

improperly with respect to aspects of the dispute. It is not intended to provide direct access on routine disputes such as ordinary discovery disputes, extensions of time or other scheduling matters, or similar routine aspects of the resolution of disputes.

Section 11.402 is not intended to enlarge or restrict the law enforcement activities of the United States or the Office of Enrollment and Discipline, which are authorized and permissible under the Constitution and the law of the United States. The "authorized by law" proviso to § 11.402(a) is intended to permit Government conduct that is valid under this law. The proviso is not intended to freeze any particular substantive law, but is meant to accommodate substantive law as it may develop over time.

Section 11.403 would provide a standard for communicating with an unrepresented person, particularly one not experienced in dealing with legal matters. Such a person might assume that a practitioner will provide disinterested advice concerning the law even when the practitioner represents a client. In dealing personally with any unrepresented third party on behalf of the practitioner's client, a practitioner should not give advice to the unrepresented party other than the advice to obtain counsel.

Section 11.404 would require a practitioner to respect the rights of third parties. Responsibility to a client requires a practitioner to subordinate the interests of others to those of the client, but that responsibility does not imply that a practitioner may disregard the rights of third persons. It is impractical to catalogue all such rights, but they include legal restrictions on methods of obtaining evidence from third persons.

Section 11.501 would set forth the responsibilities of a partner or supervisory practitioner. Paragraphs (a) and (b) of § 11.501 would refer to practitioners having supervisory authority over the professional work of a firm, or unit of a Government agency. This includes members of a partnership and the shareholders in a law firm organized as a professional corporation; practitioners having supervisory authority in the law department of an enterprise or Government agency; and practitioners who have intermediate managerial responsibilities in a firm.

Under § 11.501(a), a partner or supervisory practitioner in a firm would be responsible for ensuring that the firm has in effect measures giving reasonable assurance that all practitioners in the firm conform to the Rules of Professional Conduct. Under

§ 11.501(b), a supervisory practitioner in a Government unit would be responsible for making reasonable efforts to ensure that any practitioner subject to supervision conforms to the Rules of Professional Conduct.

The measures required to fulfill the responsibility prescribed in §§ 11.501(a) and (b) would depend on the firm's or unit's structure and the nature of its practice. In a small firm, informal supervision and occasional admonition ordinarily might be sufficient. In a large firm, or in practice situations in which intensely difficult ethical problems frequently arise, more elaborate procedures may be necessary. Some firms, for example, have a procedure whereby junior practitioners can make confidential referral of ethical problems directly to a designated senior partner or special committee. See § 11.502. Firms, whether large or small, may also encourage their members to participate in continuing legal education in professional ethics if such education is not required. In any event, the ethical atmosphere of a firm can influence the conduct of all its members and a practitioner having authority over the work of another may not assume that the subordinate practitioner will inevitably conform to the Rules.

Paragraph (c) of § 11.501 would set forth general principles of imputed responsibility for the misconduct of others. Section 11.501(c)(1) would make any practitioner who orders or, with knowledge, ratifies misconduct responsible for that misconduct. See also § 11.804(a). Section 11.501(c)(2) would extend that responsibility to any practitioner who is a partner in the firm in which the misconduct takes place, or who has direct supervisory authority over the practitioner who engages in misconduct, when the practitioner knows or should reasonably know of the conduct and could intervene to ameliorate its consequences. Whether a practitioner has such supervisory authority in particular circumstances would be a question of fact. A practitioner with direct supervisory authority is a practitioner who has an actual supervisory role with respect to directing the conduct of other practitioners in a particular representation. A practitioner who is technically a "supervisor" in organizational terms, but is not involved in directing the effort of other practitioners in a particular representation, is not a supervising practitioner with respect to that representation.

The existence of actual knowledge is also a question of fact. Whether a practitioner should reasonably have

known of misconduct by another practitioner in the same firm would be an objective standard based on evaluation of all the facts, including the size and organizational structure of the firm, the practitioner's position and responsibilities within the firm, the type and frequency of contacts between the various practitioners involved, the nature of the misconduct at issue, and the nature of the supervision or other direct responsibility (if any) actually exercised. The mere fact of partnership or a position as a principal in a firm would not be sufficient, without more, to satisfy this standard. Similarly, the fact that a practitioner holds a position on the management committee of a firm, or heads a department of the firm, would not be sufficient, standing alone, to satisfy this standard.

Appropriate remedial action would depend on the immediacy of the involvement and the seriousness of the misconduct. The supervisor would be required to intervene to prevent avoidable consequences of misconduct if the supervisor knows that the misconduct occurred. Thus, if a supervising practitioner knows that a subordinate misrepresented a matter to an opposing party in a negotiation, the supervisor as well as the subordinate would have a duty to correct the resulting misapprehension.

Professional misconduct by a practitioner under supervision could reveal a violation of § 11.501(b) on the part of the supervisory practitioner even though it would not entail a violation of § 11.501(c) because there was no direction, ratification, or knowledge of the violation.

Apart from §§ 11.501 and 11.804(a), a practitioner would not have disciplinary liability for the conduct of a partner, associate, or subordinate. Whether a practitioner may be liable civilly or criminally for another practitioner's conduct is a question of law beyond the scope of these Rules.

Section 11.502 would set forth the ethical responsibilities of a subordinate practitioner. Although a practitioner would not be relieved of responsibility for a violation by the fact that the practitioner acted at the direction of a supervisor, that fact may be relevant in determining whether a practitioner 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.

When practitioners in a supervisor-subordinate relationship encounter a