

**The Association of the Bar of the City of New York
Committee on Professional and Judicial Ethics**

Formal Opinion 2006-3, August 2006: Outsourcing Legal Support Services Overseas

New York holds all lawyers, including outsourcing lawyers, to a very high standard with regard to their supervisory responsibilities. Under the Code Of Professional Conduct Disciplinary Rules, a lawyer shall be responsible for a violation of these disciplinary rules if “the lawyer orders or directs the specific conduct, or with knowledge of the conduct, ratifies it” or “has supervisory authority over the non-lawyer, and knows of such conduct, or in the exercise of reasonable management or supervisory authority should have know of the conduct so that reasonable remedial action could be taken.”

To properly comply with these rules, an attorney who is outsourcing legal work must:

- a) rigorously supervise any non-lawyers to avoid the unauthorized practice of law;
- b) ensure compliance with the duty to represent the client competently;
- c) make sure that all client confidences and secrets are protected;
- d) avoid conflicts of interest;
- e) make sure clients are billed appropriately for outsourcing; and
- f) obtain client consent to outsource.

Proper supervision is necessary for outsourcing in an ethical manner. In accepting full responsibility for work completed on a client’s behalf, lawyers must review any work submitted by non-lawyers. In addition, lawyers must ensure that any non-lawyers they hire are qualified to complete the delegated tasks. Through background checks, writing samples, interviews and references, lawyers can ease their supervisory responsibilities by well-qualified individuals.

In addition to proper supervision, a lawyer must be mindful of maintaining client confidentiality when using outsourced resources. Legalities abroad may vary from those in the U.S., so lawyers must brief newly hired non-lawyers on the importance of confidentiality. If a project assigned to an outsourced non-lawyer requires the lawyer to disclose client confidences, the lawyer must obtain the client’s informed consent beforehand. The client should approve all information that is being shared with non-firm employees, and shared information should be kept to a minimum.

With respect to conflicts, lawyers are encouraged to ask outsourcing companies about their conflict-checking and matter tracking procedures when they evaluate an offshore contractor’s qualifications. Lawyers are also encouraged to determine whether the company, and those directly performing the legal support services, are performing, or have performed, services for any parties adverse to the lawyer’s client.

Finally, regarding costs and billing, the direct costs of outsourcing along with any extra overhead costs are to be forwarded to the client.