

**ORR & RENO, P.A. ETHICS AND PROFESSIONAL LIABILITY
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The Ethics of Outsourcing Legal Work

In our globalized economy, it is not uncommon for lawyers to hire the services of other lawyers and non-lawyers to provide both legal and non-legal support services for their clients. Outsourcing often allows lawyers to reduce client costs and to represent clients effectively and efficiently. Common examples include hiring outside firms to create and maintain a database for complex litigation, to review documents or to prepare court motions. However, lawyers must assess their obligations under the New Hampshire Rules of Professional Conduct before outsourcing.

According to the American Bar Association (“ABA”), which has reviewed outsourcing under the Model Rules of Professional Conduct, there is nothing unethical about a lawyer outsourcing legal and non-legal services as long as the outsourcing lawyer renders legal representation to the client “with the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.” *ABA Formal Op. 08-451* (Aug. 5, 2008). However, at the outset, lawyers should notify their clients and obtain informed consent. The ABA states that where the relationship between the lawyer and the individuals performing the service is attenuated, as in typical outsourcing relationships, no information protected by Rule 1.6 may be revealed without the client’s informed consent. Written confidentiality agreements with the provider are also advisable to minimize risks of inadvertent disclosure of confidential information.

Adequate supervision must also be provided. Rules 5.1 and 5.3 impose a number of obligations on lawyers who have “direct supervisory authority” over other lawyers and non-lawyers. To ensure that tasks are delegated to individuals or organizations competent to perform them and to adequately oversee the execution of the project, the ABA recommends that lawyers conduct reference checks and interviews to evaluate the service provider’s facilities, policies and procedures regarding protection of confidential or privileged materials.

The ABA also notes that fees charged by the outsourcing lawyer must be reasonable and otherwise comply with Rule 1.5. While the lawyer is not obligated to inform the client of how much the firm is paying to a contract lawyer, lawyers would generally be able to bill the client only actual cost plus a reasonable allocation of associated overhead or cost of supervision. Finally, it is important for outsourcing lawyers to be aware that certain activities performed by the provider could constitute the unauthorized practice of law, *e.g.*, advising the client on state law questions without supervision by the admitted lawyer. If legal work performed by a provider is held to be the unauthorized practice of law and the outsourcing lawyer facilitated the violation by action or inaction, the outsourcing lawyer will have violated Rule 5.5(a).

The Quarterly Review is intended to provide a general overview of a legal ethics issue. It is not, and should not be construed, as legal counsel or advice. If you would like more

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