

ADVISORY ETHICS OPINION 2001-05

SYNOPSIS:

A legal assistant, paralegal, or four-year law clerk may not sign court pleadings with an attorney's name and the paraprofessional's initials after the attorney's name.

FACTS:

The individual requesting this opinion asks whether, in emergency circumstances, a four-year law clerk can sign a supervising attorney's name, followed by the individual's initials, to a pleading to be filed in court. An attorney in solo practice was on vacation. A court requested that the attorney file additional information by a date that was before the attorney's return from vacation and the attorney could not be reached. A consultation with the court clerk produced a suggestion that a motion to expand time be filed to alert the court that the attorney would not be able to make a timely response to the court's request. The clerk printed the standard form used by the attorney for motions to enlarge time, entered the reason the attorney needed the time, and filed the motion, affixing the attorney's name and the clerk's initials.

QUESTION PRESENTED:

Whether it is proper for a paraprofessional to sign an attorney's name, together with the paraprofessional's initials, to a pleading in a situation where the paraprofessional's supervising attorney could not be reached in time to respond a request from the court.

Relevant Provisions of the Vermont Rules of Professional Conduct

RULE 5.3 RESPONSIBILITIES REGARDING NONLAWYER ASSISTANTS

With respect to a nonlawyer employed or retained by or associated with a lawyer:

...

- (b) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and**

...

RULE 5.5 UNAUTHORIZED PRACTICE OF LAW

A lawyer shall not:

...

- (b) assist a person who is not a member of the bar in the performance of activity that constitutes the unauthorized practice of law.**

ANALYSIS:

V.R.C.P. 11 (a) states in part: Every pleading, written motion, and other paper shall be signed by at least one attorney of record in the attorney's individual name . . . V.R.C.P. 11 (b) discusses the representations that an attorney makes when the attorney signs a pleading or other paper. V.R.Cr.P. 49(d) and the federal rule are similar. Since the governing rules require a signature by the attorney, the attorney would be in violation of Rule 5.3 if the attorney approved or ratified conduct by an assistant that violated the procedural rules of the jurisdiction. Such conduct also would run afoul of Rule 5.5(b) as signing pleadings clearly constitutes the practice of law.

Case law and ethics opinions from other jurisdictions are in accord with the prohibition on a paraprofessional signing a pleading with an attorney's name. In re Buchanan, 1990 WL 241937 (Bankr. N.D. Ohio 1990)(citing a rule with identical language); Lynch v. Cannatella, 122 F.R.D. 195 (E.D. La. 1987)(citing Rule 11); Florida State Bar Association Committee on Professional Ethics, Opinion 87-11, holds "Under no circumstances should an attorney permit a nonlawyer employee to sign the attorney's name, together with the nonlawyer's initials, to notices of hearing and other pleadings."

CONCLUSION:

It would be improper for the paraprofessional to sign a pleading with the attorney's name and the paraprofessional's initials. The paraprofessional could send a letter to the court explaining the circumstances and asking for an extension until the attorney returned.