

Professional Ethics of the Florida Bar

Proposed Advisory Opinion 07-2, January 2008

In Florida, a law firm that would like to outsource legal work to overseas attorneys and paralegals must consider ethical issues related to the unauthorized practice of law, supervision of any foreign or non-lawyers, conflicts of interest, confidentiality and billing.

Under Florida law, there is no ethical distinction between hiring a temporary paralegal in Florida versus overseas. Furthermore, using overseas employs does not result in the unlicensed practice of law provided there is adequate supervision. The challenge is in the supervision. Regardless of location, there must be constant supervision by a lawyer that works for the Florida law firm. The supervising lawyer should confirm the educational status of prospective workers and inform the client that employees outside the firm will be handling parts of the case. The supervising attorney also must ensure that any non-lawyers are not giving legal advice, that their conduct is consistent with the ethics rules, and that they only complete work based on factual information.

In carrying out these responsibilities, the Florida attorney or law firm may need to take extra steps to ensure that the foreign employees are familiar with Florida's ethics rules governing conflicts of interest and confidentiality. If an attorney decides to outsource work, he or she should obtain information to demonstrate that no conflicts of interest exist. In addition, the hiring attorney has an ethical obligation to maintain confidentiality. Confidentiality will be maintained if the client gives consent to the disclosure of any information, and if the firm only gives limited access to workers outside the firm. The law firm should never provide access to information about other clients of the firm. Informed consent should be commensurate with the degree of risk involved in the contemplated activity for which the consent is sought. The hiring attorney should also require specific assurances from the overseas outsourcing company that data the law firm provides to the company will not be sold, used or accessible outside the context of the specific engagement, and will be irretrievably destroyed after the service has been fulfilled. These issues present heightened supervisory and auditability concerns in foreign jurisdictions, which require heightened scrutiny by the attorney seeking to use the overseas services.

With the client's consent, a firm may charge for the actual costs of outsourcing the work. However, lawyers should not include the outsourcing expenses if these expenses would normally be considered overhead. Furthermore, in contingent fee cases, it is improper to charge a separate fee for outsourced work that would usually be performed by a client's own attorney and thus incorporated into the attorney's standard fee, even though a third party provider is part of the engagement.