

May 7, 2010

ABA Commission on Ethics 20/20
Attn: Natalia Vera
veran@staff.abanet.org

**RE: Call for Comments
Legal Process Outsourcing (Domestic and International)**

Dear Ms. Vera:

As recognized authorities on freelance legal practice, we welcome the opportunity to comment in response to the Ethics 20/20 Commission's inquiry concerning domestic and international legal process outsourcing.

Introduction

In *The End of Lawyers?: Rethinking the Nature of Legal Services*, Richard Susskind posited that advances in legal technology will result in the increasing decomposition of the provision of legal services into component tasks that can be "multi-sourced." Outsourcing—subcontracting a process to a third-party company—is one of these sourcing models. Thus, any changes resulting from the Commission's current study will have a significant impact on the future of the legal profession.

Outsourcing isn't just for big firms, and it isn't new. Solos and small firms—two groups that, together, comprise the majority of U.S. lawyers—have long looked to their colleagues for assistance when the demands of an active law practice have required them to answer concurrent calendar calls in different courtrooms (or even counties), or to brief a dispositive motion for one client while trying a case for another. At the same time, ongoing dramatic shifts in the legal marketplace have made understanding outsourcing options increasingly important for firms of all sizes.

Trends in the Legal Industry

Two intersecting developments over the past several years are dramatically changing how law firms are structured and how legal services are provided to clients. Work-life

balance issues are pushing many highly-educated and experienced lawyers to quit traditional law firm employment in favor of alternative, flexible work arrangements. Simultaneously, as a result of the current economic downturn, clients are putting more pressure on law firms to reduce costs; corporate clients are moving their legal business from large national firms to smaller local firms with lower billing rates and more flexibility; and law firms are particularly hesitant to hire employees. To meet the demand created by these changes, there is a small but growing cadre of U.S.-based freelance lawyers who, enabled by technology, work on a project-by-project basis for other attorneys.

The Commission must take into account the impact that its study will have on both the solos and small firms that outsource legal work and the U.S.-based freelance lawyers who serve them.

Defining the Terms: “Contract Lawyer” and “Freelance Lawyer”

Continued discussion of legal process outsourcing should include more precise terminology, which will facilitate a better understanding of the different business models that fall under the “legal process outsourcing” umbrella.

In many segments of the legal industry (and even, to a certain extent, in the general lexicon) the term “contract lawyer” refers to an attorney or law graduate who works as an employee of a legal employment agency or LPO company. The agency or LPO provider, in turn, contracts with law firms for the use of its employees to perform work on a temporary basis. The agency or LPO provider bills the firm for the contract lawyer’s time; it pays the contract lawyer a percentage of the hourly fee collected from the firm.

To distinguish themselves from contract lawyers who work for agencies or LPO companies, many attorneys who provides services to law firms as independent contractors refer to themselves as “freelance lawyers.” This terminology has been gaining traction in the legal community. Freelance lawyers are entrepreneurs: they maintain their own offices, pay their own taxes, arrange for their own insurance and benefits, set their own schedules and fees, establish their own working conditions, pursue their own professional development and market their services directly to law firms and in-house legal departments.

Some freelance lawyers rely on freelance work to pay the bills while building a more traditional solo law practice, while others—in increasing numbers—work exclusively as freelance lawyers.

Job Satisfaction Among Contract Lawyers and Freelance Lawyers

In general, contract lawyers and freelance lawyers experience significantly different levels of job satisfaction and perform different kinds of work.

Contract lawyers have little control over their careers; they sit and wait for their phones to ring with job assignments. Those assignments are usually document review or other routine process tasks, and a single large assignment may last for months or even years.

Freelance lawyers, on the other hand, have a great deal of control over their careers. They employ the same practice management skills as lawyers in any other practice area to market their services, network, sharpen their skills and build successful businesses. They generally perform a wider variety of tasks, and deal with a wider variety of legal issues, than contract lawyers do. Like lawyers in other practice areas (who handle a number of open matters at any one time), freelance lawyers generally have multiple ongoing projects on their plates.

Contract lawyers are unlikely to receive mentoring from the LPO companies that technically employ them or the law firms for which they perform work. By contrast, attorneys who hire less-experienced freelance lawyers often mentor the freelancers.

Reports about the poor working conditions and career dead-ends awaiting contract lawyers are legion. This is especially true now, as law graduates struggle with overwhelming student loan debt and a tight job market. Blogs such as *Temporary Attorney: The Sweatshop Edition* explicitly solicit “horror stories” and seek “help expos[ing] the nasty sweatshops, swindling law schools, and opportunistic staffing agencies.” Most commentators on the contract attorney life write anonymously, afraid of being blacklisted from work assignments.

By contrast, freelance lawyers who contribute to the public discourse surrounding the changing nature of law practice consistently express high levels of satisfaction with their careers. As entrepreneurs, they are happy to speak openly about their work.

This anecdotal evidence is consistent with the results of the Gallup Healthways Well Being Index, a 2009 survey of over 100,000 people in 11 job categories. That survey found that business owners had the highest overall well-being score, followed closely by professionals, on a composite measure of six factors, including emotional and

physical health, job satisfaction, healthy behavior, access to basic needs and self reports of overall life quality.¹

This evidence is also consistent with the results of a 2005 U.S. Bureau of Labor Statistics study that examined several types of contingent and alternative employment arrangements. The Bureau found that fewer than 1 in 10 independent contractors said they would prefer a traditional work arrangement.² By contrast, 56 percent of workers employed by temporary help agencies wanted a traditional work arrangement.³

Legal Outsourcing Patterns

Our broad experience with freelancers, solos, and small firms nationwide reveals that solos and small firms approach outsourcing in a vastly different manner than larger firms.

Solos and small firms that outsource legal work overwhelmingly employ U.S.-based providers. In light of the significant additional (and, we believe, warranted) due diligence burdens on foreign-outsourcing lawyers spelled out in ABA Formal Op. 08-451, this preference for domestic providers is not likely to change.

The preference for domestic outsourcing is also driven by the nature of the tasks that solos and small firms are most likely to outsource. Many tasks these lawyers need help with (such as court appearances and depositions) cannot be performed remotely. Even for legal research and writing, a local freelance lawyer who is familiar with local court practices can provide added value.

The location-independent tasks that solos and small firms outsource tend to be of a fairly substantive nature, with a focus on legal research and writing. By contrast, the primary location-independent task that large firms outsource is document review. Since advances in technology have made document review increasingly systematized and repetitive, firms outsourcing document review have little incentive to hire highly educated U.S. lawyers, at U.S. rates, to perform this work. Moreover, the sheer size of many document review projects makes it more efficient for large firms outsourcing such work to rely on LPO companies or staffing agencies that can quickly assemble teams of attorneys, rather than looking to solo freelance attorneys. Large document review

¹ Brett W. Pelham, *Business Owners Richer in Wellbeing Than Other Job Types* (Sept. 16, 2009), <http://www.gallup.com/poll/122960/Business-Owners-Richer-Job-Types.aspx>.

²U.S. Dep't of Labor Bureau of Labor Statistics, *Alternative Employment Arrangements and Worker Preferences* (July 27, 2005), <http://www.bls.gov/news.release/pdf/conemp.pdf>, at T.11.

³ *Id.*

projects also require standardized technology and security measures, which can more easily be provided by a single staffing agency or LPO company employing multiple lawyers than by independent freelance lawyers.

ABA Formal Op. 08-451

We are in general agreement with ABA Formal Op. 08-451. We recognize that the same principles that allow firms to send legal work overseas have many beneficial implications American lawyers. First, these principles allow freelance lawyers to perform substantive and rewarding legal work without the trappings and long work hours expected of associates and partners at traditionally structured law firms. Second, they allow freelance lawyers to work for law firms in jurisdictions in which they are not admitted, thus greatly expanding their work opportunities. Finally, they allow law students and law graduates awaiting admission to develop their skills while performing substantive legal work under a lawyer's supervision.

Moreover, because legal ethics committees in most states have not yet issued opinions that squarely address outsourcing, Op. 08-451 provides some measure of guidance for lawyers around the country.

Respectfully submitted,

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**National Association of
Freelance Legal Professionals**

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About Lisa Solomon

Lisa Solomon was one of the first lawyers to recognize and take advantage of the technological advances that make outsourcing legal research and writing services practical and profitable for law firms of all sizes. Through Lisa Solomon, Esq. Legal Research & Writing (www.QuestionOfLaw.net), she assists attorneys with all their legal research and writing needs, including preparing and arguing appeals and drafting substantive motions and trial memoranda. Through Legal Research & Writing Pro (www.LegalResearchandWritingPro.com), she shows other lawyers how to start and run successful practices as freelance attorneys and teaches lawyers in all practice areas how to write more persuasive briefs.

About the National Association of Freelance Legal Professionals

The National Association of Freelance Legal Professionals (www.NAFLP.org) provides support, education, business and professional development for freelance lawyers and other freelance legal professionals who offer services to law firms as independent contractors. The organization was founded in 2006 by Melody A. Kramer and Amanda L. Mineer, sole practitioners in San Diego, California who run hybrid law practices, mixing direct work for clients with freelance work for other law firms. Melody and Amanda have been quoted in articles about freelance lawyering by the ABA (*Perspectives*), National Bar Journal, and FreelanceSwitch.com.