

ABA Commission on Ethics 20/20
Legal Process Outsourcing (Domestic and International)
Call for Comments

The ABA Commission on Ethics 20/20 is studying the ethical and professional regulatory implications of legal process outsourcing in a domestic and international context. The Commission is reviewing the ABA Model Rules of Professional Conduct, existing ethics opinions and other literature and studies about this topic. The Commission is also interested in gathering information about domestic and international legal process outsourcing from lawyers, law firms, clients and outsourcing providers, and developed the following questions to do so.

We look forward to hearing from you. Please do not feel constrained to limit your responses to the information sought by these questions. We are interested in receiving whatever information you feel is relevant.

Please e-mail your responses by May 31, 2010 to Senior Research Paralegal Natalia Vera at veran@staff.abanet.org.

For purposes of these questions:

The terms “lawyer” and “law firm” exclude in-house counsel.

“Client” is an individual who hires a lawyer or law firm or an organization (including in-house counsel) that does so, and who may initiate a relationship with a legal process outsourcing provider themselves or direct their lawyer or law firm to do so.

A. Questions for lawyers and law firms who have outsourced legal work:

1. Under what circumstances have you outsourced legal work?
2. What sort of work have you outsourced?
3. When in the process of a representation have you outsourced work?
4. Who initiated the idea of outsourcing, you (law firm or lawyer) or your client? In what context did this issue arise?
5. What conversations did you have with your clients about the process and work to be outsourced? When in the course of the representation did these conversations occur? Did you make a written record of those conversations?
6. Can you please describe the process of identifying which outsourcing firm to use and what factors were important? For example, please explain:

a. Was your decision regarding who to outsource to dependent upon the location of the outsourcer? If so, in what ways?

b. How did you or your firm decide whether to outsource outside of the U.S. or within the U.S., or to a firm that has workers in multiple jurisdictions including the U.S.? What issues, besides price, did you consider in this decision?

c. Where did you look to find guidance to assist you in this process? Who did you call? Is there an organization or quality indicia that you looked for?

d. Did you discuss the terms of the outsourcing contract/agreement with your client prior to its execution? Was your client a party to the contract/agreement? Can you share a contract with us?

7. What has your experience been when you have outsourced (inside or outside the U.S.)?

8. Has your experience with outsourcing (inside or outside the U.S.) raised any issues under the Rules of Professional Conduct and can you describe them?

B. Questions for clients who have outsourced legal work:

1. Who made the initial decision that legal work should be outsourced and if the client is an organization, who in the organization did so (e.g., an officer of the organization, general counsel or a procurement employee)?

2. Was the decision to outsource made in the context of legal work for a particular transaction or dispute, or as a general matter for all work that falls into a certain category, whether or not it has already arisen and is identified?

3. Did you involve your lawyer or law firm in your decision to outsource, and in helping to select outsourcing firms? Please describe the nature of the lawyer or law firm's involvement.

4. Can you please describe the process of identifying which outsourcing firm to use and what factors were important? For example, please explain:

a. Was your decision regarding who to outsource to dependent upon the location of the outsourcer? If so, in what ways?

b. How did you or your firm decide whether to outsource outside of the U.S. or within the U.S., or to a firm that has workers in multiple jurisdictions including the U.S.? What issues, besides price, did you consider in this decision?

c. Where did you look to find guidance to assist you in this process? Who did you call? Is there an organization or quality indicia that you looked for?

d. Did you discuss the terms of the outsourcing contract/agreement with your lawyer or law firm prior to its execution? Was your lawyer or law firm a party to the contract/agreement? Can you share a contract with us?

5. What sort of agreements do you enter into with your outside lawyer(s) or law firm(s), if any, with regard to responsibility for oversight of outsourced work and related liability?

6. What, if anything, changes when you decide to outsource to a firm/organization based overseas, with regard to the decision to outsource, vetting and selecting the outsourcer and the relationship with the outside law firm?
7. What has your experience been when you have outsourced or your lawyer or law firm has done so on a matter for which they represent you (inside or outside the U.S.)?

C. For providers of legal process outsourcing services:

1. Where do your workers work?
2. Are the workers who perform the outsourced tasks educated and licensed as lawyers somewhere? If some are and some are not educated and licensed as lawyers somewhere, what is the proportion of lawyer to non-lawyer?
3. What proportion of lawyer workers are educated and licensed in the jurisdiction where they sit, educated and licensed in the jurisdiction whose law governs or educated and licensed in the U.S.?
4. For non-U.S. based providers do you have a staffed physical presence in the U.S? Who staffs it (e.g., U.S. licensed lawyers) and what is done there?
5. How do you decide which individuals should work on which matters?
6. What do you do to help your employees understand the U.S. rules of professional conduct and who provides this education or training?
7. How do you do train and assess the competence of your workers and assess and verify the quality of the work done?
8. What types of security systems to you have in place to ensure data integrity and compliance with confidentiality requirements of those who hire you?
 - a. If there is a difference in security systems for work performed inside and work done outside the U.S., please explain.
9. What types of systems do you have in place to avoid conflicts of interest regarding those who hire you?
10. Are you regulated? In what way and by whom? Are there competing regulations and regulators?