Dear Natalia,

The ABA Section of Labor & Employment Law appreciates the opportunity to submit comments on the Discussion Draft Regarding Domestic and International Outsourcing. The Co-Chairs of the Ethics and Professional Responsibility Committee of the ABA Section of Labor & Employment Law have reviewed the Discussion Draft and the comments on the Discussion Draft received from Section members. A compilation of the Co-Chairs’ comments and those received by them are set forth on the attached memorandum.

In addition, we also are enclosing as a separate document “Additional Comments,” marked as such, that have been prepared by the Co-Chairs of the Ethics Subcommittee of our Employment Rights & Responsibilities Committee. These comments were submitted to us too late for the Section’s Ethics and Professional Responsibility Committee Co-Chairs to consider, but we believe the comments may merit consideration by the Commission.

Thank you.

Brad

Brad Hoffman
Director, Section of Labor & Employment Law
American Bar Association
321 N. Clark Street
Chicago, IL 60654
T: 312.988.5815
M: 312.451.2368
F: 312.988.5814
brad.hoffman@americanbar.org
www.abanet.org
To: Gordon Krischer, Chair, and Richard Seymour, Chair-Elect
ABA Section of Labor and Employment Law

From: Andrew Altschul, Gwen Handelman, Evangelina Hernandez, and David Powell, Co-Chairs
Section of Labor and Employment Law Committee on Ethics and Professional Responsibility

Re: Comments on Discussion Draft Regarding Domestic and International Outsourcing

Date: January 24, 2011

Thank you for soliciting comments from the Section of Labor and Employment Law Standing Committees on the Discussion Draft Regarding Domestic and International Outsourcing, which proposes amendments to the Model Rules of Professional Conduct to clarify the ethical obligations of lawyers and law firms engaged in outsourcing of legal and/or nonlegal support services. At your request, as Co-Chairs of the Section’s Ethics and Professional Responsibility Committee, we have reviewed the Discussion Draft and the comments on the Discussion Draft received from two Section Council members and Co-Chairs of the Technology in the Practice & Workplace Committee and Employee Benefits Committee. The Co-Chairs of the Employee Benefits Committee observed, “[w]e did not identify any issues or concerns which appear to be of particular relevance to labor, employment and employee benefits attorneys (as opposed to attorneys generally),” and we concur. However, we think that the responses of Section of Labor Employment law members would be useful to the Commission. A compilation of our own comments and those received by us is set forth below.

Introduction

The extensive research and deliberations reflected in the Report accompanying the Discussion Draft Regarding Domestic and International Outsourcing circulated by the ABA Commission on Ethics 20/20 are invaluable. The Discussion Draft effectively focuses attention on key ethical issues raised by outsourcing of legal and support services and addresses them with admirable brevity. The Commission’s perception that clarification is needed is reinforced by some of the misperceptions reflected in comments we received from the membership of the Section of Labor and Employment Law. However, we think that the Discussion Draft and accompanying Report need revision. First, the Report does not indicate the intent of the Commission to make substantive changes to the Model Rules of Professional Conduct but, rather, the intent to clarify the application of the existing Rules. However, some of the proposed amendments appear to alter existing client protections, as interpreted by ABA Formal Opinion 08-451, Lawyer’s Obligations When Outsourcing Legal and Nonlegal Support Services.1 In addition, we do not think that the Draft succeeds in clarifying the applicable standards. The Draft fails to identify explicitly matters in dispute or lacking clarity or to explain how the Draft resolves them. Nor does the Draft identify any practices that were deemed to be “close to the line” and which are now approved or disapproved.

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The cover letter accompanying the Discussion Draft states that “[t]he Draft does not constitute an endorsement or rejection of the practice of outsourcing by lawyers and law firms,” but diminishing the ethical duties lawyers and law firms owe to clients likely would facilitate outsourcing by reducing exposure to breach of fiduciary and malpractice claims. The public benefit of outsourcing offered by Opinion 08-451 is lowering the cost, and therefore increasing the accessibility, of legal services. However, the adverse consequences of diminishing the applicable ethical duties include impairing the quality of legal services and undermining the trust clients have in their lawyers. In addition, lessening client protections may jeopardize lawyer self-regulation and invite government oversight.

Both Opinion 08-451 and the Report accompanying the Discussion Draft refer to a broad range of outsourced work, including both legal work and nonlegal support services. Neither document clearly considers these different sorts of services separately, but these comments distinguish between outsourced legal work, which implicates the entire panoply of a lawyer’s ethical duties, and outsourced nonlegal support services, which exclusively — or at least primarily — implicate the lawyer’s obligation of confidentiality. In various circumstances “legal work” may be performed by either a lawyer or nonlawyer.

Among the “[o]utsourced tasks” Opinion 08-451 identifies, “the use of a local photocopy shop for the reproduction of documents, [i] the retention of a document management company for the creation and maintenance of a database for complex litigation, [and] the use of a third-party vendor to provide and maintain a law firm’s computer system” are nonlegal support services”; and “hiring of a legal research service to prepare a 50-state survey of the law on an issue of importance to a client, . . . the engagement of a group of foreign lawyers to draft patent applications or develop legal strategies and prepare motion papers in U.S. litigation” and “ ‘engaging additional lawyers to conduct depositions or to review and analyze documents’ ” constitute legal work. Among the “[w]ork that is now frequently outsourced — either inside or outside the U.S.” that the Report identifies “hiring outside companies to handle human resources functions; engaging software as a service provider including those providing off-site servers commonly referred to as a ‘cloud computing’ provider; [and] sending client documents out for copying, scanning or archiving” are nonlegal support services; and “hiring providers, including other lawyers and law firms, to conduct legal research, perform document review, conduct patent searches, perform due diligence or draft contracts” involves legal work.

The comments set forth below propose changes to the Discussion Draft that both clarify the minimum standards applicable to outsourcing of legal and nonlegal support services and reflect the following principles of client protection:

1) A lawyer must inform clients before using the legal work of outside lawyers or nonlawyers in providing legal services to a client.

2) A lawyer must obtain the client’s informed consent before confidential information is disclosed to outside lawyers or nonlawyers unless disclosure without client consent is authorized by Rule 1.6.

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2 Id. at ABA/BNA Lawyers’ Manual on Professional Conduct 1301:134.  
3 Report at 12.
3) When using the legal work of outside lawyers or nonlawyers in providing legal services to a client, a lawyer must make reasonable efforts to ensure that their conduct is compatible with the lawyer’s professional obligations as a lawyer and remain ultimately responsible for rendering competent legal services.

Specific suggested revisions appear in bold italic type.

1. **A lawyer must inform clients before using the legal work of outside lawyers or nonlawyers in providing legal services to a client.**

As noted in the Report accompanying the Discussion Draft, there are “those who oppose outsourcing work internationally” also “those who find the practice of outsourcing itself to be objectionable.”[^1] The Report may have been referring to lawyers, but clients, too, may share these objections. To outsource work without notifying clients risks involving them in financially supporting a practice they oppose. ABA Formal Opinion 88-356[^2] advised that a client is not ordinarily entitled to notice that a temporary lawyer is performing the client’s legal work. However, Opinion 08-451 distinguishes a temporary lawyer who is “tantamount to an employee” and the typical outsourcing relationship “where the relationship between the [lawyer or] firm and the individuals performing the services is attenuated.”[^3] Several Model Rules indicate that a lawyer must inform clients when outsourcing legal work either to lawyers or nonlawyers, domestically or internationally. Under Rule 1.2(a), a lawyer must “abide by a client’s decisions concerning the objectives of representation” and “consult with the client as to the means by which they are to be pursued.” Rule 1.4(a)(2) also requires a lawyer to “reasonably consult with the client about the means by which the client’s objectives are to be accomplished.” Comment [7] to Rule 1.4 states that “A lawyer may not withhold information to serve the lawyer’s own interest or convenience.” Because the only plausible reasons a lawyer might withhold information about outsourcing practices are concern that clients will veto the practice or take their business elsewhere, clients are entitled to be consulted when their legal work is outsourced. However, neither Model Rule 1.2 nor 1.4 provide a basis for requiring written notice.

Further, not informing clients about outsourcing of their legal work may violate Rules 7.1 and 7.5. Under Rule 7.1, a lawyer may not make a misleading communication about the lawyer or lawyer’s services, and Rule 7.5(a) prohibits using “a firm name, letterhead or other professional designation that violates 7.1.” The body of Rule 7.1 includes the explanation that a communication is misleading if it “omits a fact necessary to make the statement considered as a whole not materially misleading.” Failing to inform clients about outsourcing legal work in communications with clients, especially when a firm name, letterhead, and/or other professional designations imply legal services will be provided by an identifiable person or entity, seems to meet this test. Again, neither Model Rule 7.1 nor 7.5 indicate that disclosure about outsourcing legal work must be in writing.

[^1]: Id. at 11.
To clarify a lawyer’s or law firm’s disclosure obligations when outsourcing legal work, an example should be provided following the second sentence of Comment [3] under Rule 1.4 in terms such as the following: “For example, a lawyer must inform a client before retaining an individual or entity outside the lawyer’s office or law firm to provide legal services to be used in representing the client.”

2. A lawyer must obtain the client’s informed consent before confidential information is disclosed to outside lawyers or nonlawyers unless disclosure without client consent is authorized by Rule 1.6.

The Discussion Draft addresses disclosure of confidential information in proposed comments under Model Rule 1.1, Competence, and Model Rule 5.3, Responsibilities Regarding Nonlawyer Assistants. In similar terms, the proposed comments to these rules state that, if confidential client information will be disclosed under an outsourcing arrangement, informed client consent may be required, depending upon the circumstances (emphasis supplied). One commentator perceived that the Draft might expand existing requirements to obtain client consent before utilizing copying services and trial consultants. However, on close reading, the Draft appears to diminish client protections. The use of “may” in essence transforms the imperative of Model Rule 1.6 that, with limited exceptions, “[a] lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent” into a rule of reason along the lines of Comment [17] to Rule 1.6 regarding reasonable precautions to avoid inadvertent disclosure. In contrast, Opinion 08-451 provides that “where the relationship between the [lawyer or] firm and the individuals performing the services is attenuated, as in a typical outsourcing relationship, no information protected by Rule 1.6 may be revealed without the client’s informed consent.” The Opinion continues:

The implied authorization of Rule 1.6(a) and its Comment [5] thereto to share confidential information within a firm does not extend to outside entities or to individuals over whom the firm lacks effective supervision and control.

Under Opinion 08-451, the requirement articulated in Comment [16] to Rule 1.6 to “act competently to safeguard information relating to the representation of a client against inadvertent and unauthorized disclosure by the lawyer or other persons who are participating in the representation of the client or who are subject to the lawyer’s supervision” is in addition to the requirement of informed consent.

Whether the Draft intends to expand, contract, or maintain existing client protections, clarification is required, and we recommend adding specific reference to outsourcing in the comments under Model Rule 1.6. We advocate maintaining a lawyer’s obligation to obtain a client’s informed consent before disclosing confidential information to outside lawyers or nonlawyers unless disclosure without client consent is authorized by Model Rule 1.6. For example, if required, informed consent may

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7 The commentator asked “does this rule require a Law firm to get consent from the client every time the firm uses these types of companies? What is the definition of informed client consent? What happens if for some reason, the information given to third parties is stolen or misused by the third parties – is the client supposed to be informed that this is a possibility that this could occur in our age of technology?”

8 Id.

9 Id.
be obtained when the client agrees to the terms of an engagement letter including “adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct,” as provided in Model Rule 1.0(e). However, we think that the Rules should recognize the practical concerns raised by commentators and reflect that in some circumstances a lawyer may exercise as much effective supervision and control over an outside entity or individual as over an employee, in which case disclosure of confidential client information may be impliedly authorized under Rule 1.6.

To clarify a lawyer’s or law firm’s obligation to obtain a client’s informed consent before disclosing confidential information to outside lawyers or nonlawyers, an additional sentence should be added to Comment [5] under Rule 1.6 along the lines of the following: “In addition, implied authorization to share confidential information within a firm does not extend to outside entities or to individuals over whom the firm lacks effective supervision and control.” In addition, the last two sentences of both proposed Comment [7] to Rule 1.1 and proposed Comment [3] to Rule 5.3 should be deleted.

3. When using the legal work of outside lawyers or nonlawyers in providing legal services to a client, a lawyer must make reasonable efforts to ensure that their conduct is compatible with the lawyer’s professional obligations as a lawyer and remain ultimately responsible for rendering competent legal services.

Proposed Comment [7] to Rule 1.1, Competence, provides that “[a] lawyer may retain other lawyers outside the lawyer’s own firm to provide or assist in the provision of legal services to a client provided the lawyer reasonably concludes that the other lawyers’ services will contribute to the competent and ethical representation of the client” and includes a list of circumstances, including “the education, experience and reputation of the nonfirm lawyers” and “the legal and ethical environment in which the services will be performed,” to be used in determining the reasonableness of the outsourcing lawyer’s conclusion. An almost identical list of factors is included in Proposed Comment [3] to Rule 5.3, Responsibilities Regarding Nonlawyer Assistants, to be taken into account in determining the reasonableness of the lawyer’s or law firm’s efforts “to ensure that the activities of any nonlawyer service providers are compatible with the lawyer’s professional obligations.” The Discussion Draft includes no proposed amendments to Rule 5.1, Responsibilities of Partners, Managers, and Supervisory Lawyers.

The first sentence of proposed Comment [3] to Rule 5.3 explains that “The responsibilities stated in this Rule also apply when a lawyer or law firm utilizes nonlawyer service providers outside the lawyer’s or law firm’s office to assist in rendering legal services to clients.” The proposed comment next articulates a duty to “make reasonable efforts to ensure that the activities of any nonlawyer service providers are compatible with the lawyer’s professional obligations,” the extent of which obligation depends upon the circumstances, followed by the list of circumstances that might be taken into account. This articulation of the duty of an outsourcing lawyer or law firm contrasts with the more specific explanation in existing Comment [2] that Rule 5.3 “requires lawyers with managerial authority within a law firm to make reasonable efforts to establish internal policies and procedures to provide reasonable assurance that nonlawyers in the firm will act in a way compatible with the Rules of Professional
Conduct.” The proposed Comment also states, “Where the client has chosen or suggested a particular nonlawyer service provided, the lawyer or law firm ordinarily should consult with the client concerning the allocation of responsibility for monitoring as between the client and the lawyer or law firm.” One commentator expressed discomfort with imposition of an obligation to consult with a client regarding the allocation of monitoring responsibility and with the use of the term “monitoring,” absent adequate explanation in the Report.

Opinion 08-451 observes that both Model Rules 5.1 and 5.3 impose obligations on outsourcing lawyers and law firms. Rule 5.1(b) requires that a lawyer having direct supervisory authority over another lawyer must make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct. Rule 5.3(b) requires that a lawyer having direct supervisory authority over a nonlawyer employed or retained by or associated with the lawyer must make reasonable efforts to ensure that the nonlawyer’s conduct is compatible with the professional obligations of the lawyer. To meet these professional obligations, a lawyer or law firm utilizing legal work of lawyers or nonlawyer assistants outside the lawyer’s office or law firm must bear the same degree of instructional and supervisory responsibility as a lawyer utilizing in-house lawyers or nonlawyer assistants. Opinion 08-451 states that the obligations under Rules 5.1 and 5.3 “apply regardless of whether the other [supervised] lawyer or nonlawyer is directly affiliated with the supervising lawyer’s firm.” The Opinion notes that “[a] contrary interpretation would lead to the anomalous result that lawyers who outsource have a lower standard of care when supervising outsourced lawyers than they have with respect to lawyers within their own firm.” The Opinion identifies the challenge for an outsourcing lawyer as ensuring “that tasks are delegated to individuals who are competent to perform them, and then to oversee the execution of the project adequately and appropriately.” Because of the attenuated nature of the outsourcing relationship, close scrutiny of the legal work product is necessary to fulfill these obligations.

This conception of an outsourcing lawyer’s responsibilities also comports with the responsibility of a lawyer under Model Rule 5.5 not to assist another engage in the unauthorized practice of law. According to Comment [2] to Rule 5.5, utilizing the services of nonlawyers is permitted “so long as the lawyer supervises the delegated work and retains responsibility for their work,” although only involvement, not supervision, is required to avoid assisting the unauthorized practice of law with respect to a lawyer authorized to practice in another U.S. jurisdiction. Such a lawyer may provide legal services in a jurisdiction where the lawyer is not licensed to practice on a temporary basis in association with a lawyer admitted to practice in that jurisdiction who “actively participates in the matter.” Comment [8] explains that the lawyer must “share responsibility for the representation” to avoid assisting the unauthorized practice of law. The Discussion Draft reflects sensitivity to unauthorized practice issues, proposing to add to Comment [1] to Rule 5.5 the sentence, “For example, a lawyer may not assist a person in practicing law in violation of the rules governing professional conduct in that person’s jurisdiction.”

10 Id. at ABA/BNA Lawyers’ Manual on Professional Conduct 1301:135.
11 Id. at ABA/BNA Lawyers’ Manual on Professional Conduct 1301:135 n.2.
12 Id. at ABA/BNA Lawyers’ Manual on Professional Conduct 1301:135.
Several revisions to the Discussion Draft would strengthen and clarify the application of Model Rules 1.1, 5.1 and 5.3 to outsourcing lawyers and law firms. First, Opinion 08-451 explains that the “anomalous result” that a lower standard of care applies to outsourcing lawyers than to lawyers with supervisory responsibilities within their own firm could follow from the language of Comment [1] to Rule 5.1, which refers to “lawyers who have supervisory authority over the work of other lawyers in a firm.”

Therefore, to acknowledge an outsourcing lawyer’s supervisory obligations, a phrase should be added to the end of Comment [1] to Rule 5.1 along the lines of the following: “and to lawyers who utilize a legal services provider outside their own offices to assist in rendering legal services to a client.”

Second, proposed Comment [3] to Rule 5.3 should be stated in terms that more clearly indicate that the responsibility of outsourcing lawyers and law firms for the ethical behavior of nonlawyer assistants is on a par with the responsibilities of lawyers and law firms for the behavior of nonlawyer employees.

To clarify that the obligation of outsourcing lawyers and law firms is not less than that of lawyers and law firms with respect to their own nonlawyer employees, Comment [3] to Rule 5.3 should include, in addition to the requirement to “make reasonable efforts” to ensure nonlawyer service providers act consistently with the Rules of Professional Conduct, the requirement “to establish policies and procedures to provide reasonable assurance that nonlawyer service providers will act in a way compatible with the Rules of Professional Conduct,” tracking the language of Comment [2] regarding nonlawyer employees.

Third, “reputation” is an amorphous concept that provides little in the way either of guidance to a decision maker or standard against which to assess the reasonableness of a decision to utilize a particular service provider. ABA Formal Opinion 08-451 makes the sensible observation that “[at] a minimum, a lawyer outsourcing services for ultimate provision to a client should consider conducting reference checks.”

Thus, “references” should replace “reputation” in the list of factors to be taken into account under Comment [7] to Rule 1.1 in determining the reasonableness of the conclusion that an outside lawyer’s or nonlawyer’s “services will contribute to the competent and ethical representation of the client” and the list of factors under Comment [3] to Rule 5.3 to be taken into account in determining the reasonableness of the lawyer’s or law firm’s efforts “to ensure that the activities of any nonlawyer service providers are compatible with the lawyer’s professional obligations.”

Fourth, the term “legal and ethical environment” is imprecise and not self-evident. The term likely is intended to reflect the concerns addressed in Proposed Comment [7] to Rule 1.1 and proposed Comment [3] to Rule 5.3, which refer to “rules, laws or practices of a foreign jurisdiction [that] provide substantially less protection for confidential client information than that provided in this jurisdiction.”

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13 Id.
To clarify the intended meaning of “legal and ethical environment” in the list of factors to be taken into account under Comment [7] to Rule 1.1 in determining the reasonableness of the conclusion that an outside lawyer’s or nonlawyer’s “services will contribute to the competent and ethical representation of the client” and the list of factors under Comment [3] to Rule 5.3 to be taken into account in determining the reasonableness of the lawyer’s or law firm’s efforts “to ensure that the activities of any nonlawyer service providers are compatible with the lawyer’s professional obligations,” the term should be replaced by more precise language along the lines of the following: “legal protections and professional conduct rules of the jurisdiction in which the services will be performed with respect to confidential client information.”

Fifth, appropriate language proficiency is essential to the provision of competent legal services. Although the Draft Report notes “the dominance of the English language in law and commerce,”14 English language proficiency varies widely, even among those who speak English as their native tongue, let alone among those for whom English is a second or tertiary language. A high degree of proficiency in the English language is essential to provide competent legal representation under the laws of any United States jurisdiction. In addition, multilingual capabilities may be helpful or even necessary to provide competent legal services to particular clients or in particular settings.

Therefore, in recognition not only of the globalization of the practice of law but also of the many different languages spoken in the United States, “appropriate language proficiency” should be added to the list of factors to be taken into account under Comment [7] to Rule 1.1 in determining the reasonableness of the conclusion that an outside lawyer’s or nonlawyer’s “services will contribute to the competent and ethical representation of the client” and the list of factors under Comment [3] to Rule 5.3 to be taken into account in determining the reasonableness of the lawyer’s or law firm’s efforts “to ensure that the activities of any nonlawyer service providers are compatible with the lawyer’s professional obligations.”

Finally, Comment [1] to Rule 5.5 appears to impose strict liability for noncompliance with the rules of professional conduct in a foreign lawyer’s jurisdiction, which is an inappropriately high standard.

Therefore, in recognition that an outsourcing lawyer cannot know the rules of professional conduct of every jurisdiction in which an outside lawyer is licensed, the proposed addition to Comment [1] to Rule 5.5 should be modified by adding “knowingly,” as follows: “For example, a lawyer may not knowingly assist a person in practicing law in violation of the rules governing professional conduct in that person’s jurisdiction.”

Conclusion

The Section of Labor and Employment Law Committee on Ethics and Professional Responsibility applauds the Commission on Ethics 20/20 for the openness of the process and thanks the Commission for this opportunity to comment on its work. The Committee submits these comments in the spirit of cooperation and collaboration that the Commission has fostered.

14 Report at 12.
Brad,

Below please find comments on the ABA's proposed changes to the Model Rules addressing outsourcing. These comments are made on behalf of the ERR Ethics Sub-committee.

If you have any questions or concerns, please call Marisa Warren at (212) 403-7365.

Sincerely,

The ERR Ethics Sub-Committee Co-Chairs

Marisa Warren, Pedowitz & Meister LLP, Plaintiff's Chair, Employee Rights and Responsibility Ethics Sub-Committee,

Charles Bacharach, Feinblatt Rothman Hoffberger & Hollander, LLC, Management/Employer Co-Chair, Employee Rights and Responsibility Ethics Sub-Committee,

Gretchen Winter, Executive Director, Center for Professional Responsibility in Business and Society, College of Business, University of Illinois at Urbana-Champaign, Public Co-Chair, Employee Rights and Responsibility Ethics Sub-Committee

Marisa Warren

Pedowitz & Meister, LLP
1501 Broadway, Suite 800
New York, NY 10036
212-403-7365
Fax: 212-354-6614
email: marisa.warren@pedowitzmeister.com <mailto:marisa.warren@pedowitzmeister.com>
Although it is agreed that the proposed changes to the Model Rules do help to clarify some ethical concerns, these changes, in itself, are insufficient to tackle the ethical considerations raised by outsourcing. ABA Formal-Op.08-451 brought to light a host of ethical concerns that remain unaddressed.

In addition to touching upon the rules which the ABA task force is now proposing to amend (competence, Model Rule 1.1, a lawyer's responsibilities regarding nonlawyer assistants Model Rule 5.3, and the unauthorized practice of law, Model Rule 5.5), opinion 08-451 mentioned many more ethical concerns including appropriateness of fees (Model Rule 1.5), duties of confidentiality (Model Rule 1.6), and conflicts of interest (Model Rule 1.7, 1.9, 1.10, 1.11). Accordingly, each of these Model Rules should be amended to contemplate the prevailing ethical guidelines set forth in Formal Op. 08-451.

In particular, the Model Rule amendments fail to address the critical issue of conflicts of interest. Although the ABA's discussion draft notes that conflicts are "increasingly given careful attention by outsourcing providers", the draft fails to address the fact that there is no uniform method or procedure in place to regulate those providing outsourced legal services. Model Rule 1.10 provides a screening mechanism to facilitate firm conflicts management when lawyers change law firms or law firms merge. There is no comparable screening mechanism in place for those providing outsourcing services who may move from one outsourcing firm to another and may have confidential information about their current or former clients. As a result, an attorney's duty of confidentiality may be substantially compromised.

Although it is necessary for the Rules to address the issues raised by outsourcing, this alone is insufficient. The task force should consider developing a separate accreditation process for outsourcing firms, particularly those in foreign jurisdictions. This accreditation process could be run in a similar fashion to the ABA's law school accreditation procedure. Accreditation would help to police outsource providers and ensure that they comply with ethical obligations. Additionally, this would give attorneys comfort in the fact that they are choosing outsourcing providers who will competently, and ethically, perform legal services.

The accreditation process can also serve as a mechanism to ensure that all attorneys—attorneys representing small individuals or large corporations—may effectively utilize the benefits of outsourcing on equal footing. As Formal Op. 08-451 correctly notes, outsourcing may provide advantages to small firms and solo practitioners who, without the help of outside lawyers and legal assistants, may be unable to effectively handle large, discovery intensive litigation effectively. However, the proposed changes to the Model Rules do not take into account the fact outsourcing may have the ability to further disadvantage small and solo practitioners.

Smaller firms and solo practitioners typically represent individual plaintiffs as opposed to large corporate entities. With conflicts concerns, legal outsourcing firms may decline to provide outsourcing services to smaller firms or solo practitioners due to the fact that representing this smaller party may foreclose the outsourcing provider from performing outsourcing tasks for the opposing corporation in the future. As a result, small firms may be closed off from the major outsourcing firms. The task force should explore ways to ensure that legal outsourcing services can be used by small and large firms alike.

Since accreditation is admittedly a costly solution to the problem, the ABA task force may also focus its efforts on drafting a model agreement between a law firm and an outsource provider that would address all of the ethical concerns involving outsourcing. This agreement would streamline the outsourcing process which would benefit both attorneys and clients alike. Additionally, this agreement would assist smaller firms who may not have the resources
or expertise to negotiate the highly technical and specialized nature of these relationships.