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Focusing Your Firm on Ethics

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ethics

Is your firm focused on providing a culture of ethical practice and behavior?

By Alex B. Long

The Tennessee Rules of Professional Conduct (TRPC) are rules of individual professional responsibility, not law firm responsibility. Various individuals have argued in favor of firm-wide professional discipline, and two states have gone so far as to adopt such an approach.[1] In addition, a law firm may, of course, be held civilly liable in tort and under agency principles for the actions of its individual lawyers. But in Tennessee (as in most other states), there is no professional discipline for law firms. That said, there is at least one rule of professional responsibility that envisions not only specific conduct on the part of individual firm lawyers, but conduct on the part of the firm itself.

TRPC Rule 5.1 speaks to the responsibilities law firm partners, managers, and supervisory lawyers have with respect to their firms. Specifically, Rule 5.1(a) requires that law firm partners (or those with comparable managerial authority) 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" (emphasis added). Rule 5.1(b) imposes a duty of supervision upon firm lawyers with supervisory authority over another lawyer. Finally, Rule 5.1(c) provides that a lawyer shall be responsible for another lawyer's violation of the Rules when the lawyer orders the other lawyer to engage in misconduct, ratifies the misconduct when it occurs, or knows of the other lawyer's misconduct but fails to take reasonable remedial action in time to prevent the adverse consequences stemming from the misconduct.

But while the other parts of Rule 5.1 speak solely to action on the part of an individual lawyer in a firm, Rule 5.1(a) contemplates that the firm itself will institute "measures" designed to promote the ethical practice of law among all firm lawyers. Legal ethics experts often refer to these measures as a firm's "ethical infrastructure," the organizational structure, practices and procedures a firm employs to promote ethical behavior. In keeping with this idea, Comment 2 to TRPC Rule 5.1 explains that "the ethical atmosphere of a firm or organization can influence the conduct of all its members." Therefore, it is essential (and ethically required) that firm partners make reasonable efforts to make sure that the firm establishes practices and procedures that, to the extent feasible, ensure that all lawyers in the firm are practicing in an ethical manner on a daily basis.

I recently conducted a survey of Tennessee law firms to determine what types of ethical infrastructures Tennessee law firms employ in an attempt to promote the ethical practice of law among their attorneys. I distributed an online survey to more than 700 firms in Knoxville, Nashville, Memphis, Chattanooga, Murfreesboro, Clarksville and the Tri-Cities area (Bristol, Kingsport, and Johnson City). I received 156 responses. Where possible, I directed the survey to a firm's managing partner or equivalent.[2] For those firms without readily accessible electronic contact information, I distributed the survey via snail mail. To the firms that responded, I pass along my thanks. (To those that didn't, my apologies for the spam.)

The survey yielded a fairly representative sample of Tennessee law firms in terms of size.

Chart 1: What is the size of your firm?

Number of Attorneys	Number of Respondents	Percentage of Respondents
1-2	28	18 percent
3-10	89	57 percent
11-24	21	13 percent
25-100	11	7 percent
over 100	7	4 percent

Rule 5.1(a) and the Development of Ethical Infrastructures: Who Is Responsible?

Rule 5.1(a) applies to law firm partners or those in the firm with comparable managerial authority. According to Comment 1 to the current version of Rule 5.1 of the TRPC, all law firm partners or their counterparts in other types of legal organizations have managerial authority for all aspects of a firm's practice and are therefore subject to the duty imposed by Rule 5.1(a). However, the comment clarifies that where a law firm or other organization of lawyers has centralized managerial authority for the conduct of the firm or organization in some, but not all, of the partners or managing lawyers, only those with such managerial authority are subject to the duty imposed by Rule 5.1(a). Thus, the comment seems to recognize that some partners — despite being partners — lack any meaningful ability to develop the ethical infrastructures necessary to promote firm-wide compliance with the rules. The comment to the newly proposed version of Rule 5.1 omits this language.

Rule 5.1(a) and the Development of Ethical Infrastructures: Why Have Them?

There are any number of reasons why law firm partners might want to develop internal structures, policies, and procedures designed to ensure that all lawyers in the firm are practicing in an ethical manner. Most obviously, it is required by Rule 5.1. In addition to being required as a matter of professional responsibility, the development of ethical infrastructures makes sense from a risk-management perspective. Under the doctrine of *respondeat superior*, an employer may be held liable for the torts of its employees committed within the scope of employment. Law firms have been held vicariously liable for any number of offenses committed by their associates, including conversion of client funds[3] and malpractice.[4] In some of these cases, law firms have faced liability not just under a *respondeat superior* theory, but for their own negligent supervision of their associates that allowed the associates to misbehave undetected.[5] In addition, a law firm may be held vicariously liable for the wrongful acts of a partner committed while acting within the scope of his or her authority as a partner in the firm.[6] And at least one commentator has argued that the failure of a law firm partner to raise questions internally about the possible misconduct of another firm attorney may amount to a breach of fiduciary duty.[7]

There are other practical reasons why firms might want to better develop their ethical infrastructures. Developing better internal compliance procedures may increase revenue and improve the quality of client representation through the development of procedures that aid in the conflict detection process, the

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discovery process, and the investigation of misconduct by opposing counsel.[8] In addition, some ethics experts have suggested that firms can use the existence of their compliance programs and the ensuing culture of ethical practice within the firm as selling points for new clients and new attorneys.[9] Thus, law firms and their individual partners have strong financial incentives to put compliance mechanisms in place that are designed to provide adequate supervision and guidance to associates and partners alike.

What Constitutes an Ethical Infrastructure for Purposes of Rule 5.1(a)?

A firm's ethical infrastructure may take a variety of forms. Despite imposing a duty to make "reasonable efforts" to encourage firm-wide compliance procedures, Rule 5.1(a) stops short of defining that duty with any degree of specificity. The comments explain that, as is the case with tort law's "reasonable person" standard, what constitutes a reasonable effort to ensure compliance varies with the structure and nature of the firm's practice. "In a small firm or legal department," the comments explain, "informal supervision and occasional admonition ordinarily might be sufficient." A comment to Rule 5.1 of the ABA's Model Rules of Professional Conduct suggests that "periodic review of compliance with the required systems ordinarily will suffice" for small firms or legal departments. The comments also note that, regardless of its size, a firm may rely on continuing legal education in professional ethics.

In larger firms or in firms with sophisticated practices, the comments to the TRPC advise that "more elaborate measures may be necessary." Comment 2 to Rule 5.1 of the ABA's Model Rules of Professional Conduct explains that "[s]uch policies and procedures include those designed to detect and resolve conflicts of interest, identify dates by which actions must be taken in pending matters [and] account for client funds and property." It is easy to imagine other types of policies and procedures that most any firm should have in place. For example, a Michigan ethics opinion declares that its version of Rule 5.1 obligates a firm to establish a record retention plan, to educate members of the firm about the plan, and to monitor compliance.[10]

The respondents to the survey indicated that their firms used a variety of devices to attempt to make sure that all lawyers in a firm are complying with their ethical obligations. The most common measure cited was informal supervision. In addition to the options provided in the survey, other common practices mentioned included contacting the Board of Professional Responsibility when confronted with an ethics question and informal discussion and consultation with other attorneys in the firm. One respondent indicated that his or her firm had in place a "team-based peer review/audit system."

Although most respondents indicated that their firms had some kind of policies or procedures in place, in general, these policies or procedures are not formalized. Few respondents indicated that the details of their policies or procedures were in written form and disseminated within the firm.

Internal Guidance on Ethics Questions: The Ethics Guru

Given the increasingly complex nature of legal ethics, even the most conscientious lawyer can be expected at some point to have questions concerning his or her ethical obligations. Therefore, it is essential that a lawyer feel that there is someone to whom he can turn when confronted with a difficult ethics question. Comment 2 to Rule 5.1 of the TRPC notes that a necessary component of an ethical infrastructure for some firms could be a procedure "whereby junior lawyers can make confidential referral of ethical problems directly to a designated senior partner or special committee." Junior lawyers are not the only ones who may need ethics advice,

Chart 2: Which of the following measures, if any, does your firm use to help ensure that all lawyers in the firm are practicing in an ethical manner?

[Respondents could choose more than one answer.]

Options	Number of Respondents	Percentage of Respondents
Use of designated ethics counsel	12	8 percent
Use of general counsel	7	4 percent
Use of ethics committee	7	4 percent
Ethics training provided at firm's expense	64	41 percent
Partner peer review	40	26 percent
Formal mentor system for associates and subordinate attorneys	40	26 percent
Informal supervision for associates and subordinate attorneys	107	69 percent
Scheduled firm or practice-group meetings	58	37 percent
Other (please explain)	23	15 percent
None	6	4 percent

however. Nationally, many firms (particularly larger firms) now assign responsibility for legal ethics matters to an individual or group of individuals. According to a 2004 survey conducted by consulting group Altman Weil, nearly two-thirds of responding law firms in the AmLaw 200 had a designated general counsel. In close to 90 percent of those firms, general counsel advised the firm on professional responsibility issues.[11] Another study of 32 large law firms by law professors Elizabeth Chambliss and David B. Wilkins found that each of the firms had at least one partner with "special responsibility for promoting ethics and/or regulatory compliance."[12]

The job responsibilities and staffing of these kinds of "ethics guru" positions often varies dramatically among firms. In some firms, the partner with responsibility for ethics matters may perform the task on a full-time basis. In others, the designated ethics specialist serves in that capacity on a part-time basis and receives no additional compensation. Some firms rely on ethics committees consisting of several firm members who take time out of their practices to handle ethics inquiries. One study found conflicting views as to which of these approaches was best. Some part-time ethics specialists expressed the view that their responsibility for ethics matters was something of a burden and a distraction from the practice of law.[13] Some full-time ethics specialists believed that the full-time nature of their job made them more accessible and made it more likely that firm lawyers would seek out their services and be receptive to their counsel. However, some expressed the concern that they might not be viewed as real, honest-to-goodness practicing lawyers and were, therefore, viewed with some skepticism by firm lawyers who were actually "down in the trenches."[14]

Most respondents indicated that their firms did not have such a position.

Instead, most respondents indicated that their firms have less formal procedures in place to help their lawyers resolve ethical issues, such as referring ethical questions to a superior. Numerous respondents also separately listed referral to the Board of Professional Responsibility as another option.

The failure of many firms to have a designated individual or individuals charged with responsibility for ethics matters is hardly surprising in light of the fact that most of the respondents (and most firms in Tennessee and the nation) are smaller in nature. Not surprisingly, larger firms were more likely to report the existence of designated individuals within the firm charged with responsibility for handling ethics matters than were smaller firms. Of the respondents from firms with 25 or more attorneys, nearly 67 percent reported the existence of such individuals. Of the respondents from firms with 10 or fewer attorneys, only 15 percent reported the existence of such individuals. And, of course it is natural that smaller firms would rely on a system of informal referral of ethics questions to the firm's managing partner or someone in a similar position. However, there are at least some concerns with this practice. Junior lawyers, in particular, may be less likely to admit to a partner who holds their professional fate in his or her hands that they have an ethical issue. Moreover, referral to a superior is only an effective compliance mechanism to the extent that such referrals are encouraged and acted upon. Where an emphasis on ethical practice is not part of a firm's culture, the managing partners should hardly be surprised if junior attorneys are reticent about seeking out advice on ethics issues.

Rule 5.1(b): Supervision and Mentoring of Subordinate Attorneys

One of the most common complaints of newer attorneys is that they are often given little guidance and mentoring. Not surprisingly, Rule 5.1 singles out supervision of subordinate attorneys as an area of special concern. Rule 5.1(b) provides that a lawyer having direct supervisory authority over another lawyer must make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct. Comment 2 to the ABA's Model Rule 5.1 further emphasizes that adequate supervision of subordinate attorneys is not merely an aspirational goal. According to the comment, lawyers with managerial authority in a firm must make reasonable efforts to develop policies

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Chart 3: How are the details of the policies or procedures that exist within the firm to help attorneys resolve ethical issues involving themselves or other attorneys within the firm communicated?

Options	Number of Respondents	Percentage of Respondents
They are in written form and disseminated	13	24 percent
Firm attorneys are informed of them through a training, mentor or similar program	23	43 percent
Firm attorneys are informed of them during orientation	19	35 percent
Word of mouth	33	61 percent
Other (please explain)	8	15 percent
They are not communicated to attorneys	—	—

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and procedures designed to provide reasonable assurance that all lawyers in the firm will conform to the Rules, including policies and procedures designed to "ensure that inexperienced lawyers are properly supervised."

The limited case law on the subject suggests that the failure to have some type of review mechanism in place by which a supervisor may review an associate's work can also give rise to a violation of Rule 5.1(a). *In re Weston*,[15] an Illinois case, involved an attorney who was appointed administrator of a client's estate. He delegated the matter to an associate in his firm who ignored the matter for several years, causing financial injury to the client. The Illinois Supreme Court wound up disbarring the supervising attorney for his negligent supervision and for other misconduct. The court rejected the supervising attorney's excuses that he was exceedingly busy and that he trusted that the associate was competent. The court concluded that "an attorney cannot avoid his professional obligations to a client by the simple device of delegating the work to others," and explained that "(a) lawyer's primary obligation is to . . . clients, and neither (other) duties nor a belief in the competency of subordinates is sufficient to justify inadequate supervision, particularly after knowledge of the existence of problems is acquired."[16]

In many of the cases in which junior and subordinate attorneys have been disciplined for poor case management or dishonesty, it becomes clear quickly that better supervision on the part of supervising attorneys might have addressed the issue. *In re Yacavinom*, for example, involved an attorney who wound up being suspended from the practice of law for forging a court order to conceal his negligent handling of an adoption. The facts revealed that this new attorney had been "left virtually alone and unsupervised" in a law firm of 20 attorneys. While disciplining the attorney, the New Jersey Supreme Court also put law firms and their partners on notice with respect to their obligations under Rule 5.1. In the court's words:

> The office was lacking in the essential tools of legal practice. … In the future, … this attitude of leaving new lawyers to "sink or swim" will not be tolerated. Had this young attorney received the collegial support and guidance expected of supervising attorneys, this incident might never have occurred … This sorry episode points up the need for a systematic, organized routine for periodic review of a newly admitted attorney's files.[17]

Clearly, the general duty under Rule 5.1(a) to make reasonable efforts to ensure that all lawyers in a firm are practicing in an ethical manner overlaps with the specific duty of adequate supervision of subordinate attorneys imposed by Rule 5.1(b). Again, what types of policies and procedures a firm develops in this regard will depend on the nature of the firm. Some firms have developed formal mentoring programs. Others rely on less formal measures. At a minimum, a firm must make some affirmative effort not only to monitor the actions of subordinate attorneys, but to encourage them to seek out assistance when confronted with a question as to their professional responsibility. Thus, as mentioned, comment 2 to Rule 5.1 of the TRPC explains that "[s]ome firms … have a procedure whereby junior lawyers can make confidential referrals of ethical problems directly to a designated senior

Chart 4: Does your firm have a designated ethics counsel, general counsel who handles ethics matters, ethics committee, or similar position?

Options	Number of Respondents	Percentage of Respondents
Yes	33	21 percent
No	123	79 percent

Chart 5: If an attorney in your firm has a question or concern about his or her ethical obligations in a matter, what policies or procedures exist within the firm to help the attorney resolve the issue?
[Respondents could choose more than one answer.]

Options	Number of Respondents	Percentage of Respondents
Referral to designated ethics counsel	18	12 percent
Referral to general counsel	8	5 percent
Referral to ethics committee	8	5 percent
Referral to ombudsman	—	—
Referral to managing partner or practice area leader	89	57 percent
Referral to attorney's direct supervisor(s)	51	33 percent
Referral to outside counsel	27	17 percent
Other (please explain)	62	40 percent
None	7	4 percent

partner or special committee."

Most of the respondents to the survey indicated that their firms tended to rely on informal methods of supervision. For example, only 51 percent reported that their firms periodically reviewed the work product of junior attorneys.

Interestingly, with the exception of very small firms (which may not have any subordinate attorneys), there was no meaningful difference as between larger and smaller firms in terms of review of subordinates' work. Formal mentoring programs are fairly rare among firms with fewer than 10 attorneys, according to the survey results. But of the respondents from firms with more than 10 attorneys, 72 percent reported that they had formal mentor systems in place. Formal training for associates is also relatively uncommon, at least among firms with fewer than 25 attorneys. Of the 18 respondents from firms with 25 or more attorneys, a little over half indicated that their firms provided some kind of formal training for associates.

Internal Procedures for Addressing Suspected Misconduct and Rule 5.1(a)

Another possibility for ensuring that all attorneys in the firm are practicing in an ethical manner might be a procedure that encourages firm attorneys (perhaps confidentially or anonymously where possible) to raise concerns about suspected ethical misconduct on the part of another attorney on an internal basis and provides for internal investigation and resolution of the matter. As I have argued elsewhere, if, as Rule 5.1(a) provides, law firm partners must make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers in the firm conform to the rule, then there should be an implied duty to implement some type of device whereby firm management can learn of and investigate possible misconduct by one of the

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firm's members.[18] No compliance mechanism is foolproof, of course, and lawyers should generally be able to trust that their colleagues are behaving in an ethical manner and acting in conformity with firm policy. However, borderline unethical conduct is almost certain to occur at any law firm eventually, particularly in light of the increasingly complex nature of the practice of law (and legal ethics in particular). Indeed, a comment to the newly proposed Rule 5.1 notes that partners may not simply assume "that all lawyers associated with the firm will inevitably conform to the Rules." One of the best means to ensure that all lawyers in the firm are practicing in an ethical manner, while also protecting the client and the firm from possible adverse consequences of misconduct, is to implement a procedure that encourages lawyers to come forward with their concerns and that promises to investigate and resolve these concerns.

The realities of life in a law office may make it unlikely that an attorney will report suspected misconduct of a colleague to the Tennessee Board of Professional Responsibility, even where the misconduct is serious in nature. Attorneys are, of course, ethically obligated under TRPC Rule 8.3(a) to report another attorney's ethical violation where the violation raises a substantial question as to the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects. But, for a host of reasons, this is a duty many attorneys tend to overlook, particularly where the misconduct involves an attorney in the same firm. As one author has argued, where an "unethical lawyer and a potential reporting lawyer work in the same law firm, there is little chance that even serious misconduct will be reported to disciplinary authorities" due to the reporting lawyer's sense of loyalty to the firm and fear of retaliation.[19] This would seem particularly true in the case of a junior attorney who knows of a partner's misconduct.

Research suggests, however, that individuals within an organization prefer and are more likely to utilize an

Chart 6: What measures, if any, does your firm use to help ensure that associates and other subordinate attorneys are practicing in a competent manner (e.g., that they know the law, are meeting filing deadlines, communicating with clients, etc.)?

[Respondents could choose more than one answer.]

Options	Number of Respondents	Percentage of Respondents
Formal mentor system	51	33 percent
Formal training for associates	36	23 percent
Informal supervision	117	75 percent
Periodic review of subordinate attorneys' actions (e.g., reviewing files)	80	51 percent
Scheduled firm or practice-group meetings	61	39 percent
Firm-sponsored CLE training	49	31 percent
Other (please explain)	28	18 percent
None	10	6 percent

Chart 7: If an attorney in your firm has a question or concern about the possible ethical misconduct of another attorney in the firm, what policies or procedures exist within the firm to help the attorney resolve the issue?

[Respondents could choose more than one answer.]

Options	Number of Respondents	Percentage of Responders
Referral to designated ethics counsel	13	8 percent
Referral to general counsel	7	4 percent
Referral to ethics committee	5	3 percent
Referral to ombudsman	1	1 percent
Referral to managing partner or practice area leader	84	54 percent
Referral to attorney's direct supervisor(s)	40	26 percent
Referral to outside counsel	14	9 percent
Other (please explain)	44	28 percent
None	15	10 percent

internal reporting system than to make an external report to law enforcement or disciplinary authorities. An internal process for resolving suspected unethical behavior enables individuals to feel they are maintaining their loyalty to the organization by acting to protect it from a rogue actor.[20] Research suggests that such systems are most likely to be effective where they are formalized, where the organization conveys the idea that it values the system, and where reporting individuals are provided some measures of assurance of protection from retaliation.[21]

As numerous examples attest, a lawyer who reports the misconduct of another lawyer in a firm faces the potential for retaliation.[22] The Tennessee Supreme Court has held that a lawyer who is retaliated against after reporting another lawyer's misconduct to the Board of Professional Responsibility may have a common law claim of retaliatory discharge, in part because the lawyer has an ethical obligation to make such a report.[23] However, a lawyer who reports concerns over suspected unethical conduct to firm management and then faces retaliation may not be entitled to the same protection. No ethical rule specifically requires a firm lawyer to make an *internal* report of suspected misconduct. In a case from the District of Columbia, an associate in a law firm raised numerous concerns to management about possible unethical conduct

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Chart 8: How are the details of the policies or procedures that exist within the firm to help attorneys resolve ethical issues involving themselves or other attorneys within the firm communicated?

Options	Number of Respondents	Percentage of Responders
They are in written form and disseminated	13	24 percent
Firm attorneys are informed of them through a training, mentor or similar program	23	43 percent
Firm attorneys are informed of them during orientation	19	35 percent
Word of mouth	33	61 percent
Other (please explain)	8	15 percent
They are not communicated to attorneys	—	—

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on the part of partners within the firm. After she was fired, she sued, alleging retaliation. The D.C. Court of Appeals held that because no ethical rule imposed a duty on the associate to make such an internal complaint, her firing did not offend public policy and, therefore, she had no claim for retaliatory discharge.[24] The Tennessee Supreme Court has not addressed an analogous situation. However, the court has demonstrated at least some reluctance to permit employees who have complained internally about suspected illegal or unethical conduct to maintain retaliatory discharge claims.[25] And the Tennessee Court of Appeals has noted on several occasions that employees who attempt to bring similar claims under Tennessee's whistleblower protection statute face a "formidable burden" in establishing some of the elements of the statutory claim.[26]

One would think (and hope) that a law firm would actually *prefer* that an associate raise concerns about unethical behavior within the firm before reporting externally. Reporting internally would provide the firm with the chance to investigate the matter and, if it found that the concerns were valid, take remedial measures and potentially limit the damage to the client and the firm itself before proceeding further. Indeed, an ethics opinion from New York recommends that an attorney make such an internal report before reporting externally to a disciplinary committee.[27] Yet, if an attorney does so, there is no guarantee either that she will not face retaliation, and, if she does, that the law will provide a remedy.

With these concerns in mind, I asked firms what steps, if any, they took to encourage internal reporting of suspected misconduct. Most respondents indicated that their firms had some type of process in place to address a lawyer's concerns about possible ethical misconduct on the part of another lawyer in the firm. However, it appears that most firms use informal methods — rather than formal written policies — to make lawyers aware of what those processes are.

Most respondents indicated that their firms did not have any type of policy in place to encourage internal reporting of suspected misconduct. Of the firms that do have such policies, it appears that the majority provide some assurance of protection from retaliation.

Larger firms were more likely to report the existence of a policy encouraging lawyers to come forward with their concerns about unethical behavior than were smaller firms. Of the responding law firms with fewer than 25 attorneys, only 10 percent reported the existence of such a policy. Of the larger responding firms, a slight majority (56 percent) reported that they had such a policy. With respect to small firms, these results are probably not surprising. For example, a firm consisting of two equal partners and no associates would obviously be unlikely to have a formal internal reporting system in place. However, of the respondents from firms with between 11 and 24 attorneys — firms that are almost certainly large enough to have and potentially benefit from formal infrastructures, including some type of internal reporting procedure — only one out of 21 (4.7 percent) reported the existence of such a policy.

Chart 9: Does your firm have a written policy encouraging attorneys to notify the appropriate individual(s) within the firm about concerns over another attorney's possible ethical violations?

Options	Number of Respondents	Percentage of Responders
Yes	24	15 percent
No	132	85 percent

Chart 10: Does your firm's written policy encouraging attorneys to notify the appropriate individual(s) within the firm about concerns over another attorney's possible ethical violations provide any assurances against retaliation?

Options	Number of Respondents	Percentage of Responders
Yes	18	75 percent
No	6	25 percent

Conclusion

Rule 5.1(a) of the Tennessee Rules of Professional Conduct imposes a somewhat vague but definitely important duty on the part of law firm partners and those in similar positions to take reasonable steps to ensure that the firm has in effect measures giving reasonable assurance that all lawyers in the firm are practicing in an ethical manner. Rule 5.1(b) imposes a complimentary duty to supervise subordinate lawyers. There are any number of measures that the legal profession as a whole could potentially adopt in order to further the goals underlying Rule 5.1, including imposing similar duties on law firms (rather than individual partners) and adopting more specific ethical rules. However, there are still measures already in place in firms in Tennessee and across the country that individual partners may point to as they attempt to develop a culture of ethical practice in their firms.

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Notes

1. Ted Schneyer, "Professional Discipline for Law Firms," *77 Cornell L.* Rev. 1 (1991); Arthur J. Lachtman, "What You Should Know Can Hurt You: Management And Supervisory

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Responsibility for the Misconduct of Others Under Model Rules 5.1 And 5.3," 18 No. 1 *Prof. Law.* 1, 1 (2007).

2. Sixty percent of respondents indicated that they were managing partners. Other options included simply "Partner" or "Office Manager." A few respondents described their positions in interesting ways, including "Potentate," "Chief Cook and Bottle Washer," and "Godlike."

3. *Beyers v. Richmond*, 937 A.2d 1082 (Pa. 2007).

4. *Wright v. Shapiro*, 828 N.Y.S.2d 736 (N.Y. App. Div. 2006).

5. *See, e.g., Beyers*, 937 A.2d at 1085.

6. *PCO Inc. v. Christensen, Miller, Fink, Jacobs, Glaser, Weil & Shapiro LLP*, 150 Cal. App. 4th 384 (Cal. Ct. App. 2007).

7. Douglas R. Richmond, "Law Firm Partners as Their Brothers' Keepers," 96 *KY. L. J.* 231, 258-59 (2007-08).

8. Jonathan Epstein, "The In-House Ethics Advisor: Practical Benefits for the Modern Law Firm," 7 *Geo. J. Legal Ethics* 1011, 1033 (1994).

9. Elizabeth Chambliss & David B. Wilkins, "Promoting Effective Ethical Infrastructure in Large Law Firms: A Call for Research and Reporting," 30 *Hofstra L. Rev.* 691, 710 (2002).

10. State Bar of Michigan, Standing Committee On Professional and Judicial Ethics Opinion Number R-5 (1989).

11. Altman Weil Inc., "Report to Legal Management: Major Law Firms Embrace General Counsel Concept," May 2004 http://www.altmanweil.com/dir_docs/resource/fa00e91f-9955-4dce-b6f4-d088b9fe2f0b_document.pdf. (visited Feb. 20, 2008).

12. Elizabeth Chambliss & David B. Wilkins, "The Emerging Role of Ethics Advisors, General Counsel, and Other Compliance Specialists in Large Law Firms," 44 *Ariz. L. Rev.* 559, 564-65 (2002).

13. *Id.* at 574.

14. *Id.* at 580-81.

15. 442 N.E.2d 236 (Ill. 1982).

16. *Id.* at 239.

17. *In re Yacavino*, 494 A.2d 801, 803 (N.J. 1985).

18. Alex B. Long, "Retaliatory Discharge and the Ethical Rules Governing Attorneys," 79 *U. Colo. L. Rev.* 1043 (2008).

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