

PROFESSIONALISM AND THE DUTY TO SUPERVISE



BY LAUREN BLOOM

Keeping a close eye on a subordinate's work can help keep you both out of trouble.

Benefit plan professionals provide a wide range of services involving the interests of plan sponsors, participants, their beneficiaries, regulators and, in some instances, the general public. They often collaborate with other professional advisors whose fields of expertise complement their own, relying on their work as the basis for their own conclusions and recommendations.

Additionally, unless they work as sole practitioners, benefit plan professionals frequently also serve as supervisors and managers, delegating sometimes significant portions of complex assignments to junior colleagues while helping them grow into more senior roles. Training and managing employees is a

tremendous responsibility that can present significant professionalism pitfalls for professionals who fail to provide their subordinates with adequate supervision.

ENTHUSIASTIC BUT INEXPERIENCED

Here's an example. Imagine Andrea Baker, a benefit plan advisor and ASPPA member who owns and operates a smallish benefit plan consulting firm. She has among her four employees a junior analyst named Charlie Davis, who is fresh out of college and not yet an ASPPA member. Andrea hired Charlie approximately 18 months ago to do investment market research and preliminary analysis for some of her smaller clients so she could focus on more complex and lucrative work. Charlie is unseasoned but eager, and Andrea has been very pleased by his enthusiasm for the work she gives him.

Convinced that he's ready for a larger challenge, Andrea asks Charlie to do all of the underlying research for an economic analysis and series of plan redesign recommendations that she plans to deliver to the Board of Directors of one of her biggest clients. Busy with other matters, Andrea lets Charlie work essentially unsupervised, allowing him two extensions of time to finish his research. Andrea waits until receiving his final report to review Charlie's work, which seems satisfactory. She then works his analysis into a series of optimistic recommendations for the client. The Board enthusiastically accepts and implements all of Andrea's recommendations.

Only later, after talking to Charlie and looking over his research notes, does Andrea discover that the inexperienced Charlie failed to take into account several secondary but important factors that probably would have prompted her to make more moderate recommendations. Six

months later, the client realizes that Andrea's recommendations were far too optimistic, and the chairman of the client's Board threatens to complain to ASPPA about Andrea's ill-considered advice.

Will Andrea be able to explain away the deficiencies in her work by claiming that she relied on Charlie, a non-ASPPA member, to provide her with solid research? Given that Andrea is Charlie's boss, the answer may very well be no.

As an ASPPA member, Andrea is bound by ASPPA's Code of Professional Conduct. The Code requires, among other things, that ASPPA members provide professional services with "honesty, integrity, skill, and care." While one might argue that Andrea breached this obligation by failing to dig deeply enough into Charlie's research before incorporating it into her own work product, it may well be that Charlie's research and analysis looked acceptable even after a reasonable review. Andrea's professionalism lapse may not be that she relied on Charlie's work but, rather, that she simply didn't supervise him closely enough while he was doing it.

DELEGATE BUT SUPERVISE

The duty to supervise subordinates is expressly recognized in the ethical codes of the legal profession. That makes sense, considering the traditional structure of most law firms. After completing law school and passing the bar, young lawyers frequently begin a long period of apprenticeship as associates in law firms, practicing for several years under the direct supervision of more senior attorneys before finally attaining partnership. It's widely recognized that senior lawyers delegate responsibility to their junior (and less expensive) subordinates, so the legal profession requires those senior lawyers to take an active role in overseeing their junior colleagues' work.

Similarly, the actuarial Code of Professional Conduct addresses ACOPA members' supervision of work performed under their direction. The Actuarial Standards Board has published more than 40 Actuarial Standards of Practice addressing everything from data quality to communications. The actuarial Code not only requires actuaries to follow the standards themselves when providing professional services, but also to ensure that professional services performed "under the [actuary's] direction" satisfy the requirements of those standards. Active supervision of subordinates' work is often crucial to satisfy this Code requirement.

The fact that ASPPA's Code of Professional Conduct doesn't explicitly address the duty to supervise doesn't mean that ASPPA members should presume that they have no such responsibility. Just as it can be difficult for actuaries to ensure that work performed under their direction comports with actuarial standards of practice, it can be challenging for other benefit plan professionals to ensure that their work is performed with proper skill and care if they don't oversee their subordinates' activities. Careful oversight of employees' work can contribute tremendously to the overall quality of a finished work product.

The question that then arises, of course, is how much supervision an ASPPA member should give a subordinate, and the answer depends very much on the circumstances. The more experienced and capable a subordinate is, the less supervision is probably needed. The more complex or sophisticated an assignment is, the greater the likelihood that an ASPPA member will need to take an active hand in directing the work.

In Andrea's case, she knew that Charlie was enthusiastic but not experienced, so she probably would have been wise to err on the side



of supervising him too much rather than too little. She would have been smart to hold a preliminary meeting where she instructed him on what to do and where to go for information. Checking in periodically to make sure that he was looking at all the factors that would likely be important might have encouraged Charlie to research more deeply. Finally, Andrea probably would have benefitted from meeting with Charlie and questioning him closely about not only his conclusions, but also the methods he used, before incorporating his work into her own.

When benefit plan professionals are stressed and over-committed, it can be easy to let supervisory responsibilities slide. Nonetheless, it's important to make sure that subordinates are getting enough oversight to minimize preventable omissions and errors in their work. Taking supervision seriously is an excellent way for ASPPA members to safeguard their own professionalism. **PC**



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