



MULTI-STATE SURVEY OF ETHICAL OPINIONS REGARDING LEGAL PROCESS OUTSOURCING

WITH THE INCREASING GLOBALIZATION of markets and soaring legal costs, firms are beginning to refine their business models for legal services to include legal process outsourcing (LPO) and utilizing international services for discrete projects such as document review and legal research. Benefits of LPO practices include significant savings and timely delivery, as LPO sites (in India, e.g.) typically have lower overhead and operate during American “off-hours.” However, LPO practices are not without potentially serious risks. At stake in LPO transactions are a lawyer’s ethical duties (ranging from competence and supervisory responsibilities to confidentiality and the prohibition against the unauthorized practice of law).

In August 2008, the ABA issued Opinion 08-451. Though permissive of LPO practices, the opinion noted several considerations a lawyer must weigh before engaging LPO services. Paramount among them, a lawyer must ensure that the individuals to whom she has delegated tasks are competent to perform them; and she must oversee the work appropriately. In addition to ABA 08-451, a developing body of ethics opinions speaks to similar issues. Below are ethics opinions, gathered across various jurisdictions, which either implicate LPO practices directly or speak to related issues (such as those governing non-lawyer assistants.) As such, these references may both guide attorneys in their current LPO decision-making and inform future LPO-specific opinions in those jurisdictions.

ALABAMA: Opinion Number 1990-04 (legal research services do not constitute the unauthorized practice of law).

FLORIDA: Opinion 07-2 (a lawyer is not prohibited from engaging the services of an overseas provider for paralegal assistance as long as ethical obligations of unlicensed practice of law, supervision, conflicts, confidentiality, and billing are satisfied).

ALASKA: Ethics Opinion No. 73-1 (an attorney may employ non-lawyers to do any task for her except counsel clients about law matters, engage directly in the practice of law, or appear in court or in formal proceedings a part of the judicial process, and so long as it is the attorney who takes the work and vouches for it to the client and is responsible to the client).

GEORGIA: State Disciplinary Board Advisory Opinion No. 21 (extending delegable duties to non-lawyers including legal research and fact investigation, while prohibiting others, such as the rendering of legal advice or executing pleadings).

ARIZONA: Opinion No. 93-01 (prohibiting the association of a lawyer with a non-lawyer-operated business for the purpose of offering “attorney representation”).

INDIANA: Opinion No. 4 of 1994 (provides for the temporary employment of non-lawyer assistants subject to attorney supervision).

CALIFORNIA: Los Angeles County Bar Association Professional Responsibility and Ethics Committee Opinion No. 518 (legal research and brief-writing are permissible if the attorney is competent to review the work and retains supervisory responsibility for the work product).

Opinion No. 3 of 2000 (provides for contract employment of non-lawyer assistants subject to attorney supervision, maintenance of client confidentiality, and avoidance of conflicts of interest).

San Diego County Bar Association Ethics Opinion 2007-1 (LPO services permitted where lawyer is competent to supervise and client is informed).

IOWA: Opinion No. 98-21 (permits legal research services for lawyers).

COLORADO: Opinions 61 and 79 (extending duties of competence, supervision, and disclosure to clients to the use of non-lawyer legal assistants and prohibiting the unauthorized practice of law by such assistants through appearances in hearings or depositions).

KENTUCKY: KBA E-142 (provides for non-lawyers to perform certain tasks, including legal research, as long as the lawyer remains responsible for and supervises the work).

KBA E-318 (provides that attorneys can establish legal research services for other attorneys, obligating them to preserve confidences).

CONNECTICUT: Formal Opinion No. 8 (prohibiting the creation of a partnership with non-lawyers for a consulting and research service limited to the area of taxation and estate and business planning. “The question of what constitutes the practice of law is a thorny question [...] That these activities would be engaged in primarily for another attorney rather than directly for a lay client does not alter the fact that the purpose is to offer services of a legal nature, which, when performed directly for a client, can properly be performed only by a lawyer”).

MASSACHUSETTS: Opinion No. 75-8 (permits legal research services, including use of non-lawyer assistants where the lawyer maintains a direct relationship with the client, supervises the delegated work, and has complete professional responsibility for the work product).

DISTRICT OF COLUMBIA: Opinion 227 (permits “migratory” paralegals to work for multiple law firms, subject to appropriate screening of conflicts and confidences).

MICHIGAN: RI-310 (permits temporary “leasing” of attorneys, subject to proper supervision and disclosure duties).

MINNESOTA: Opinion No. 8 (requires that non-lawyers be supervised by an attorney who is responsible for their work).

MISSISSIPPI: Opinion No. 177 (properly disclosed outsourced legal research is not prohibited).

NEVADA: Formal Opinion No. 6 (permits an attorney to operate a collateral business of placing temporary secretarial and clerical help, as long as obligations of client confidences are preserved and disclosure of the attorney is made).

NEW HAMPSHIRE: Formal Opinion #1995-96/3 (permits employment agency to place lawyers, law school graduates, and law students to provide legal and quasi-legal services, as long as such employees properly avoid the unauthorized practice of law, disclose the nature of their employment relationship as appropriate, and comply with the rules regarding client confidences and conflicts of interest).

NEW JERSEY: Advisory Committee on Professional Ethics Opinion No. 101 (prohibiting the creation and advertising of a legal research service by lawyers for use by other lawyers. "We hold that legal research and brief writing—the very foundation of all law practice—do constitute the practice of law").

Advisory Committee on Professional Ethics Opinion No. 546 (holding as improper the hiring of a non-lawyer assistant in which the prospective employer is presently involved in matters adversarial to the prior employer).

NEW YORK: New York State Opinion 721 (1999) (legal research services, under proper supervision, do not constitute unauthorized practice of law).

The Association of the Bar of the City of New York Formal Opinion 2006-3 (properly supervised LPO allowed with client's informed consent).

NORTH CAROLINA: 2007 Formal Ethics Opinion 12 (properly supervised LPO allowed for services such as "reviewing documents; conducting due diligence; drafting contracts, pleadings, and memoranda of law; and conducting legal research." Client's written informed consent required).

OHIO: Opinion No. 2005-1 (an attorney who performs research and writing on a contract basis to other attorneys but who is not engaged by, does not meet with, and does not offer advice to clients is not considered to be engaged in the practice of law).

OKLAHOMA: Ethics Opinion No. 319 (even though a licensed attorney in a supervisory capacity may delegate some law-related clerical tasks to non-lawyers, she must not delegate the professional function of an attorney which requires training, knowledge, and experience critical to effective representation of the client's interest).

OREGON: Formal Ethics Opinion No. 2005-20 (a lawyer must supervise and control what is done in the lawyer's name).

PENNSYLVANIA: Informal Opinion No. 2006-04 (permits limited scope representation with the use of law school interns subject to twin responsibilities of reasonable limits and client informed consent; in addition, appropriate supervision is required).

RHODE ISLAND: Provisional Order 18 to the Rhode Island Disciplinary Rules of Professional Conduct (providing that legal assistants are not to engage in services requiring independent legal judgment, shall be subject to the direction of lawyers who will be ultimately and directly responsible for the work product and all aspects of the attorney-client relationship).

SOUTH CAROLINA: Opinion 02-12 (invoking South Carolina judicial interpretation of the unauthorized practice of law and the proper role of paralegal in legal research, investigation, and the preparation of legal documents).

SOUTH DAKOTA: Opinion 2004-01 (permits non-lawyer employees to work for

multiple law firms as long as client confidences are protected and the unauthorized practice of law is prevented by adequate supervision).

TEXAS: Opinion 508 (prohibits pooling employees under a non-lawyer leasing agreement among multiple law firms).

UTAH: Opinion 02-07 (allows the association of an attorney with a paralegal outside the attorney's firm, as long as the attorney's independent professional judgment is maintained).

VERMONT: Advisory Ethics Opinion 2002-02 (permits hiring of independent non-lawyer/paralegal service subject to attorney's supervision and instruction to protect confidences and avoid conflicts of interest).

VIRGINIA: ABA 08-451 (acknowledged in Virginia State Bar's ethics database index).

WEST VIRGINIA: L.E.I. 84-3 (permits operation of legal research service so long as the contemplated research service is limited to the legal profession and not to business or the public and is not advertised or held out in any manner to provide such services to the public at large or outside of the legal profession).

WISCONSIN: References ABA Formal Opinion 88-356 (permitting temporary lawyers subject to proper disclosure and confidentiality and conflicts of interest rules).

The following states' ethics rules do not address LPO issues:

ARKANSAS
DELAWARE
HAWAII
ILLINOIS
MAINE
MISSOURI
MONTANA
NEW MEXICO
NORTH DAKOTA
TENNESSEE
WASHINGTON

The following states' ethics opinions were not publicly available at the time of publication:

IDAHO
KANSAS
LOUISIANA
MARYLAND
NEBRASKA
WYOMING



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