

**RULE 5.2:  
RESPONSIBILITIES OF A SUBORDINATE LAWYER**

**Executive Summary**

Rule 5.2 states the fundamental proposition that every lawyer is responsible for his or her own conduct, notwithstanding that he or she acted at the direction of another. Paragraph (b) continues the "safe harbor" exception: that a subordinate lawyer is protected if he or she acts in accordance with a supervisory lawyer's reasonable resolution of an arguable question.

**Text of Proposed Rule with COSAC Explanation**

<b>RULE 5.2: RESPONSIBILITIES OF A SUBORDINATE LAWYER</b>	<b>COSAC COMMENTARY</b>
<p>(a) A lawyer is bound by these Rules notwithstanding that the lawyer acted at the direction of another person.</p> <p>(b) A subordinate lawyer does not violate these Rules if that lawyer acts in accordance with a supervisory lawyer's reasonable resolution of an arguable question of professional duty.</p>	<p>Rule 5.2 follows the Model Rules. It is substantially identical to DR 1-104(E) and (F).</p>
<p><b>COMMENT</b></p> <p>[1] Although a lawyer is not relieved of responsibility for a violation by the fact that the lawyer acted at the direction of a supervisor, that fact may be relevant in determining whether a lawyer had the knowledge required to render conduct a violation of the Rules. For example, if a subordinate filed a frivolous pleading at the direction of a supervisor, the subordinate would not be guilty of a professional violation unless the subordinate knew of the document's frivolous character.</p>	<p><b>COSAC COMMENTARY</b></p> <p>Comment [1] follows the Model Rules.</p>

<p>[2] When lawyers in a supervisor-subordinate relationship encounter a matter involving professional judgment as to ethical duty, the supervisor may assume responsibility for making the judgment. Otherwise, a consistent course of action or position could not be taken. If the question can reasonably be answered only one way, the duty of both lawyers is clear and they are equally responsible for fulfilling it. However, if the question is reasonably arguable, someone has to decide upon the course of action. That authority ordinarily reposes in the supervisor, and a subordinate may be guided accordingly. To evaluate the supervisor's conclusion that the question is arguable and the supervisor's resolution of it is reasonable in light of applicable law, the subordinate lawyer is advised to undertake research, to consult with a designated senior partner or special committee (see Comment [3] to Rule 5.1) or use other appropriate means. For example, if a question arises whether the interests of two clients conflict under Rule 1.7, the supervisor's reasonable resolution of the question should protect the subordinate professionally if the resolution is subsequently challenged.</p>	<p>Comment [2] follows the Model Rules Comment, but has language inserted to slightly increase the responsibility of subordinates. The subordinate may not be able to simply defer to the supervisor's assertions regarding the questionable matter, but is advised to conduct research, consult with a designated ethics partner or committee or take other action appropriate in the circumstances.</p>
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### **Changes from Existing New York Code**

The Proposed Rule is substantially identical to the existing New York Code.

### **Reporter's Notes**

The Proposed Rule is substantively identical to New York DR 1-104(E) and (F). COSAC only reformatted the rule to be consistent with the remainder of the Proposed Rules.

### **Corresponding New York Disciplinary Rules**

#### **DR 1-104 Responsibilities of a Partner or Supervisory Lawyer and Subordinate Lawyers.**

E. A lawyer shall comply with these Disciplinary Rules notwithstanding that the lawyer acted at the direction of another person.

F. A subordinate lawyer does not violate these Disciplinary Rules if that lawyer acts in accordance with a supervisory lawyer's reasonable resolution of an arguable question of professional duty.