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Don't Check Your Ethics at the Door: The Ethical Implications of Legal Service Outsourcing

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Don't Check Your Ethics at the Door: The Ethical Implications of Legal Service Outsourcing[1]

I. Introduction

The outsourcing of legal and law-related services, often termed "legal process outsourcing,"[2] has moved beyond the headlines[3] and into the mainstream.[4] The concept is not new; law firms and corporate law departments have been outsourcing legal work, such as document production and due diligence, in the United States for more than two decades.[5] More recently, though, there has been an explosion in overseas outsourcing (sometimes

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[1]Authored by Professor Lisa A. Dolak, Michael E. McCabe, Jr. and Tyler Maulsby.

[2]*See*, *e.g.*, Brandon James Fischer, *Outsourcing Legal Services, In-Sourcing Ethical Issues: An Examination of the Ethical Considerations Arising From the Practice of Outsourcing Legal Services Abroad*, 16 Sw. J. Int'l L. 451, 452-53 (2010); *LPO growth leads to increased merger activity*, THE GLOBAL LEGAL POST (May 2015, 11:41 BST) http://www.globallegalpost.com/management-speak/lpo-growth-leads-to-increased-merger-activity-90531119/; *Evolution of LPO Into a Billion Dollar Industry*, VALUE NOTES SOURCING PRACTICE (Jan. 14, 2015), http://www.sourcingnotes.com/content/view/936/1/; Ernesto Noronha, *LPO: A complicated career alternative for lawyers*, LIVE MINT (Oct. 11, 2015, 5:58 PM),http://www.livemint.com/Opinion/RfcsRjJHs66v3VdPyG; 4yZI/LPO-A-complicated-career-alternative-for-lawyers.html; *available at* http://www.lexisnexis.com/communities/corporatecounselnewsletter/b/newsletter/archive/2014/03/17/legal-process-outsourcing-a-billion-dollar-industry-complete-with-trade-shows-fierce-competition-amp-risks.aspx.

[3]*See, e.g.*, Cynthia Cotts, LianeKufchock, *U.S. firms outsource legal services to India*, N.Y. TIMES (Aug. 21, 2007) http://www.nytimes.com/2007/08/21/business/worldbusiness/21iht-; Suzanne Barlyn, *Call my lawyer . . . in India*, TIME, (Apr. 3, 2008) http://content.time.com/time/magazine/article/0,9171,1727726,00.html.

[4] Rob Davies, *SA growing as legal outsourcing host*, IOL (Oct. 12, 2014, 5:13 PM) http://www.iol.co.za/business/opinion/columnists/sa-growing-as-legal-outsourcing-host-1.1763835; Matthew Wocks, *Legal process outsourcing grows by leaps and bounds*, LEGAL POST (Apr. 17, 2013, 9:02 AM) http://business.financialpost.com/legal-post/legal-process-outsourcing-grows-by-leaps-and-bounds; Rafi Azim-Khan, D. Craig Wolff, Tim Wright, *Legal Process Outsourcing of intellectual property work*, LEXOLOGY (Jan. 4, 2013) http://www.lexology.com/library/detail.aspx?g=1cd14df0-1db4-41e2-a8e0-ee427bf30a9b.

[5] H. Ward Classen, *The Firm: Legal outsourcing: The future of law?*, DETROIT LEGAL NEWS (Nov. 2, 2010) http://www.legalnews.com/detroit/1003248.

called "offshoring"), particularly to India, but more recently, countries such as South Africa and the Philippines have become major players.[6]

Although the term "outsourcing" is often associated with sending work overseas, the term encompasses any situation in which an organization delegates a task to an external person or enterprise, usually to decrease costs or enhance quality. Such delegation by lawyers, to other lawyers and non-lawyer professionals or businesses, domestic or foreign service providers, has become a multi-billion-dollar global industry.[7]

The work outsourced includes services from administrative support, such as secretarial services and payment processing, to quasi-legal services such as transcription and document review, all the way up to high-level legal analysis.[8]A 2008 analysis of the ethics of legal outsourcing by the ABA Standing Committee on Ethics and Professional Responsibility ("ABA Committee") cited several examples of outsourced tasks:

> Outsourced tasks range from the use of a local photocopy shop for the reproduction of documents, to the retention of a document management company for the creation and maintenance of a database for complex litigation, to the use of a third-party vendor to provide and maintain a law firm's computer system, to the hiring of a legal research service to prepare a 50-state survey of the law on an issue of importance to a client, or even to the engagement of a group of foreign lawyers to draft patent applications or develop legal strategies and prepare motion papers in U.S. litigation.[9]

Legal outsourcing implicates a range of ethical duties, but the fundamental guiding principle is neither complicated nor surprising: A lawyer who outsources work, whether it is to a lawyer or non-lawyer, in the United States or abroad, retains the ethical responsibilities she would have were she doing the work herself. If anything, outsourcing

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[6] Joe O'Connell, *Fulbright Scholar to study legal work outsourcing*, NEWS@NORTHERASTERN (May 13, 2014) http://www.northeastern.edu/news/2014/05/legal-work-outsourcing/; Davies, *supra* note 3.

[7] *Evolution of LPO Into a Billion Dollar Industry*, *Supra* note 1; Laura Wood, *Research and Markets: Global Legal Process Outsourcing Market 2015-2019 with Clutch, Infosys, Integreon, QuisLex&UnitedLex Dominating*, BUSINESS WIRE (JAN. 5, 2015, 12:52 PM) http://www.businesswire.com/news/home/20150105006216/en/Research-Markets-Global-Legal-Process-Outsourcing-Market.

[8] K. William Gibson, *Outsourcing Legal Services Abroad*, LAW PRACTICE, Jul./Aug. 2008, at 47.

[9] ABA Comm'n on Prof'l Ethics & Grievances, Formal Op. 08-451 (2008).

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