

PRESENTED AT
13th Annual
ADVANCED PATENT LAW INSTITUTE

March 1-2, 2018
United States Patent and Trademark Office
Alexandria, Virginia

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

Speaker: Michael E. McCabe, Jr.
**Supplement to: *Brave New World: Technology Advances
Create Ethical Risks for Patent Practitioners***

Co-authors:

Michael E. McCabe, Jr.
mike@ipethicslaw.com
McCabe Law LLC
Potomac, Maryland

Professor Lisa A. Dolak
ladolak@syr.edu
Syracuse College of Law
Syracuse, New York

Tyler Maulsby, Esq.
TMaulsby@fkks.com
Frankfurt Kurnit Klein & Selt PC
New York, New York

Don't Check Your Ethics at the Door: The Ethical Implications of Legal Service Outsourcing¹

I. Introduction

The outsourcing of legal and law-related services, often termed “legal process outsourcing,”² has moved beyond the headlines³ 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

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, Liane Kufchock, *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

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).

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](http://utcle.org/elibrary)

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

Also available as part of the eCourse

[Brave New World: Technology Advances Create Ethical Risks For Patent Practitioners](#)

First appeared as part of the conference materials for the
13th Annual Advanced Patent Law Institute session

"Brave New World: Technology Advances Create Ethical Risks For Patent Practitioners "