

I. General Description of Program:

A. The official title of the program:

“Got Billable Hours? How to Increase Them by Effectively Using Support Staff.”

The classification and category for which the entry is being submitted:

Classification: Large Chapter

Category: Association Development
Bar Relations

The chapter name, submitter’s name, address, telephone number, and e-mail address:

Chapter: NALS of Phoenix
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B. A brief description of the program:

A 3-hour Maricopa County Bar seminar directed to new attorneys to assist them in effectively using support staff to manage their practice.

C. A brief summary of the program:

The concept of teamwork is important in today’s legal community. In order to be able to accomplish their goals, attorneys need to know the types of things that can be handled by professional support staff and how they can best encourage and support their staffs’ assistance. We wanted to present a program that would talk about support staff generally, with many references to NALS and all it offers, so that new attorneys could get started knowing about NALS, recognizing quality staff members, and learning how to build what could be a long and mutually satisfying relationship with their secretary and paralegal. It was also our opportunity to get involved with the Maricopa County Bar Association, to let them know about NALS of Phoenix and that we were interested in assisting them in future endeavors.

The Maricopa County Bar did contact us later for members who might be interested in serving in a focus group that the Bar was setting up to help plan a training agenda for a potential Adobe class that may be offered in response to the federal courts going to a mandatory e-filing format in August and what the Bar believes the Superior Court will be following later in 2005. With just a three-day notice, NALS of Phoenix provided them with four legal secretaries to add to the panel, which included attorneys, paralegals and office administrators

II. Judging Criteria:

A. Needs Assessment

- 1. How was the need for the program identified (surveys, requests, please quantify)?**

At meetings members would comment on how attorneys and paralegals did not know how to work with staff to make them more efficient. Particularly with young attorneys who do most of the work themselves, the group kept coming to the conclusion that if they used the talent they have available to them in their support staff, they could spend more of their time doing billable work, enhancing their quality of life and enabling their staff to do more of the interesting work we all enjoy.

- 2. How does this program address this need?**

A panel of three experienced legal secretaries/legal assistants spoke about the three main areas that could enhance each attorney's relationship with his/her support staff – attitude, communication, and recognition. We also had an attorney discuss ethical considerations when dealing with support staff, which would count toward each attorney's Arizona State Bar membership annual requirement for ethics CLE credit.

B. Planning and Design

- 1. List the program's objectives**

The main objective was to assist attorneys in discovering what could be hidden talents in their support staff to make their life easier and to make their staff's work life more interesting. A secondary objective was to let the attorneys know about NALS of Phoenix and how it can assist them and their staff in the day-to-day management of their practice.

- 2. Describe the steps taken to design and develop the program (planning process, members involved, creativity)**

Kathy Sieckman, PP, PLS, has worked for some time on a program for summer associates and new attorneys hired at her firm to give them some ideas on how to work with secretaries and paralegals. She spoke to a young attorney who was elected to the Maricopa County Bar Board of Directors and mentioned a couple of ideas for seminars and otherwise partnering with the Bar. The attorney spoke with the correct people at the Bar and the person in charge of CLE contacted Kathy Sieckman and said they were interested in such a program for new attorneys.

Next, a committee was appointed to decide what kind of information would be useful. After a brainstorming session by most of the committee at a NALS of Arizona meeting, Kathy Sieckman, PP, PLS,

Karen McElroy, PP, PLS and Ginger Hinkhouse, PLS were appointed as the panel and an attorney was chosen to give the ethics portion. Work commenced on the “guts” of the program with Kathy to give the attitude portion; Ginger to give the communication portion; and Karen to give the recognition portion. Brian McQuaid, Esq. of Squire, Sanders & Dempsey L.L.P. was asked to give the ethics portion.

Each panelist researched their particular portion. We met several times over the course of the nearly two months that we had to prepare, including one practice session.

C. Logistics and Production

- 1. How was the program delivered to the target audience (room, room set up, etc.)?**

The program was delivered through the Maricopa County Bar Association at their seminar facility at the ASU Downtown Center at the Mercado in downtown Phoenix. The Bar did all the advertising, videotaped the presentation to sell as self-study later, and copied all the handouts. They furnished a PowerPoint projector for our presentation. The room was set up in a classroom setting with a lectern for the speaker.

- 2. Provide details describing educational materials, methods, and resources. Include samples of printed materials used (lecture, small group discussion, handouts).**

Lots of research was done online and culled into a PowerPoint presentation. An outline was handed out to attendees, along with some ancillary material regarding NALS, the NALS certification comparison chart, NALS of Phoenix brochures, copies of @Law, and miscellaneous NALS marketing materials.

D. Budgeting and Finance

- 1. What is the annual income and expenses of your chapter?**

Actual income and expenses for 2004: \$12,388.24 (income) and \$15,510.11 (expenses)

Projected budget for 2005: \$11,855.00 (income) and \$11,855.00 (expenses)

- 2. Was this program funded in whole or in part by a Grant from the NALS Foundation?**

No.

- 3. What were the program’s broad financial objectives (profit, break-even, or subsidized service)? Choose one and tell why.**

The broad financial objectives were strictly marketing NALS. There was no cost expenditure and no income. The panelists did have to

take time from work for the presentation, but the rest of the work was done on our own time.

- 4. Provide both the project revenue and expense, as well as the actual revenue and expense.**

There was no projected revenue or expense and there was no actual revenue or expense.

- 5. Provide your best estimate of association resources expended on this program. You might use, for example, total dollars and total volunteer time.**

NALS of Phoenix expended substantial volunteer time on this project.

The volunteer time is somewhat difficult to estimate, but the following is an appropriate estimate:

Project	Hours
Brainstorming session with members of NALS of Phoenix (6 members x 2 hours)	12
Research on topics (3 presenters)	28
Preparation of outline and PowerPoint presentation (3 presenters)	15
Practice sessions before presentation (3 presenters + 2 chapter members)	15
Actual presentation (3 presenters)	12
TOTAL VOLUNTEER TIME	82 Hours

E. Marketing, Promoting, and Advertising

- 1. List and describe the specific marketing, promotional and advertising vehicles used**

The presentation was marketed by the Maricopa County Bar Association in flyers mailed to all members of the Maricopa County Bar. The Maricopa County Bar Association styled the flyer in their usual fashion so it would be recognized as a Bar presentation. The flyer was mailed out in a regular mailing to members of the County Bar. The information was included in the online CLE calendar and published in the *Maricopa Lawyer*, the Maricopa County Bar monthly publication.

F. Evaluation

- 1. To what extent did the program achieve stated objectives (quantify results such as 10 new members)?**

It is difficult to quantify how the attendees have actually used any of the information passed along, but the Maricopa County Bar did invite NALS of Phoenix to participate in the focus group as mentioned above, and may ask us to assist them with projects in the future.

2. **What broader impact, if any, did this program have on the growth, image or performance of the chapter or its members?**

The program did let newer attorneys know of the existence of NALS of Phoenix and what it could do for their staff. It also accomplished the goal of getting NALS of Phoenix more involved with the local bar association.

3. **Based on the outcome of this program, describe the most significant changes you might make the next time you offer it or a similar program.**

It might be better directed to law school students who have not yet entered the attorney/staff relationship. They may be more open to some of the ideas expressed, although those in attendance seemed to appreciate the information.

MCBA Seminar

TITLE:

Got billable hours?
How to increase them by effectively using support staff

FACULTY:

Ginger Hinkhouse, PLS
Bonnett Fairbourn

Karen McElroy, PP, PLS
Squire, Sanders & Dempsey

Kathy Sieckman, PP, PLS
Squire Sanders & Dempsey

Brian McQuaid, Esq.
Squire, Sanders & Dempsey L.L.P.

OVERALL PREMISE/SUBJECT TOPIC MATTER. FOCUS AREAS AND WHAT ATTENDEES WILL LEARN

Tips for utilizing support staff successfully to allow attorneys to focus on the practice of law and not unnecessary administrative work, including ethical considerations in using support staff.

ETHICS?

Yes

BASIC/INTERMEDIATE/ADVANCED

Basic

SPECIALIZATION

No

AUDIOVISUAL EQUIPMENT NEEDED?

Intend to have PowerPoint presentation

MARICOPA COUNTY BAR ASSOCIATION

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Got Billable Hours? How to Increase Them by Effectively Using Support Staff

(CE 042905)

Apr. 29, 2005 1:00 PM - 4:30 PM

ASU Downtown Center, Bldg C 502 E. Monroe Street, Phoenix (Parking at Heritage Square Garage, SE corner of Monroe & 5th Streets)

Join our panel and learn tips for utilizing support staff successfully. Attendees will learn how they can focus on the practice of law and not unnecessary administrative work, including ethical considerations in using staff support.

Faculty:

- Ginger Hinkhouse, PLS, Bonnett Fairbourn Friedman & Balint PC
- Karen McElroy, PP, PLS, Fennemore Craig P.C.
- Kathy Sieckman, PP, PLS, Squire Sanders & Dempsey L.L.P.
- Brian McQuaid, Esq. Squire Sanders & Dempsey L.L.P.

REGISTRATION:

Payment must be received before you will be registered. All registrations not paid in full 24 hours prior to program will be assessed a \$15 late fee. If space is available you may register at the door, however, a \$15 late fee will be assessed. If you are a walk-up registration, we cannot guarantee space or materials on the day of the seminar.

CANCELLATIONS:

Refunds, less a \$10 fee, will be issued only if the CLE Dept. receives your cancellation in writing or by fax 2 business days in advance. If you have a paid reservation but not attend you may request materials to be sent to you free of charge or convert your no-show to a self study package with payment of a \$15 audiotape charge.

Worth up to 3 credit hours.

	Section Member Prices	MCBA Member Prices	Non-Member Prices
Attorney / Professionals:	N/A	75.00	105.00
Paralegal / Public Lawyer:	N/A	55.00	75.00
Self Study Package:	N/A	75.00	105.00
Law Student:	N/A	N/A	N/A

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GOT BILLABLE HOURS?
How to Increase Them by Effectively Using Support Staff
April 29, 2005

I. DEVELOPING AN EFFECTIVE RELATIONSHIP
Kathy Sieckman, Certified PP, PLS

A. What Is A Secretary?

- Assistant
- Boss's advisor
- Business partner
- Confidante
- Professional

B. Developing an Effective Relationship

- Tools
 - Praise
 - Respect
 - Humor
 - Honor
 - Communication
 - Trust
 - Listening
 - Feedback
 - A mission statement
 - Personal interest in each other's well being
- Respect
 - Appreciate experience
 - Seek effectiveness
 - Show respectful behavior
 - Appreciate uniqueness
 - Professionalism
 - Accept blame
- Power

- **Relationship Rules**
 - **Love thyself**
 - **Check the attitude at the door**
 - **Value people**
 - **Make the effort to form relationships**
 - **Understand the reciprocity rule**
 - **Follow the golden rule**

- **Start with a great morning**
 - **Greetings**
 - **To Do lists**
 - **In and Out Baskets**

- **Keep the momentum going**
 - **Where oh where are you?**

- **End on a positive note**
 - **Thanks for your help today**

- **Encourage**
 - **Certification**
 - **CLE requirement**
 - **Recertification**
 - **Topics on exams**
 - **Seminars**
 - **Professional Association Membership**
 - **Networking**
 - **Out of state contacts**
 - **Forms**
 - **Local Rules**
 - **Judge Preferences**
 - **Contacts in other areas of law**

- **Allow quality time**

- **Teamwork**
 - **Do you have the same goals?**
 - **Do you appear to be and behave as a team?**

- **Delegate**
 - **Who is doing what?**
 - **Which tasks do you handle that are recurring?**
 - **Which tasks are absolutely necessary?**
 - **Which tasks can be completely eliminated?**
 - **Which tasks can you delegate to your staff?**

C. Problems

- **NEVER --**
 - **Say anything negative about your secretary publicly**
 - **End the day without resolving conflicts**
 - **Micromanage**

D. Results of Micromanagement

E. How you can generate success

- **Focus on behaviors, not traits or labels**
- **Reward doers**
- **Focus on perceptions of fairness – not happiness**
- **Encourage straight talk and constructive conflict**
- **Model the way**
- **Enlist staff input**
- **Take an interest in people outside of work**
- **Recognize and celebrate staff success every chance you get**

II. GETTING THE MESSAGE ACROSS EFFECTIVELY

Ginger Hinkhouse, Certified PLS

A. Most of Your Support Staff Multi-tasks

- **Most of your support staff work for more than one person**
- **Most secretaries or paralegals work for more than one attorney**
- **They will probably know various idiosyncrasies and personality traits of the attorney you are working under**
- **They are well versed in office protocol**
- **They know procedure for obtaining checks for filing fees, witnesses fees and miscellaneous accounting procedures**
- **Take advantage of this wealth of information - work as a team**

- B. Sharing information is communicating**
 - Be approachable
 - Encourage questions
 - Observe your staff
 - Set guidelines for being interrupted
 - Assist your staff with prioritizing
 - Lead by example

- C. Criticizing is not communicating**
 - Negativity does not get the job done
 - The power of positive attitudes
 - Impatience is synonymous with unapproachable
 - Improvement must be handled positively

- D. Assisting your staff with to do lists**

- E. Forms of communication with staff**
 - Detailed phone messages
 - Status Memos to the file
 - Prioritizing
 - Apprised of all appointments and deadlines, including when your staff is out of the office
 - A clear and working knowledge of the rules of court
 - Organized files

- F. What forms of communication does your staff expect from you?**
 - Regularly Scheduled Meetings and Status Conferences
 - Detailed Instruction to the Staff
 - Using In and Out Baskets Effectively
 - Thank You's and Acknowledgements
 - Being kept apprised of:
 - Potentially hectic days
 - Unforeseen deadlines
 - Needy clients
 - Matters that keep you out of the office

- G. Do you micromanage?**
 - Micromanaging is not Communicating
 - Mind Reading is not a Form of Communication
 - Fault Finding is not a Form of Communication

III. RECOGNIZING AND REWARDING EFFECTIVE BEHAVIOR

Karen McElroy, Certified PP, PLS

A. Recognition & Praise

- **Why don't more managers, owners and employees give appreciation?**
 - **Don't know how to give it**
 - **Don't know what to give appreciation for in the workplace**
 - **Too busy to give appreciation**
- **Pay me now or pay me later**
- **Invest now with sincere appreciation and achieve better performance or pay later by seeing team performance drop, overall morale decrease and corrective actions and coaching increase.**

B. Recognition Tips

- **Verbal expression of approval and appreciation**
- **Banking System**
 - **Deposits**
 - **Withdrawals**
 - **Interest**
- **Recognition must be initiated by the manager/boss**
- **Be specific with the appreciation**
- **Be timely when you show appreciation**
- **Be fair and consistent**
 - **Clearly state rules for appreciation**
 - **Be consistent when showing appreciation**
 - **Find something good**
 - **Be pure in your appreciation**
- **Be public, if possible**

C. Types of Recognition

- **Four types of recognition: personal, written, public and electronic**
- **How do you choose the type of recognition?**
 - **Do you see the employee often?**
 - **Employee preference – do you know how the employee prefers to be praised?**
 - **What is your comfort zone?**

D. Recognition Ideas

- **What kinds of recognition and rewards do employees want?**
 - **Managerial support and involvement**
 - **Perks (i.e., free coffee, donuts on Fridays)**
 - **Improved working conditions**
 - **Seminars**
 - **Professional association**

E. Recognizing Special Occasions

- **Three occasions that you need to recognize**
 - **Birthdays**
 - **Administrative Professional's Day (i.e., Secretary's Day)**
 - **Year end holiday**
- **Gift Guidelines for Special Occasions**
 - **Birthday – floral arrangement or a gift**
 - **Secretary's Day – floral arrangement with optional lunch**
 - **Year end holiday – gift**

F. Gift Ideas

- **Appropriate business related items**
 - **Personalized business cards**
 - **Desktop nameplate**
 - **Ergonomically correct desk accessories**
 - **Computer hardware/software upgrade**
- **Gift Certificate**
- **Monetary bonus for exemplary performance**

G. Great Bosses Really Do Exist

- **We learn to be leaders**
- **Why do we need to be more aware of recognition?**
 - **Relates directly to our bottom line**
 - **Better leaders/bosses get better results**
 - **Work harder at being better in everything they do (doesn't stop with their legal skills)**
 - **Better leaders/bosses are lifelong learners**

- **Best bosses**
 - **Inspire us, mold us and guide us**
 - **We admire them, learn from them, imitate them and remember them**
 - **They are willing to teach us what they know – clearly, honestly and with respect and consideration**
 - **They are good at what they do and know it – they don’t have to make others feel weak in order to feel strong or prove daily they are more intelligent or knowledgeable and savvy than those who work for them**
 - **They lavish us with appreciation and praise that is sincere – tell us what we do right, not just what we do wrong**
 - **Loyal to the people they supervise – always ready to go to bat for us, even if not easy nor expedient.**
 - **Don’t lie or shift blame for their mistakes onto someone else; don’t play games; don’t play one employee against another**
 - **Say what they mean in clear, understandable terms**
 - **Know how to delegate work and authority; assign complete projects, not isolated tasks**
 - **Give us responsibility as well as information and resources – then give us credit**
 - **Bosses not only ask the best of us but give the best of themselves in return**

H. Recognizing a Leader

IV. EFFECTIVE AVOIDANCE OF ETHICAL PITFALLS WITH STAFF **Brian McQuaid, Esq.**

A. Standards

- **Arizona Rules of Professional Responsibility**
- **Arizona Supreme Court Rule 42**

B. Key Concepts

- **Partners’ duty**
- **Supervising attorney’s duty**
- **Specific occasions where lawyer is “responsible”**

C. Arizona Rules of Professional Responsibility Applicable To Staff

- **Rule 1.3 – Diligence**
- **Rule 1.4 – Communication**
- **Rule 1.6 – Confidentiality of Information**
- **Rule 1.7 – Conflicts of Interest**
- **Rule 1.10 – Imputation of Conflicts of Interest**
- **Rule 1.15 – Safekeeping of Property**

D. Rule 8.4(a)

- **Rule 8.4(a)**

“It is professional misconduct for a lawyer to:

- (a) violate or attempt to violate the Rules of professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another.”**

E. Arizona Ethical Rules

- **AZ-ER 5.3 – Duty to control nonlawyer assistants**

“Lawyers generally employ assistants in their practice, including secretaries, investigators, law student interns, and paraprofessionals. Such assistants, whether employees or independent contractors, act for the lawyer in rendition of the lawyer's professional services. Law enforcement officers generally are not considered associated with government lawyers, for purposes of this Rule. A lawyer must give such assistants appropriate instruction and supervision concerning the ethical aspects of their employment, particularly regarding the obligation not to disclose information relating to representation of a client, and should be responsible for their work product. The measures employed in supervising nonlawyers should take account of the fact that they do not have legal training and are not subject to professional discipline.”

Comment, AZ-ER 5.3, § 1

- ***Matter of Galbasini*, 163 Ariz. 120, 786 P.2d 971 (1990)**

Supreme Court noted: “Although ER 5.3 may not establish a rule of vicarious or imputed liability, it does mandate an independent duty of supervision.”

163 Ariz. at 124, 786 P.2d at 975.

- *Matter of Miller*, 178 Ariz. 257, 872 P.2d 661 (1994)

“This analysis concedes that an attorney who supervises a non-lawyer assistant is not required to guarantee that that assistant will never engage in conduct that is not compatible with the professional obligations of the lawyer. However, the analysis provides that if a supervising lawyer takes no precautionary steps whatsoever, ER 5.3 is violated, regardless of whether or not the non-lawyer assistants misbehave.”

178 Ariz. at 259, 872 P.2d at 663

- *Matter of Struthers*, 179 Ariz. 216, 877 P.2d 789 (1994)

“It is important to note that lawyers are often responsible for the actions of their nonlawyer assistants. Ethical Rule 5.3(a) provides that a lawyer in Struthers' position shall "make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance" that nonlawyer assistants conduct themselves according to the rules for lawyers.”

179 Ariz. at 219, 877 P.2d at 792

“In addition, ER 5.3(c) holds a lawyer responsible for an employee's misconduct if the lawyer ratifies that conduct or fails to mitigate its consequences when possible.”

179 Ariz. at 219, 877 P.2d at 792

“Although there may often be some question of what is a reasonable effort to ensure proper conduct by nonlawyer employees, at a minimum the lawyer must screen, instruct and supervise.”

179 Ariz. at 219, 877 P.2d at 792

There are three separate categories of nonlawyer assistants to which the obligations imposed by these Rules apply:

- (1) those “employed” by the firm or lawyer;
- (2) those “retained by” a firm or lawyer; and
- (3) those “associated with” a firm or lawyer.

- *Matter of Rice*, 173 Ariz. 376, 843 P.2d 1268 (1992)
 - Must instruct staff to ensure:
 - Clients received correct billings;
 - Clients were dealt with cooperatively;
 - Client communication; and
 - Client representation.

F. Client Confidences

- *Samaritan Foundation v. Superior Court*, 173 Ariz. 426, 844 P.2d 593 (App. 1992), vacated on other grounds sub nom. *Samaritan Foundation v. Goodfarb*, 176 Ariz. 497, 862 P.2d 870 (1993)

The Court noted in *Samaritan Foundation*:

An attorney is ethically responsible for the conduct of a nonlawyer employed by, retained by, or associated with the lawyer. 17A A.R.S. Sup.Ct.Rules, Rules of Professional Conduct, Rule 4.2, ER 5.3 (1988). The Rules of Professional Conduct require the lawyer with direct supervisory control over the nonlawyer to “make reasonable efforts to ensure that the [nonlawyer’s] conduct is compatible with the professional obligations of the lawyer.” *Id.* Those obligations include client confidentiality.

Id., 173 Ariz. at 433, fn.8, 844 P.2d at 600.

G. Imputed Disqualification/Screening

- *Smart Industries Corp., Mfg. v. Superior Court in and For County of Yuma*, 179 Ariz. 141, 876 P.2d 1176 (App. 1994)

Court of Appeals held that “the operation of ER 1.10(b) may be extended to the conduct of nonlawyers through ER 5.3” *Id.*, 179 Ariz. at 145, 876 P.2d at 1180.

“The lawyer’s duty of supervision over, and responsibility for, the conduct of a nonlawyer assistant under ER 5.3 clearly encompasses the protection of client confidences communicated to a nonlawyer assistant, such as a paralegal or secretary.”

179 Ariz. at 146, 876 P.2d at 1181

“We conclude that the screening requirements articulated above are sufficient to satisfy a lawyer’s duty under ER 5.3 to supervise a nonlawyer employee in a manner that will assure conduct ‘compatible’ with the lawyer’s ethical obligations.”

179 Ariz. at 150, 876 P.2d at 1185

- ***Daines v. Alcatel, S.A.*, 194 F.R.D. 678 (E.D. Wash. 2000)**
 - **Screening lateral employees.**

Judge Quackenbush found that Washington RPC 1.10’s screening rule applies to nonlawyer staff as well by virtue of RPC 5.3(c)’s injunction that lawyers are responsible for the staff they supervise:

“This section charges attorneys with the responsibility of ensuring that non-attorney staff members follow the same ethics rules that apply to attorneys. If those non-attorneys violate those ethical obligations, the supervising attorneys can be held responsible. It follows that if a non-attorney possesses confidences acquired in previous legal employment but is not effectively screened by a new employer under RPC 1.10, the new employer may be disqualified.”

194 F.R.D. at 682.

- **ABA Comm. on Ethics and Professional Responsibility Informal Op. 88-1526 (1988) (paralegals and independent contractors may be screened)**
- ***In re American Home Prods. Corp.*, 985 S.W.2d 68 (Tex. 1998);**
- ***Phoenix Founders v. Marshall*, 887 S.W.2d 831, 834 (Tex. 1994)**
- ***Grant v. Thirteenth Court of Appeals*, 888 S.W.2d 466, 467 (Tex. 1994);**
- **State Bar. of Mich Comm. on Professional and Judicial Ethics Op. 4-115 (1992);**

- ***Hayes v. Central States Orthopedic Specialists, Inc.*, 51 P.3d 562 (Okla. 2002) ("Thus before being disqualified for having hired a non-lawyer employee from its opponent, the hiring firm should be given the opportunity to prove that the non-lawyer has not revealed client confidences to the new employer and has been effectively counseled and screened from doing so. If such proof is made to the court's satisfaction, the court should deny the motion to disqualify the non-lawyer's new firm. We expressly decline to consider in this opinion whether the use of screening devices would be appropriate in cases involving lawyers who move to a firm that represents an opponent who the lawyers had represented.")**
- ***Smart Indus. Corp. v. Superior Court*, 876 P.2d 1176 (Ariz. 1994) (firm can avoid imputation by following ABA Op. 88-1526 when hiring nonlawyers)**
- **N.J. Sup. Ct. Advisory Comm. on Professional Ethics Op. 665 (1992) ("Chinese Wall" may be used even where transferring nonlawyer worked for opposing party in open matter)**
- **N.C. State Bar Ethics Comm. Op. 176 (1994) (no imputation if screening is used).**
- ***Liebowitz v. Eighth Judicial District*, 78 P.3d 515 (2003)**
- **Maine Ethics Op. 186 (2004)**
- **Illinois-Chicago Ethics Op. 93-5**
- **Tennessee Ethics Op. 2003-F-147**
- **Vermont Ethics Op. 92-12**

- *Zimmerman v. Mahaska Bottling Co.*, 19 P.3d 784 (Kan. 2001)
 “As previously mentioned, nonlawyers are privy to a great deal of confidential information regarding the litigation in the office they work in. They are also often involved in legal strategy and planning. The client expects and our legal system requires the client's confidences to be protected. To treat nonlawyers in a different manner than lawyers would seriously erode the foundation of the KRPC and place at risk the public trust in the legal system. Because KRPC 1.10 does not allow for the implementation of a screening device or Chinese wall for lawyers, it likewise does not allow for the use of a screening device for nonlawyers.”
- *Williams v. Trans World Airlines, Inc.*, 588 F. Supp. 1037, 1044 (W.D. Mo. 1984).
 “If information provided by a client in confidence to an attorney for the purpose of obtaining legal advice could be used against the client because a member of the attorney's nonlawyer support staff left the attorney's employment, it would have a devastating effect both on the free flow of information between client and attorney and on the cost and quality of the legal services rendered by an attorney. Every departing secretary, investigator, or paralegal would be free to impart confidential information to the opposition without effective restraint. The only practical way to assure that this will not happen and to preserve public trust in the scrupulous administration of justice is to subject these "agents" to the same disability lawyers have when they leave legal employment with confidential information.”
- *Ciaffone v. District Court*, 945 P.2d 950 (Nev. 1997)
 “The reasoning of [cases holding nonlawyers may be screened] implicitly recognizes that a nonlawyer's employment opportunities or mobility must be weighed against client confidentiality before disqualification occurs. While this approach may appear fairer to the paralegal/secretary, it has been roundly criticized for ignoring the realities of effective screening and litigating that issue should it ever arise. For example, one commentator explained that a majority of courts have rejected screening because of the uncertainty regarding the effectiveness of the screen, the monetary incentive involved in breaching the screen, the fear of disclosing privileged information in the course of proving an effective screen, and the possibility of accidental disclosures. [Citation omitted.] Accordingly, we conclude that adherence to the existing SCR scheme [disallowing screening for lawyers moving from private firm to private firm] is the better rule. We, therefore, refrain from

creating an exception to the imputed disqualification rule embodied in SCR 160.”

- Educate New Hire
- Confirm
- Educate Attorneys and Other Staff
- Preclude Access
- Develop Written Policy
- Note Key Information on File

H. Responsibility For Misconduct Of Nonlawyer Assistants

- Under AZ-ER 5.3(c), a lawyer will be held responsible for conduct of a nonlawyer employed or retained by or associated with the lawyer that would be a violation of the Rules of Professional Conduct if engaged in by the lawyer, if the lawyer ordered or ratified the conduct or if the lawyer failed to take reasonable remedial action after learning of it at a time when its consequences could have been avoided or mitigated.

I. Sharing Fees With Nonlawyer

- AZ-ER 5.4(a)(3):
 - A lawyer or firm may include nonlawyer employees in a compensation or retirement plan which is based, either in whole or in part, on a profit-sharing arrangement.

J. Forming A Partnership With Nonlawyers

- Ethics Opinion No. 82-18:
Committee held that attorney could not ethically assist paralegals who provide paralegal and investigative services even if (1) the attorney would be a salaried employee of the paralegals' corporation, and not a shareholder or office, (2) the corporation would make no profit from the attorney's fees, (3) the attorney would receive the legal fees charged in their entirety, and (4) the only clients of the paralegals' corporation would be other lawyers.

K. Unauthorized Practice Of Law

- The “general rule” is that only active members of the State Bar of Arizona may practice law in Arizona. There are instances where individuals may engage in activities that constitute the practice of law without having secured admission to, or being a member of, the State Bar of Arizona. Rule 31(c), RASC prescribes situations where lay persons may, without being licensed as an attorney, engage in activities what would otherwise constitute the practice of law.

- **Arizona lawyers are permitted to employ non-lawyer assistants to assist in the practice of law.**
- **All non-lawyer assistants must be supervised by the Arizona lawyers, and the Arizona lawyer is responsible for the misconduct of any non-lawyer assistants in his employ.**
 - **AZ-ER 5.3**
 - **AZ-ER 5.5**

L. Arizona Ethics Opinions

- **No. 98-08**
Ethically proper for attorney to contract with a paralegal to have paralegal assist with conducting initial interviews of estate planning clients, so long as:
 - **Attorney supervises and controls paralegal's activities to assure paralegal does not engage in the unauthorized practice of law.**
 - **There is no sharing of fees**
 - **Initial interviews are only with existing clients; and**
 - **There is no solicitation of new business by the paralegal**
- **No. 99-13**
Committee held that Arizona attorney may ethically permit a nonlawyer paralegal, who is also a licensed tribal advocate, to represent clients in tribal court if the rules of the court in question permitted that, because the court's rules control. Such engagements will not run afoul of the lawyer's duty not to assist the unauthorized practice of law, as long as the representation by the paralegal is limited to matters in tribal court.

M. Standards

- **NALS . . . The association for legal professionals Code of Ethics**
- **National Association of Legal Assistants Code of Ethics and Professional Responsibility**
- **National Federation of Paralegal Associations Model Code of Ethics and Professional Responsibility**

N. Notary Laws

- **The state of Arizona commissions notaries.**
 - **A.R.S. 41-312(C)**

- **An employer of a notary may not limit the notary’s services to customers or other persons designated by that employer**
 - **A.R.S. § 41-312(C)(3)**
- **A notary continues to serve until her commission expires, she resigns her commission, dies, or the Secretary of State revokes the commission.**
 - **A.R.S. § 41-312(D)**
- **Arizona law specifies that the signer must always be in the presence of the notary before the notary can complete the notarization.**
- **A notary cannot notarize a rubber stamp of an employer’s signature used to “sign” documents.**
- **A notary cannot postdate or predate a notarial certificate.**
- **Notary commissions are not transferable.**
- **A notary is subject to and must obey Arizona law.**

O. Talk About It

- **Why a client’s money must be put in a separate account**
- **Why physical items belong to a client shouldn’t be put in an office filing cabinet – locked or not**
- **Why money belonging to a client can’t go into the firm’s regular checking or savings account**
- **Why no one can “borrow” money from the firm’s trust account**

P. Do’s and Don’ts For Your Staff

- **Do not give advice regarding the competence or incompetence of another lawyer, whether that lawyer is in your office or another office.**
- **Avoid any contact whatsoever with the opposite party litigant.**
- **Don’t talk to the press.**
- **Do not make or repeat disparaging comments about judges.**
- **Do avoid conflicts of interest.**
- **Do give honest, factual answers to clients and the public when it is appropriate to give an answer.**
- **Do use common sense and avoid the discussion of any subject causing embarrassment to an attorney in your office, your clients or the courts.**

V. SO . . . HOW CAN YOU INCREASE BILLABLE HOURS WITH EFFECTIVE USE OF SUPPORT STAFF?

- **Routines**
- **Let them take some initiative**
- **Make your office or department a real team**
- **Allow them to do the job you're paying them for.**
- **Don't micromanage**
- **Communicate with them.**
- **Recognize their achievements both inside and outside the office.**
- **Treat them as the professionals they should be.**

VI. CONTACTS

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GOT BILLABLE HOURS?

How to Increase Them by Effectively Using Support Staff

April 29, 2005 Presented on behalf of NALS of Phoenix (formerly known as Phoenix Legal Support Association)

What Is Your Idea Of The Perfect Secretary?

- Della Street of Perry Mason?
- Roxanne Melman of L.A. Law?
- Elaine Vassal of Ally McBeal?
- Tara Wilson of The Practice?

April 29, 2005 Presented on behalf of NALS of Phoenix (formerly known as Phoenix Legal Support Association)

Developing an Effective Relationship

Kathy Sieckman, Certified PP, PLS

April 29, 2005 Presented on behalf of NALS of Phoenix (formerly known as Phoenix Legal Support Association)

What Is A Secretary?

- Assistant
- Boss's advisor
- Business partner
- Confidante
- Professional

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"Understand that you, yourself, are no more than the composite picture of all your thoughts and actions. In your relationships with others, remember the basic and critically important rule: If you want to be loved, be lovable. If you want respect, set a respectable example!"

~ Denis Waitley
American personal development expert

April 29, 2005 Presented on behalf of NALS of Phoenix (formerly known as Phoenix Legal Support Association)

Developing an Effective Relationship

- Tools
 - Praise
 - Respect
 - Humor
 - Honor
 - Communication
 - Trust
- Listening
- Feedback
- A mission statement
- Personal interest in each other's well being

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Developing an Effective Relationship

- **Respect**
 - Appreciate experience
 - Seek effectiveness
 - Show respectful behavior
 - Appreciate uniqueness
 - Professionalism
 - Accept blame
- **Power**

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Developing an Effective Relationship

- **Relationship Rules**
 - Love thyself
 - Check the attitude at the door
 - Value people
 - Make the effort to form relationships
 - Understand the reciprocity rule
 - Follow the golden rule

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"People who try to command respect are wasting their time. Respect can't be commanded. It has to be earned."

~ unknown

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Developing an Effective Relationship

- **Start with a great morning**
 - Greetings
 - To Do lists
 - In and Out Baskets
- **Keep the momentum going**
 - Where oh where are you?
- **End on a positive note**
 - Thanks for your help today

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Developing an Effective Relationship

- **Encourage**
 - Professional Association Membership
 - Certification
 - CLE requirement
 - Recertification
 - Topics on exams
 - Seminars

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Developing an Effective Relationship

- **Professional Association Membership**
 - Networking
 - Out of state contacts
 - Forms
 - Local Rules
 - Judge Preferences
 - Contacts in other areas of law

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Developing an Effective Relationship

- **Allow quality time**
- **Teamwork**
 - Do you have the same goals?
 - Do you appear to be and behave as a team?

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Developing an Effective Relationship

- **Delegate**
 - Who is doing what?
 - Which tasks do you handle that are recurring?
 - Which tasks are absolutely necessary?
 - Which tasks can be completely eliminated?
 - Which tasks can you delegate to your staff?

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Time	Activity	Analysis	Responsible Party
9:00	Review e-mail	Recurring/ Necessary	Atty
9:30	Draft summons	Delegate	Paralegal
10:00	Research re: local rules for USDC S.D. Fla.	Delegate	Secretary – information is online
10:30	Draft Motion for summary judgment	Necessary	Secretary can set up shell/paralegal can insert facts

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Problems

- **NEVER --**
 - Say anything negative about your secretary publicly
 - End the day without resolving conflicts
 - Micromanage

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Results of Micromanagement



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How you can generate success

- Focus on behaviors, not traits or labels
- Reward doers
- Focus on perceptions of fairness– not happiness
- Encourage straight talk and constructive conflict
- Model the way

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How you can generate success

- Enlist staff input
- Take an interest in people outside of work
- Recognize and celebrate staff success every chance you get

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Getting the Message Across Effectively

Ginger Hinkhouse, Certified PLS

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Most of Your Support Staff Multi-tasks

1. Answers your phone	6. Drafts skeleton documents
2. Files court pleadings	7. Client communications
3. Works the file	8. Opens mail
4. Assists with service of process, i.e., subpoenas, complaints, etc.	9. Calendars and docket deadlines
5. Drafts correspondence	10. Opens files

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Most of your support staff work for more than one person

1. Most secretaries or paralegals work for more than one attorney
2. They will probably know various idiosyncrasies and personality traits of the attorney you are working under
3. They are well versed in office protocol

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Most of your support staff work for more than one person

4. They know procedure for obtaining checks for filing fees, witnesses fees and miscellaneous accounting procedures
5. Take advantage of this wealth of information - work as a team

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Sharing information is communicating

1. Be approachable
2. Encourage questions
3. Observe your staff
4. Set guidelines for being interrupted
5. Assist your staff with prioritizing
6. Lead by example

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Criticizing is not communicating

1. **Negativity does not get the job done**
2. **The power of positive attitudes**
3. **Impatience is synonymous with unapproachable**
4. **Improvement must be handled positively**

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Assisting your staff with to do lists

- **Everyone handles To Do Lists differently. Keep the following items in mind:**
 - **Specific instruction and direction**
 - **A 2-minute instruction does not mean a 2-minute task!**
 - **Initial projects can take different directions**
 - **Communicate and make sure the task at hand is understood**
 - **Review, update and prioritize**

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Forms of communication with staff

A. Detailed phone messages

1. **Who called. Why they called. What matter they were calling on. Is their name spelled correctly? Is the phone number written down correctly?**
2. **Voicemail vs. leaving a message with a staff member**

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Forms of communication with staff

B. Status Memos to the file

1. Detailed memo to the file regarding who said what, with names, dates, addresses and applicable hand-written notes attached.
2. Comprehensive Notes.

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Forms of communication with staff

- C. Prioritizing
- D. Apprised of all appointments and deadlines, including when your staff is out of the office
- E. A clear and working knowledge of the rules of court
- F. Organized files

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What forms of communication does your staff expect from you?

A. Regularly Scheduled Meetings and Status Conferences

1. Going over To Do lists and calendars
2. Assigning projects
3. Scheduling meetings

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What forms of communication does your staff expect from you?

B. Detailed Instruction to the Staff

1. Effective, efficient and respectful
2. Your staff operating as a well-oiled machine

C. Using In and Out Baskets Effectively

D. Thank You's and Acknowledgements

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What forms of communication does your staff expect from you?

E. Being kept apprised of:

1. Potentially hectic days
2. Unforeseen deadlines
3. Needy clients
4. Matters that keep you out of the office

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Do you micromanage?

- Micromanaging is not Communicating
- Mind Reading is not a Form of Communication
- Fault Finding is not a Form of Communication

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Recognizing and Rewarding Effective Behavior

Karen McElroy, Certified PP, PLS

April 29, 2005 Presented on behalf of NALS of Phoenix (formerly known as Phoenix Legal Support Association)

Recognition & Praise

“There are two things people want more than sex and money...recognition and praise.”

**Mary Kay Ash
Founder of
Mary Kay Cosmetics**

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Recognition & Praise

Why don't more managers, owners and employees give appreciation?

- 1. Don't know how to give it**
- 2. Don't know what to give appreciation for in the workplace**
- 3. Too busy to give appreciation**

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Recognition & Praise

- Pay me now or pay me later
- Invest now with sincere appreciation and achieve better performance or pay later by seeing team performance drop, overall morale decrease and corrective actions and coaching increase.

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Recognition Tips

- Verbal expression of approval and appreciation
- Banking System
 - Deposits
 - Withdrawals
 - Interest

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Recognition Tips

- Recognition must be initiated by the manager/boss
- Be specific with the appreciation
- Be timely when you show appreciation

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Recognition Tips

- **Be fair and consistent**
 - Clearly state rules for appreciation
 - Be consistent when showing appreciation
 - Find something good
 - Be pure in your appreciation
- **Be public, if possible**

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Types of Recognition

- **Four types of recognition: personal, written, public and electronic**
- **How do you choose the type of recognition?**
 - Do you see the employee often?
 - Employee preference— do you know how the employee prefers to be praised?
 - What is your comfort zone?

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Recognition Ideas

- **What kinds of recognition and rewards do employees want?**
 - Managerial support and involvement
 - Perks (i.e., free coffee, donuts on Fridays)
 - Improved working conditions
 - Seminars
 - Professional association

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Recognizing Special Occasions

- **Three occasions that you need to recognize:**
 - Birthdays
 - Administrative Professional’s Day (i.e., Secretary’s Day)
 - Year end holiday

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Gift Guidelines for Special Occasions

- **Birthday – floral arrangement or a gift**
- **Secretary’s Day – floral arrangement with optional lunch**
- **Year end holiday – gift**

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Gift Ideas

- **Appropriate business related items**
 - Personalized business cards
 - Desktop nameplate
 - Ergonomically correct desk accessories
 - Computer hardware/software upgrade
- **Gift Certificate**
- **Monetary bonus for exemplary performance**

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Great Bosses Really Do Exist

- We learn to be leaders
- Why do we need to be more aware of recognition?
 - Relates directly to our bottom line
 - Better leaders/bosses get better results
 - Work harder at being better in everything they do (doesn't stop with their legal skills)
 - Better leaders/bosses are lifelong learners

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Great Bosses Really Do Exist

- Best bosses
 - Inspire us, mold us and guide us
 - We admire them, learn from them, imitate them and remember them
 - They are willing to teach us what they know – clearly, honestly and with respect and consideration

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Great Bosses Really Do Exist

- They are good at what they do and know it – they don't have to make others feel weak in order to feel strong or prove daily they are more intelligent or knowledgeable and savvy than those who work for them
- They lavish us with appreciation and praise that is sincere – tell us what we do right, not just what we do wrong

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Great Bosses Really Do Exist

- Loyal to the people they supervise— always ready to go to bat for us, even if not easy nor expedient.
- Don't lie or shift blame for their mistakes onto someone else; don't play games; don't play one employee against another

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Great Bosses Really Do Exist

- Say what they mean in clear, understandable terms
- Know how to delegate work and authority; assign complete projects, not isolated tasks
- Give us responsibility as well as information and resources— then give us credit

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Great Bosses Really Do Exist

- Bosses not only ask the best of us but give the best of themselves in return

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Recognizing a Leader

“Leadership: the act of getting someone else to do something you want done because he wants to do it.”

- Dwight D. Eisenhower
34th President of the United States

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Effective Avoidance of Ethical Pitfalls with Staff

Brian McQuaid, Esq.

April 29, 2005 Presented on behalf of NALS of Phoenix (formerly known as Phoenix Legal Support Association)

Standards

- **Arizona Rules of Professional Responsibility**
- **Arizona Supreme Court Rule 42**

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Key Concepts

- Partners' duty
- Supervising attorney's duty
- Specific occasions where lawyer is "responsible"

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Arizona Rules of Professional Responsibility Applicable To Staff

- Rule 1.3 – Diligence
- Rule 1.4 – Communication
- Rule 1.6 – Confidentiality of Information
- Rule 1.7 – Conflicts of Interest
- Rule 1.10 – Imputation of Conflicts of Interest
- Rule 1.15 – Safekeeping of Property

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Rule 8.4(a)

- Rule 8.4(a)
 "It is professional misconduct for a lawyer to:
 (a) violate or attempt to violate the Rules of professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another."

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Arizona Ethical Rules

- **AZ-ER 5.3 – Duty to control nonlawyer assistants**

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AZ-ER 5.3

“Lawyers generally employ assistants in their practice, including secretaries, investigators, law student interns, and paraprofessionals. Such assistants, whether employees or independent contractors, act for the lawyer in rendition of the lawyer’s professional services. Law enforcement officers generally are not considered associated with government lawyers, for purposes of this Rule. A lawyer must give such assistants appropriate instruction and supervision concerning the ethical aspects of their employment, particularly regarding the obligation not to disclose information relating to representation of a client, and should be responsible for their work product. The measures employed in supervising nonlawyers should take account of the fact that they do not have legal training and are not subject to professional discipline.”

Comment, AZ-ER 5.3, § 1

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AZ-ER 5.3

- **Matter of Galbasini, 163 Ariz. 120, 786 P.2d 971 (1990)**
 - Supreme Court noted: **“Although ER 5.3 may not establish a rule of vicarious or imputed liability, it does mandate an independent duty of supervision.”**

163 Ariz. at 124, 786 P.2d at 975.

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AZ ER 5.3

- *Matter of Miller*, 178 Ariz. 257, 872 P.2d 661 (1994)
“This analysis concedes that an attorney who supervises a non-lawyer assistant is not required to guarantee that that assistant will never engage in conduct that is not compatible with the professional obligations of the lawyer. However, the analysis provides that if a supervising lawyer takes no precautionary steps whatsoever, ER 5.3 is violated, regardless of whether or not the non-lawyer assistants misbehave.”
178 Ariz. at 259, 872 P.2d at 663

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AZ ER 5.3

- *Matter of Struthers*, 179 Ariz. 216, 877 P.2d 789 (1994)
“It is important to note that lawyers are often responsible for the actions of their nonlawyer assistants. Ethical Rule 5.3(a) provides that a lawyer in Struthers' position shall "make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance" that nonlawyer assistants conduct themselves according to the rules for lawyers.”
179 Ariz. at 219, 877 P.2d at 792

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AZ ER 5.3

“In addition, ER 5.3(c) holds a lawyer responsible for an employee's misconduct if the lawyer ratifies that conduct or fails to mitigate its consequences when possible.”
179 Ariz. at 219, 877 P.2d at 792

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AZ ER 5.3

“Although there may often be some question of what is a reasonable effort to ensure proper conduct by nonlawyer employees, at a minimum the lawyer must screen, instruct and supervise.”

Id.

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AZ ER 5.3(b)

- **There are three separate categories of nonlawyer assistants to which the obligations imposed by these Rules apply:**
 - (1) those “employed” by the firm or lawyer;**
 - (2) those “retained by” a firm or lawyer; and**
 - (3) those “associated with” a firm or lawyer.**

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AZ ER 5.3

- ***Matter of Rice*, 173 Ariz. 376, 843 P.2d 1268 (1992)**
 - **Must instruct staff to ensure:**
 - **Clients received correct billings;**
 - **Clients were dealt with cooperatively;**
 - **Client communication; and**
 - **Client representation.**

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Client Confidences

- *Samaritan Foundation v. Superior Court*, 173 Ariz. 426, 844 P.2d 593 (App. 1992), vacated on other grounds sub nom. *Samaritan Foundation v. Goodfarb*, 176 Ariz. 497, 862 P.2d 870 (1993)

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Client Confidences

- **The Court noted in *Samaritan Foundation*:**
 - An attorney is ethically responsible for the conduct of a nonlawyer employed by, retained by, or associated with the lawyer. 17A A.R.S. Sup.Ct.Rules, Rules of Professional Conduct, Rule 4.2, ER 5.3 (1988). The Rules of Professional Conduct require the lawyer with direct supervisory control over the nonlawyer to “make reasonable efforts to ensure that the [nonlawyer’s] conduct is compatible with the professional obligations of the lawyer.” *Id.* Those obligations include client confidentiality.

***Id.*, 173 Ariz. at 433, fn.8, 844 P.2d at 600.**

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Imputed Disqualification/Screening

- *Smart Industries Corp., Mfg. v. Superior Court in and For County of Yuma*, 179 Ariz. 141, 876 P.2d 1176 (App. 1994)
 - Court of Appeals held that “the operation of ER 1.10(b) may be extended to the conduct of nonlawyers through ER 5.3” *Id.*, 179 Ariz. at 145, 876 P.2d at 1180.

April 29, 2005 Presented on behalf of NALS of Phoenix (formerly known as Phoenix Legal Support Association)

**Imputed
Disqualification/Screening**

“The lawyer’s duty of supervision over, and responsibility for, the conduct of a nonlawyer assistant under ER 5.3 clearly encompasses the protection of client confidences communicated to a nonlawyer assistant, such as a paralegal or secretary.”

179 Ariz. at 146, 876 P.2d at 1181

April 29, 2005
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**Imputed
Disqualification/Screening**

“We conclude that the screening requirements articulated above are sufficient to satisfy a lawyer’s duty under ER 5.3 to supervise a nonlawyer employee in a manner that will assure conduct ‘compatible’ with the lawyer’s ethical obligations.”

179 Ariz. at 150, 876 P.2d at 1185

April 29, 2005
Presented on behalf of NALS of Phoenix (formerly known as Phoenix Legal Support Association)

**Imputed
Disqualification/Screening**

- ***Daines v. Alcatel, S.A.*, 194 F.R.D. 678 (E.D. Wash. 2000)**
 - Screening lateral employees.

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**Imputed
Disqualification/Screening**

- *Daines v. Alcatel, S.A.*, 194 F.R.D. 678 (E.D. Wash. 2000)
 - Judge Quackenbush found that Washington RPC 1.10's screening rule applies to nonlawyer staff as well by virtue of RPC 5.3(c)'s injunction that lawyers are responsible for the staff they supervise:

“This section charges attorneys with the responsibility of ensuring that non-attorney staff members follow the same ethics rules that apply to attorneys. If those non-attorneys violate those ethical obligations, the supervising attorneys can be held responsible. It follows that if a non-attorney possesses confidences acquired in previous legal employment but is not effectively screened by a new employer under RPC 1.10, the new employer may be disqualified.”

194 F.R.D. at 682.

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**Imputed
Disqualification/Screening**

- ABA Comm. on Ethics and Professional Responsibility Informal Op. 88-1526 (1988) (paralegals and independent contractors may be screened)
- *In re American Home Prods. Corp.*, 985 S.W.2d 68 (Tex. 1998);
- *Phoenix Founders v. Marshall*, 887 S.W.2d 831, 834 (Tex. 1994)
- *Grant v. Thirteenth Court of Appeals*, 888 S.W.2d 466, 467 (Tex. 1994);
- State Bar. of Mich Comm. on Professional and Judicial Ethics Op. 4-115 (1992);

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**Imputed
Disqualification/Screening**

- *Hayes v. Central States Orthopedic Specialists, Inc.*, 51 P.3d 562 (Okla. 2002) (“Thus before being disqualified for having hired a non-lawyer employee from its opponent, the hiring firm should be given the opportunity to prove that the non-lawyer has not revealed client confidences to the new employer and has been effectively counseled and screened from doing so. If such proof is made to the court's satisfaction, the court should deny the motion to disqualify the non-lawyer's new firm. We expressly decline to consider in this opinion whether the use of screening devices would be appropriate in cases involving lawyers who move to a firm that represents an opponent who the lawyers had represented.”)

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**Imputed
Disqualification/Screening**

- *Smart Indus. Corp. v. Superior Court*, 876 P.2d 1176 (Ariz. 1994) (firm can avoid imputation by following ABA Op. 88-1526 when hiring nonlawyers)
- N.J. Sup. Ct. Advisory Comm. on Professional Ethics Op. 665 (1992) (“Chinese Wall” may be used even where transferring nonlawyer worked for opposing party in open matter)
- N.C. State Bar Ethics Comm. Op. 176 (1994) (no imputation if screening is used).

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**Imputed
Disqualification/Screening**

- *Liebowitz v. Eighth Judicial District*, 78 P.3d 515 (2003)
- Maine Ethics Op. 186 (2004)
- Illinois-Chicago Ethics Op. 93-5
- Tennessee Ethics Op. 2003-F-147
- Vermont Ethics Op. 92-12

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**Imputed
Disqualification/Screening**

- *Zimmerman v. Mahaska Bottling Co.*, 19 P.3d 784 (Kan. 2001)
 “As previously mentioned, nonlawyers are privy to a great deal of confidential information regarding the litigation in the office they work in. They are also often involved in legal strategy and planning. The client expects and our legal system requires the client’s confidences to be protected. To treat nonlawyers in a different manner than lawyers would seriously erode the foundation of the KRPC and place at risk the public trust in the legal system. Because KRPC 1.10 does not allow for the implementation of a screening device or Chinese wall for lawyers, it likewise does not allow for the use of a screening device for nonlawyers.”

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Imputed Disqualification/Screening

- Williams v. Trans World Airlines, Inc.*, 588 F. Supp. 1037, 1044 (W.D. Mo. 1984).

“If information provided by a client in confidence to an attorney for the purpose of obtaining legal advice could be used against the client because a member of the attorney’s nonlawyer support staff left the attorney’s employment, it would have a devastating effect both on the free flow of information between client and attorney and on the cost and quality of the legal services rendered by an attorney. Every departing secretary, investigator, or paralegal would be free to impart confidential information to the opposition without effective restraint. The only practical way to assure that this will not happen and to preserve public trust in the scrupulous administration of justice is to subject these “agents” to the same disability lawyers have when they leave legal employment with confidential information.”

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Imputed Disqualification/Screening

- Ciaffone v. District Court*, 945 P.2d 950 (Nev. 1997)

“The reasoning of [cases holding nonlawyers may be screened] implicitly recognizes that a nonlawyer’s employment opportunities or mobility must be weighed against client confidentiality before disqualification occurs. While this approach may appear fairer to the paralegal/secretary, it has been roundly criticized for ignoring the realities of effective screening and litigating that issue should it ever arise. For example, one commentator explained that a majority of courts have rejected screening because of the uncertainty regarding the effectiveness of the screen, the monetary incentive involved in breaching the screen, the fear of disclosing privileged information in the course of proving an effective screen, and the possibility of accidental disclosures. [Citation omitted] Accordingly, we conclude that adherence to the existing SCR scheme [disallowing screening for lawyers moving from private firm to private firm] is the better rule. We, therefore, refrain from creating an exception to the imputed disqualification rule embodied in SCR 160.”

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Imputed Disqualification/Screening

- Educate New Hire**

Confirm

Educate Attorneys and Other Staff

Preclude Access

Develop Written Policy

Note Key Information on File

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Responsibility For Misconduct Of Nonlawyer Assistants

- Under AZ-ER 5.3(c), a lawyer will be held responsible for conduct of a nonlawyer employed or retained by or associated with the lawyer that would be a violation of the Rules of Professional Conduct if engaged in by the lawyer, if the lawyer ordered or ratified the conduct or if the lawyer failed to take reasonable remedial action after learning of it at a time when its consequences could have been avoided or mitigated.

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Sharing Fees With Nonlawyer

- AZ-ER 5.4(a)(3):
 - A lawyer or firm may include nonlawyer employees in a compensation or retirement plan which is based, either in whole or in part, on a profit-sharing arrangement.

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Forming A Partnership With Nonlawyers

- Ethics Opinion No. 82-18:
 - Committee held that attorney could not ethically assist paralegals who provide paralegal and investigative services even if (1) the attorney would be a salaried employee of the paralegals' corporation, and not a shareholder or office, (2) the corporation would make no profit from the attorney's fees, (3) the attorney would receive the legal fees charged in their entirety, and (4) the only clients of the paralegals' corporation would be other lawyers.

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Unauthorized Practice Of Law

- The “general rule” is that only active members of the State Bar of Arizona may practice law in Arizona. There are instances where individuals may engage in activities that constitute the practice of law without having secured admission to, or being a member of, the State Bar of Arizona. Rule 31(c), RASC prescribes situations where lay persons may, without being licensed as an attorney, engage in activities what would otherwise constitute the practice of law.

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Unauthorized Practice Of Law

- Arizona lawyers are permitted to employ non-lawyer assistants to assist in the practice of law.
- All non-lawyer assistants must be supervised by the Arizona lawyers, and the Arizona lawyer is responsible for the misconduct of any non-lawyer assistants in his employ.
 - AZ-ER 5.3
 - AZ-ER 5.5

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Arizona Ethics Opinions

- No. 98-08
 - Ethically proper for attorney to contract with a paralegal to have paralegal assist with conducting initial interviews of estate planning clients, so long as:
 - Attorney supervises and controls paralegal's activities to assure paralegal does not engage in the unauthorized practice of law.
 - There is no sharing of fees
 - Initial interviews are only with existing clients; and
 - There is no solicitation of new business by the paralegal

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Arizona Ethics Opinions

- **No. 99-13**
 - Committee held that Arizona attorney may ethically permit a nonlawyer paralegal, who is also a licensed tribal advocate, to represent clients in tribal court if the rules of the court in question permitted that, because the court's rules control. Such engagements will not run afoul of the lawyer's duty not to assist the unauthorized practice of law, as long as the representation by the paralegal is limited to matters in tribal court.

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Standards

- **NALS . . . The association for legal professionals Code of Ethics**
- **National Association of Legal Assistants Code of Ethics and Professional Responsibility**
- **National Federation of Paralegal Associations Model Code of Ethics and Professional Responsibility**

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Notary Laws

- **The state of Arizona commissions notaries.**
 - A.R.S. 41-312(C)
- **An employer of a notary may not limit the notary's services to customers or other persons designated by that employer**
 - A.R.S. § 41-312(C)(3)

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Notary Laws

- **A notary continues to serve until her commission expires, she resigns her commission, dies, or the Secretary of State revokes the commission.**
 - A.R.S. § 41-312(D)
- **Arizona law specifies that the signer must always be in the presence of the notary before the notary can complete the notarization.**

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Notary Laws

- **A notary cannot notarize a rubber stamp of an employer’s signature used to “sign” documents.**
- **A notary cannot postdate or predate a notarial certificate.**
- **Notary commissions are not transferable.**

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Notary Laws

- **A notary is subject to and must obey Arizona law.**

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Talk About It

- Why a client's money must be put in a separate account
- Why physical items belong to a client shouldn't be put in an office filing cabinet – locked or not
- Why money belonging to a client can't go into the firm's regular checking or savings account
- Why no one can "borrow" money from the firm's trust account

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Do's and Don'ts For Your Staff

- Do not give advice regarding the competence or incompetence of another lawyer, whether that lawyer is in your office or another office.
- Avoid any contact whatsoever with the opposite party litigant.
- Don't talk to the press.

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Do's and Don'ts For Your Staff

- Do not make or repeat disparaging comments about judges.
- Do avoid conflicts of interest.
- Do give honest, factual answers to clients and the public when it is appropriate to give an answer.

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Do's and Don'ts For Your Staff

- Do use common sense and avoid the discussion of any subject causing embarrassment to an attorney in your office, your clients or the courts.

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Now what is your idea of the perfect attorney/secretary relationship?

- Professional
- Respectful
- Loyal
- Helpful
- Partner
- Teacher
- Mentor

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Panel discussion

Specific questions/challenges

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So . . . How can you increase billable hours with effective use of support staff?

- Routines
- Let them take some initiative
- Make your office or department a real team
- Allow them to do the job you're paying them for.
- Don't micromanage

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So . . . How can you increase billable hours with effective use of support staff?

- Communicate with them.
- Recognize their achievements both inside and outside the office.
- Treat them as the professionals they should be.

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