



## Ethical Guidelines for Legal Process Outsourcing

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[Legal Process Outsourcing](#) (LPO) and [virtual lawyering](#) have one primary thing in common: they both involve giving up control over some aspect of your law practice. On one hand, you could be outsourcing projects and tasks; on the other, document storage and management functions. As a result, both the virtual practice of law and the use of LPOs create new challenges to similar ethical compliance issues. There has been significant discussion about security and ethics “in the cloud”, but addressing the ethics issues related to the use of LPOs has taken a bit of a back seat.

In a great webinar by [Mark Ross](#), VP of Legal Solutions at [Integreon](#), he articulates and discusses the model rules that give rise to ethical concerns as they apply to the process of choosing, contracting with, and using LPO services. These issues are of particular concern as services offered by LPOs, formerly primarily back-office operations, have crept into front-office functions that may cross the line between legal and non-legal services. Unfortunately, what is and is not considered practicing law is gaining new flexibility as a result of automation. And as the legal profession moves toward “onshoring” LPO services, the importance of these issues will expand.

Ross names 6 key points to consider when deciding to include LPO services in your repertoire of service models:

- Avoid unauthorized practice of law through proper supervision
- Provide competent representation
- Adhere to duty of disclosure/communication
- Avoid conflicts of interest
- Ensure confidentiality and security
- Bill appropriately

### Unauthorized Practice of Law (MRPC 5.5)

You must choose the projects, or any aspects of them, wisely to be sure performance does not entail practicing law. Maintain close supervision over and control of the work process and product of your LPO and review the finished product carefully. This has application not only to the nature of the work being performed, but also to its quality (we’ll look at competency below). Remember that you retain sole responsibility for outsourced work, and are answerable to the State Bar and other regulatory authorities (including your malpractice carrier). Be certain the tail is not wagging the dog.

## Competent Representation(Model Rule 1.1)

As noted above, proper supervision is required to ensure your client is adequately represented. Conduct the necessary due diligence to ensure the LPO delivers the necessary level of competence. Interview the company in advance, obtain references for both the company and the individual who will be doing the work, request sample work product, and communicate directly with person assigned to your project to discuss to ensure he/she understands both the assignment and ethics involved.

## Duty of Disclosure and Confidentiality (MRPC 1.6)

As a result of the need to communicate confidential information to the LPO employee (and for other reasons, I'm sure), the ABA's Ethics 20/20 Commission has recently issued their [Initial Draft Proposal – Outsourcing](#) related to MRPC 1.6 that included an emphasis on the importance of obtaining written client consent to engaging an LPO. Mark Ross advises that the communication to the client should include:

- information about the LPO process
- what parts of the matter will be outsourced
- that non-lawyers will be performing the work
- that some confidential information will be disclosed
- how it will be billed

## Conflicts of Interest (MRPC 1.7, 1.8)

A conflicts of interest check must be run on the LPO, as the potential for a conflict to arise is far greater than a firm-wide conflict. Your chosen LPO must provide information regarding their conflicts policies and procedures as to both the provider and the individual doing the work. They should also release the results of any conflicts check they ran on your client.

## Security and Client Confidentiality

Remember that the LPO is operating on technology that gives rise to the same security concerns that you have with your own vendors. Be sure to find out what technology is employed, what security policies and processes they have in place, and whether they meet the levels of security you are comfortable with. You should also execute a non-disclosure agreement with the LPO, determine if their employees executed NDAs or confidentiality agreements. Ideally, your LPO should meet the standards of Safe Harbor Certification.

## Bill Appropriately(MRPC 1.5)

The ABA has taken the stance that costs for outsourcing can be marked-up so long as the final fees for the outsourcing project are reasonable. As mentioned above, the billing structure for the outsourced work should be contained in the disclosure to client regarding use of an LPO. In a contingency matter, LPO's fees can not be based on a percentage of the contingency fee award.

If you want to explore this topic in-depth you can access Mark Ross's webinar at [Integreon](#). Additionally, the ABA Ethics 20/20 is inviting comments on the Initial Draft – Outsourcing and other

issues by July 15, 2011. You can follow the developments [here](#). And for great commentary and analysis on all issues related to outsourcing, check out [Lisa Solomon's](#) blog.

The reality is that the use of legal process outsourcing, like most emerging trends in law practice today, asks more questions than have been answered. In that respect, adopting these trends can appear to be an onerous and unnecessary task. But you cannot ignore the blaring sirens signaling that these emerging trends are pervasive, and threaten permanent damage to law practice as we have known it. Given the alternative, staying informed and adopting new practices is the only way to stay safe in the storm.