



September 8, 2014

ABA Formal Advisory Opinion 467

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Prosecuting Attorneys With Managerial Authority or Supervisory Responsibility Must Adopt “Reasonable Policies and Procedures” That Will “Ensure” That All Lawyers and Nonlawyers in Their Offices Conform to the Rules of Professional Conduct” - ABA Ethics Opinion

On September 8, 2014, the Standing Committee on Ethics and Professional Responsibility of the American Bar Association (ABA) issued a Formal Advisory Opinion which says that Rules 5.1 (responsibilities of partners, managers and supervisory lawyers) and 5.3 (responsibilities regarding nonlawyer assistants) of the Model Rules of Professional Conduct (MRPC) require that

[p]rosecutors with managerial authority and supervisory lawyers must make “reasonable efforts to ensure” that all lawyers and nonlawyers in their offices conform to the Rules of Professional Conduct. Prosecutors with managerial authority must adopt reasonable policies and procedures to achieve these goals. Prosecutors with direct supervisory authority must make reasonable efforts to ensure that the lawyers and nonlawyers they supervise comply with the Rules. Where prosecutors have both managerial and direct supervisory authority, they may, depending on the circumstances, be required to fulfill both sets of obligations. The particular measures that managerial and supervisory prosecutors must implement to comply with these rules will depend on a variety of factors, including the size and structure of their offices, as set forth in this opinion.

ABA Comm. on Ethics & Prof'l Responsibility, Formal Op. 497 (2014) (hereafter “ABA Op.”).

Because Rules 5.1 and 5.3 of the Georgia Rules of Professional Responsibility (GRPC) as adopted by the Supreme Court of Georgia are virtually identical to Rules 5.1 and 5.3 of the MRPC, the ABA Opinion will be persuasive authority for interpreting those Rules in Georgia. See e.g. *Outdoor Advert. Ass'n of Ga. v. Garden Club of Ga.*, 272 Ga. 146, 147-149 (2000); *Henderson v. Hsi Fin. Servs.*, 266 Ga. 844, 845-846 (1996); *In re Tante*, 264 Ga. 692, 693 (1994); *Frazier v. State*, 257 Ga. 690 (1987); *Ga. FAO 11-1* (2011); *Ga. FAO 05-13* (2007).

The opinion begins by noting that:

We believe that most prosecutors know and follow the rules of professional conduct. Indeed, the laudable efforts of such prosecutors have provided good examples, cited throughout this opinion. But there are prosecutors who do violate the rules, and for all prosecutors there are special challenges and obligations.

It defines a prosecutor as having managerial responsibility as “the top prosecutors and all other prosecutors with managerial or executive functions in the office . . . includ[ing], for example, the District or County or U.S. Attorney him or herself, as well as executive staff, bureau or



State Prosecution Support Division

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unit heads, and similarly positioned others who, among other duties, make policies and set procedures for the office as a whole or for individual units.” A “supervisor’ is a lawyer who--regardless of his or her position or title in the office hierarchy--directly supervises the work of another prosecutor in a particular matter, proceeding, inquiry or other event or series of events involving a case.”

The full text of the opinion is available in the members resources section under Ethics for Prosecutors and also can be found at:

http://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/aba_formal_opinion_467.pdf