I. INTRODUCTION.

A. The legal profession is self-governing. The Ohio Constitution authorizes the Ohio Supreme Court to regulate lawyers and the legal profession.

B. The Ohio Rules of Professional Conduct (hereafter the “Rule” or “Rules”) prescribe rules for a lawyer’s conduct. Failure to comply with them is a basis for invoking the disciplinary process. The Rules are designed to provide guidance to lawyers and to provide a structure for regulating their conduct through disciplinary process. Rule violations can provide a basis for suspending a lawyer’s license to practice law.

C. Ohio’s Rules contains four parts: (1) the Rule’s text, (2) the official Comments, (3) a comparison of the Ohio rule to the former Ohio Code of Professional Responsibility, and (4) a comparison to the American Bar Association’s Model Rules of Professional Conduct.

D. The Ohio Supreme Court adopted new Rules effective February 1, 2007. The Court also adopted certain amendments to the Rules effective April 1, 2009.

E. Part V of the Rules concerns law firms and associations. Part V addresses responsibilities of partners and supervisory lawyers. And, in particular, Part V addresses the responsibilities of lawyers concerning nonlawyer assistants, such as paraprofessionals, paralegals, investigators, secretaries, and law student interns.

F. This outline addresses those Rules governing a lawyer’s conduct and duties concerning nonlawyer assistants such as paraprofessionals and other nonlawyer assistants.

G. Those Rules clearly provide that nonlawyer assistants, such as paraprofessionals, are not subject to discipline under Ohio’s Rules.¹

II. RULE 5.3: A LAWYER’S ETHICAL RESPONSIBILITIES REGARDING NONLAWYER ASSISTANTS.

¹ Rule 5.3, Comment [1], last sentence.
A. Rule 5.3 addresses an Ohio lawyer’s responsibilities and duties respecting nonlawyer assistants employed or retained by the lawyer.

B. General Rule. Managers and supervisory lawyers must ensure that nonlawyers employed by them or their law firm comply with the lawyer’s professional obligations under the Rules.²

1. Managers and supervisory lawyers must take “reasonable” efforts to ensure that:

   (a) the law firm has adopted measures assuring that a nonlawyer assistant’s conduct adheres to the professional duties of a lawyer under the Rules; and

   (b) a supervisory lawyer having authority over the nonlawyer assistant takes “reasonable” efforts to ensure that the assistant’s conduct complies with the professional obligations of a lawyer under Ohio’s ethical rules.³

2. “Reasonable” efforts under the Rules. Managers and supervisory lawyers must take “reasonable” efforts to assure that the nonlawyer assistant’s conduct complies with a lawyer’s professional ethical obligations. This means the manager or supervisory lawyer has taken the same steps that a reasonably prudent and competent lawyer would have taken under the same facts and circumstances.⁴

3. Thus, a manager or supervisory lawyer could be disciplined under Ohio’s Rules for not taking reasonable measures to assure that a nonlawyer assistant’s conduct adheres to the professional obligations of a lawyer under the Ohio Rules. In other words, the nonlawyer’s conduct must adhere to the same conduct expected of a lawyer under the Ohio Rules. If the assistant’s conduct is proscribed under the Rules that apply to lawyers, the manager or supervisory lawyer could be subjected to discipline for failing to take reasonable steps to prevent such conduct.

C. Are managers and supervisory lawyers responsible for all conduct of a nonlawyer assistant under the Rules? Answer: Clearly Not!

1. A lawyer is responsible for the proscribed conduct of a nonlawyer under three specific circumstances:

   a. the lawyer orders the proscribed conduct undertaken by the nonlawyer assistant⁵; or,

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² Rules 5.3(a) and (b).
³ Id.
⁴ Rule 1.0(i).
⁵ Rule 5.3(c)(1).
b. with actual knowledge of the facts, the lawyer approves, or sanctions the nonlawyer assistant’s specific proscribed conduct⁶; or

c. a managerial or supervisory lawyer having direct supervisory authority over a nonlawyer assistant knows of the proscribed conduct when its consequences can be avoided or mitigated, yet fails to take reasonable remedial action to stop or prevent it.⁷

D. Official Comments to Rule 5.3.

1. The official Comments to the Rule makes the following observations:

a. Certain nonlawyer assistants act for lawyers in rendering a lawyer’s professional services. Those assistants include secretaries, investigators, law student interns, and paraprofessionals.⁸

b. Accordingly, lawyers are obligated to instruct and supervise those assistants concerning legal ethics, and, in particular, the obligation not to disclose a client’s confidences or secrets to others.⁹

c. A lawyer is responsible for the work product of a nonlawyer assistant, such as a paraprofessional.¹⁰

d. In determining appropriate supervisory measures, a lawyer should recognize that nonlawyer assistants do not have legal training, and, are not subject to professional discipline under the Rules.

III. RULE 5.5: THE UNAUTHORIZED PRACTICE OF LAW.

A. A lawyer may not practice law in another jurisdiction that prohibits the lawyer from practicing there. And, likewise, a lawyer may not assist another in doing so.¹¹

B. That Rule is not without exceptions. For example, a lawyer may provide professional advice and instructions to nonlawyers whose employment requires knowledge of the law.¹² Lawyers may also assist paraprofessionals by providing

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⁶ Id.
⁷ Rule 5.3(c)(2).
⁸ Rule 5.3, Comment [1].
⁹ Id.
¹⁰ Id.
¹¹ Rule 5.5(a).
¹² Rule 5.5(a), Comment [3].
professional legal advice and instructions without violating the Rule against assisting nonlawyers in the unauthorized practice of law.\textsuperscript{13}

C. The term “practice of law” is established by law and varies from jurisdiction to jurisdiction. Regardless of its definition, it is limited to members of the bar to protect the public against those unqualified or ineligible to practice it. But Rule 5.5 does not prohibit a lawyer from employing the services of a nonlawyer paraprofessional and delegating legal work to them; nonetheless, the lawyer is required to supervise any delegated work, and, be responsible for such work.\textsuperscript{14}

IV. DISCIPLINARY CASES.

A. The \textit{Ball} case: a 1993 Ohio case of first impression involving a nonlawyer assistant.

1. In \textit{Ball},\textsuperscript{15} lawyer Claire Ball hired a secretary, Sue Haggerty.

2. Over a 10-year period, Sue began assuming considerable responsibility concerning Ball’s probate practice in addition to her normal secretarial duties.

3. Sue essentially served as a legal assistant or paraprofessional as well as a bookkeeper; eventually, she was authorized to sign checks for disbursements from Ball’s office account and client trust accounts.

4. Sue’s workload intensified. She became delinquent in filing probate and guardianship accounts with the probate court. She began concealing the delinquencies by diverting office mail referring to the delinquent accounts.

5. Moreover, she misappropriated more than $200,000 from probate accounts over which Ball was attorney of record.

6. Unfortunately, Ball paid little attention to finances, neglecting to review a single statement on any probate account, his law firm account, his trust, or a partnership account of which Ball and Sue were partners.

7. Sue’s misappropriation was eventually discovered when someone reported a delinquent probate account to disciplinary counsel.

\textsuperscript{13} Id.
\textsuperscript{14} Rule 5.5(a), Comment [2].
\textsuperscript{15} Disciplinary Counsel v. Ball, 67 Ohio St. 3d 410 (September 22, 1993).
8. Ball reviewed all probate accounts, discovered delinquencies and unaccounted funds, and fired Sue.

9. In Ball’s case, the Court was to decide whether an Ohio lawyer could be held vicariously liable and responsible under Ohio’s ethical rules for the conduct of a nonlawyer employee.

10. The Court concluded that the Ball case was a case of first impression under Ohio’s ethical rules.

11. The Court reviewed the disciplinary rules in place at the time of the alleged conduct and concluded that a lawyer could not neglect legal matters entrusted to the lawyer. But that rule specifically applied to lawyers, and not to nonlawyer assistants.

12. Ball conceded that he delegated significant aspects of his probate practice to Sue; yet failed to establish any safeguards to ensure proper administration of the probate matters entrusted to him by his clients.

13. The Court stated that delegating duties to a nonlawyer assistant was not tantamount to relinquishing responsibilities. Ball couldn’t ignore his legal responsibilities just because he delegated work to Sue. He was still responsible for her work.

14. Ball argued that he could only be vicariously liable or responsible for Sue’s work if he ordered the wrongful conduct, or, he was aware of her wrongful conduct and did nothing to correct it.

15. The Court disagreed with Ball. The Court cited the ABA Model Rules of Professional Conduct as requiring a law firm partner to implement measures to assure that a nonlawyer assistant’s conduct is compatible with a lawyer’s professional ethical obligations. And, that a supervisory lawyer must make a reasonable effort to ensure that a nonlawyer assistant’s conduct adheres to a lawyer’s professional ethical obligations.

16. Therefore, the Court found that Ball’s complete lack of any supervisory control over Sue’s work constituted neglect of legal duties entrusted to him by his clients.

17. The Court suspended Ball from the practice of law for six months.
18. The Ball case was the first Ohio case in which an Ohio lawyer was found to be vicariously responsible for a nonlawyer assistant’s proscribed conduct.

B. Advisory Opinion 2002-04.\textsuperscript{16}

1. In this case, a lawyer posed the following question: Was it ethical under Ohio’s ethical rules to delegate the taking of a deposition to a paralegal?

2. The Board began its analysis by first citing a disciplinary rule that prohibited a lawyer from aiding a nonlawyer in the unauthorized practice of law.\textsuperscript{17}

3. The Board then acknowledged the Ohio Supreme Court’s definition of the “practice of law.” The Supreme Court defined the “practice of law” to include preparing pleadings, preparing legal instruments, and advising clients in matters connected to law.\textsuperscript{18}

4. Next, the Board acknowledged that Ohio law prohibited the practice of law by persons not admitted to practice.\textsuperscript{19}

5. The Board cited several Ohio and non-Ohio cases that concluded that the taking of a deposition or representing a deponent at a deposition constituted the practice of law.

6. The Board also cited several non-Ohio advisory opinions that held it was unethical for a lawyer to delegate the taking of a deposition to a paralegal.

7. Therefore, the Board held that the following conduct constituted aiding a nonlawyer in the unauthorized practice of law:

   a. Where a lawyer delegated the taking of a deposition to a paralegal;

   b. Where a lawyer instructed a paralegal to take a deposition, to prepare deposition questions for a paralegal’s use in a deposition, to supervise a paralegal in taking a deposition, or instructing a paralegal to represent a deponent at a deposition.

\textsuperscript{16} Advisory Opinion issued by the Ohio Board of Commissioners on Grievances and Discipline. Advisory Opinions in Ohio are informal and nonbinding opinions. They are in response to prospective or hypothetical questions concerning legal ethics issues.

\textsuperscript{17} Old DR 3-101(A), Ohio Code of Professional Responsibility. This DR is no longer effective in Ohio, per se.

\textsuperscript{18} Land Title & Trust Co. v. Dworken, 129 Ohio St. 23, (1934).

\textsuperscript{19} Ohio Revised Code Ann. §4705.01. Today, §4705.07 of the Revised Code prohibits the unauthorized practice of law.
V. CONCLUSIONS.

A. Ohio’s Rules govern a lawyer’s professional conduct. They govern a lawyer’s conduct and responsibilities concerning nonlawyer assistants like paralegals or other paraprofessionals.

B. The Rules clearly provide that nonlawyer paralegals and other paraprofessionals cannot be disciplined under the Rules. The Rules only govern a lawyer’s professional conduct.

C. Rule 53 addresses a lawyer’s responsibilities concerning nonlawyer assistants, including paralegals, employed by a lawyer.
   1. Rule 53’s General Rule: Managers and supervisory lawyers must assure that paralegals and other nonlawyer paraprofessionals comply with the lawyer’s ethical obligations under the Rules.
   2. Law firms must assure that a paralegal’s conduct adheres to the Rules, which otherwise apply to lawyers.
   3. Special Rule Applicable to Supervisory Lawyers. Supervisory lawyers must employ reasonable steps to ensure that a paralegal’s conduct complies with the Ohio Rules that apply to lawyers in general.
   4. Managerial and supervisory lawyers are not responsible for all conduct of a paralegal (or a paraprofessional). But they can be found ethically responsible under three circumstances: (a) the lawyer ordered the prohibited conduct, (b) the lawyer approved the prohibited conduct, or (c) the lawyer was aware of the prohibited conduct and failed to prevent it.

D. Examples.
   1. The Ball Case.
      • A supervisory lawyer must implement measures to assure that a paralegal’s or secretary’s conduct does not violate the lawyer’s ethical conduct.
      • The complete absence of any supervisory controls or reviews over a secretary’s legal work constitutes neglect of legal duties, which is a ground for disciplining the lawyer.
      • Depending on the extent or severity of a lack of controls, a lawyer can be suspended from practicing law or permanently disbarred.
• Ball was suspended from practicing law for six months.

2. 2002-04 Advisory Opinion.

• A lawyer is precluded from assisting a nonlawyer in the unauthorized practice of law.

• Taking a deposition constitutes the practice of law.

• Hence, a lawyer may not delegate the taking of a deposition to a nonlawyer paralegal without violating the proscription against assisting a nonlawyer in the unauthorized practice of law.

• Moreover, it would be unethical for a lawyer to prepare deposition questions for a paralegal’s use in a deposition.

• Also, it is unethical for a lawyer to supervise a paralegal in taking a deposition.

E. Therefore, paralegals must be familiar with the Rules to assure that their conduct does not subject their attorneys to professional discipline.

F. Paralegals should know when their conduct crosses the “practice of law” line and insist that their lawyers supervise and review their work----this is necessary because the attorney is ultimately responsible for (and liable for) a paralegal’s work product.