

**American Bar Association
Standing Committee on Ethics and Professional Responsibility**

***Formal Opinion 08-451, August 2008:*
Lawyer's Obligations When Outsourcing Legal and Nonlegal Support Services**

According to the ABA Standing Committee on Ethics and Professional Responsibility:

“There is nothing unethical about a lawyer outsourcing legal and nonlegal services, provided the outsourcing lawyer renders legal services to the client with the ‘legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation,’ as required by Rule 1.1.”

A lawyer can outsource support services as long as there is complete compliance with Model Rule 1.1, in terms of rendering competent legal services to the client and bearing ultimate responsibility for all submitted work. Any lawyer or non-lawyer who is employed, retained or associated with the outsourcing attorney must be supervised, regardless of time or geography. The outsourcing lawyer is free to use an agency/intermediary to aid in managing the process; however, it is recommended that background checks and inquiries into the entity's hiring practices be conducted. Background and conflicts checks, review of educational records and interviews of the individual lawyers and non-lawyers are also recommended to ensure that candidates maintain the standards set forth in the Model Rules.

Clients should be informed if any part of their case is to be outsourced, as they may object to the process. Further, lawyers are strongly advised to obtain written confidentiality agreements in the context of an outsourcing relationship. Outsourcing lawyers should be mindful of their obligation to “act competently to safeguard information related to the representation of a client against inadvertent or unauthorized disclosure by the lawyer or other person participating in the representation of the client or who are subject to the lawyer's supervision.” Rule 1.6 cmt. 16. Outsourcing often involves the disintegration of complete projects, which are then distributed overseas and only the original firm and the client see the complete project. Therefore, while information about a client may be shared to workers outside the firm, the information is rarely shared in its entirety.

Fees charged by outsourcing lawyers must be reasonable. Lawyers are allowed to add a surcharge to the cost paid by the outsourced lawyer or non-lawyer provided the total charge represents a reasonable fee charged to the client. The cost of supervising outsourced lawyers and non-lawyers can be part of the surcharge in addition to any other reasonable allocation of overhead. When billing, if a firm chooses to absorb the costs of outsourcing, it is not required to disclose how much the outsourcing costs. However, if a client is paying for the outsourcing, they are only to be billed the excess overhead and direct costs.