

RE: Proposal to Amend Rule 5.1 of the Hawai'i Rules of Professional Conduct

*EMPHASIZING ROLE OF SUPERVISORY ATTORNEYS IN THE
ADMINISTRATION OF LAW-STUDENT INTERNS*

The Supreme Court of Hawai'i seeks public comment regarding a proposal to amend Rule 5.1 of the Hawai'i Rules of Professional Conduct to emphasize the role supervisory attorneys would play in the new law-student intern program, which would be created by the proposed new Rule 7 of the Rules of the Supreme Court of the State of Hawai'i.

Comments about the proposed amendments should be submitted, in writing, **no later than Thursday, January 19, 2023**, to the Judiciary Communications & Community Relations Office by mail to 417 South King Street, Honolulu, HI 96813, by facsimile to 539-4801, or via the [Judiciary's website](#).

Attachment

**PROPOSED AMENDMENTS TO THE
RULES OF THE SUPREME COURT OF THE STATE OF HAWAII**
(New material is underscored)

**Rule 5.1. RESPONSIBILITIES OF PARTNERS, MANAGERS, AND
SUPERVISORY LAWYERS.**

(a) A partner in a law firm, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm, shall 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.

(b) A lawyer having direct supervisory authority over another lawyer, including law-student interns licensed under Rule 7 of the Rules of the Supreme Court of the State of Hawai'i, shall make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct.

(c) A lawyer shall be responsible for another lawyer's violation of the Rules of Professional Conduct if:

(1) the lawyer orders or, with 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 other lawyer practices, or has direct supervisory authority over the other lawyer, including law-student interns licensed under Rule 7 of the Rules of the Supreme Court of the State of Hawai'i, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

COMMENTS:

[1] Paragraph (a) applies to lawyers who have managerial authority over the professional work of a firm. See Rule 1.0(d) of these Rules. This includes members of a partnership and the shareholders in a law firm organized as a professional corporation; lawyers having managerial authority in the law department of an enterprise or government agency; and lawyers who have intermediate managerial responsibilities in a firm. Paragraph (b) applies to lawyers who have supervisory authority over the work of other lawyers in a firm, including law-student interns authorized pursuant to Rule 7 of the Rules of the Supreme Court of the State of Hawai'i.

[2] Paragraph (a) requires lawyers with managerial authority within a firm to make reasonable efforts to establish internal policies and procedures designed to provide reasonable assurance that all lawyers in the firm will conform to the Rules of Professional Conduct. Such policies and procedures include those designed to detect and resolve conflicts of interest, identify dates by which actions must be taken in pending matters, account for client funds and property, and ensure that inexperienced lawyers, including law-student interns, are properly supervised.

[5] Paragraph (c)(2) defines the duty of a partner or other lawyer having comparable managing authority in a law firm, as well as a lawyer who has direct supervisory authority over performance of specific legal work by another lawyer, including law-student interns. Whether a lawyer has such supervisory authority in particular circumstances is a question of fact. Partners and lawyers with comparable authority have at least indirect responsibility for all work being done by the firm, while a partner or manager in charge of a particular matter ordinarily also has supervisory responsibility for the work of other firm lawyers engaged in the matter. Appropriate remedial action by a partner or managing lawyer would depend on the immediacy of that lawyer's involvement and the seriousness of the misconduct. A supervisor is required to intervene to prevent avoidable consequences of misconduct if the supervisor knows that the misconduct occurred. Thus, if a supervising lawyer knows that a subordinate misrepresented a matter to an opposing party in negotiation, the supervisor as well as the subordinate has a duty to correct the resulting misapprehension. A lawyer's knowledge of conduct referred to in (c)(2) means knowledge of the circumstances which render the conduct a violation.
