion 201601 (rev. 2022), for example, takes that approach with those terms.

² See generally ABA Formal Op. 506 (2023) (addressing nonlawyer assistants under ABA Model Rule 5.3).

³ See generally *Weiss v. Lonquist*, 153 Wn. App. 502, 224 P.3d 787 (2009) (discussing the distinctions between employment law and the RPC as regulators of the relationship between law firms and associates); see also *Seattle Truck Law, PLLC v. Banks*, 2023 WL 7130561 (Wn. App. Oct. 30, 2023) (unpublished), rev. denied, 2 Wn.3d 1035 (2024) (discussing compensation for fees under an associate’s employment agreement with a law firm); see also WSBA Advisory Ops. 202504 (2025) (parsing *Seattle Truck*) and 2119 (2006) (addressing non-competes in lawyer employment contracts). Albeit in the context of in-house counsel, *Karstetter v. King County Corrections Guild*, 193 Wn.2d 672, 444 P.3d 1185 (2019), and *Chism v. Tri-State Construction, Inc.*, 193 Wn. App. 818, 374 P.3d 193 (2016), also wrestle with the interface between ethics rules and employment law. See also RPC 1.16, cmt. 4 (addressing *Karstetter* in the context of withdrawal).

⁴ See generally ABA Formal Ops. 88-356 (1988) (discussing a variety of topics involving contract lawyers), 00-420 (2000) (billing for contract lawyers), 08-451 (2008) (outsourced services). See also Washington RPC 1.0(c) (defining the term “law firm” broadly).

⁵ See generally WSBA Advisory Op. 2219 (2012) (discussing supervisory duties in the context of in-house corporate legal department); ABA Formal Op. 467 (2014) (supervision in prosecutors’ offices).

⁶ See generally ABA, *Annotated Model Rules of Professional Conduct* 545-50, 552-54 (10th ed. 2023) (ABA Annotated Model Rules) (compiling disciplinary nationally under state variants of ABA Model Rules 5.1 and 5.2); *Atlantic Specialty Insurance Company v. Premera Blue Cross*, 2016 WL 1615430 at *14 (W.D. Wash. Apr. 22, 2016) (unpublished) (discussing RPC 5.1 in the course of disqualifying a law firm); *Sherry v. Diercks*, 29 Wn. App. 433, 434, 628 P.2d 1336 (1981) (legal malpractice case framed around asserted conduct of law firm associate).

⁷ See generally Geoffrey C. Hazard, Jr., W. William Hodes, and Peter R. Jarvis, *The Law of Lawyering* § 44.01 (rev. 4th ed. 2021) (discussing the origins of ABA Model Rules 5.1 and 5.2); ABA, *A Legislative History: The Development of the ABA Model Rules of Professional Conduct, 1982-2013* (ABA Legislative History) at 585-89, 595-97 (213) (same).

⁸ See generally Robert H. Aronson, *An Overview of the Law of Professional Responsibility: The Rules of Professional Conduct Annotated and Analyzed*, 61 Wash. L. Rev. 823, 878-79 (1986) (discussing Washington’s adoption of, among others, RPC 5.1 and 5.2).

⁹ See generally ABA Legislative History, *supra*, at 590-93, 595 (discussing amendments adopted on the recommendation of the ABA Ethics 2000 Commission in 1982); WSBA, *Reporter's Explanatory Memorandum to the Ethics 2003 Committee's Proposed Rules of Professional Conduct* at 190-91 (2004) (recommending parallel amendments to the Washington RPC); Washington Supreme Court Order 25700-1-851 (July 10, 2006) (adopting amendments to, among others, RPC 5.1 and 5.2—including official recognition of the accompanying comments). Comment 1 to RPC 5.1 was also amended slightly in 2015 as a part of a package of amendments addressing limited license legal technician practice. See Washington Supreme Court Order 25700-A-1096 at 58 (Mar. 23, 2015) (adjusting the citation to the terminology rule, RPC 1.0A).

¹⁰ See *Holman v. Coie*, 11 Wn. App. 195, 200-01, 522 P.2d 515, *rev. denied*, 84 Wn.2d 1011 (1974), *cert. denied*, 420 U.S. 984 (1975).

¹¹ See, e.g., ABA Formal Ops. 477R (cloud computing), 498 (2021) (virtual practice), 495 (2020) (working remotely), 512 (artificial intelligence); WSBA Advisory Ops. 2215 (2012) (cloud computing), 201601 (rev. 2022) (virtual and hybrid offices, 202505 (artificial intelligence).

¹² *People v. Crabill*, 2023 WL 8111898 (Colo. Nov. 22, 2023) (unpublished).

¹³ Will Oremus, *These lawyers used ChatGPT to save time. They got fired and fined*, Washington Post, Nov. 16, 2023, available at www.washingtonpost.com; see also Michael Karik, *Disciplinary Judge Approves Lawyer's Suspension for Using ChatGPT to Generate Fake Cases*, Colorado Politics, Dec. 2, 2023, available at www.coloradopolitics.com.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *People v. Crabill*, *supra*, 2023 WL 8111898 at *1.

²² There is no indication in *Crabill* that the partner was disciplined for the failure to supervise. Disciplinary prosecutions under RPC 5.1 are rare, but not nonexistent. See ABA Annotated Model Rules, *supra*, 546-48 (compiling cases nationally). The duty for both firm management under RPC 5.1(a) and direct supervisors under RPC 5.1(b) is to make “reasonable efforts” to, respectively, have systems in place and to take appropriate steps to ensure that subordinate lawyer conduct is in keeping with the RPC. Comment 2 to RPC 5.1 counsels that establishing clear firm policies is usually a central element in this regard. At the same time, even firm policies will not necessarily prevent problems if an associate does not follow them. See, e.g., *Green Building Initiative, Inc. v. Peacock*, 350 F.R.D. 289 (D. Or. 2025) (order to show cause on potential sanctions for AI-generated false citations); 2025 WL 3198411 (D. Or. Nov. 12, 2025) (unpublished) (resolving the previous order on showing that associate had not followed firm policies and in light of other remedial actions taken by law firm following discovery of the citations involved).

²³ Peter Cappelli and Ranya Nehmeh, *The Things We Lose with Remote Work—and How to Minimize the Damage*, Wall Street J., Dec. 1, 2025, at R14. While “remote” work typically involves working outside traditional office space altogether, “hybrid” work usually blends time in traditional space with working from home.

²⁴ Suzi Ring, *Law Firms Move from Pay to Perks*, Financial Times, Dec. 1, 2025, at 12.