

San Diego County Bar Association

Ethics Opinion 2007-1, 2007

Ethics Opinion 2007-1 poses and responds to three main questions pertaining to the use of outsourced resources in the practice of law.

Did a two-person California law firm violate Rule Of Professional Conduct 1-300 in aiding in the unauthorized practice of law by engaging an India company that develops case strategy and drafts correspondence and pleadings in American intellectual property, among other things, to assist in the defense of a complex intellectual property dispute for a client, in spite of the fact that the law firm had limited experience in the subject matter?

In determining whether a lawyer engages in the unauthorized practice of law by hiring an unlicensed attorney to assist with a matter, the “primary inquiry is whether the unlicensed lawyer engage[s] in sufficient activities in the state or create[s] a continuing relationship with the California client that include[s] legal duties and obligations.” *Birbower, Montalbano, Condon & Frank, PC v. Superior Court*, 17 Cal. 4th 119 (1998).

Applying this principle to the above question, the San Diego County Bar Association found that because the Indian company had not worked directly for the client but through an intermediary, it was not engaged in the unauthorized practice of law. Furthermore, the Association stated that the California lawyer maintained full control over the representation of the client and exercised independent judgment in the work drafted by the Indian contract attorneys.

Was the California law firm obligated to inform the client of its decision to engage the Indian outsourcing company before or at the time of entering the contract with the company?

When contracting with an outsourcing company to assist in the representation of a client in a legal matter, the necessity of informing the client of this relationship depends on “significant developments” in the case. The client’s reasonable expectation of who is handling the case should serve as a guide, but informing the client is ultimately in the lawyer’s discretion.

Can a California lawyer with limited experience in the subject matter of the service to be undertaken outsource important responsibilities in performing the service to a “lawyer” reasonably believed to be competent who is not licensed or otherwise authorized to practice in California?

For a lawyer to act competently in the process of outsourcing, the lawyer must either be competent to practice in the area of law in question, and therefore be able to supervise the outsourced work or the lawyer must ensure that someone who is competent in the relevant area of law is supervising the work. Supervision of work entails knowing the practice area pertaining to the work being completed. Ultimately, the supervising attorney must know enough about the subject in question to judge the quality of the work.