

LEGAL ETHICS OPINION 1872

VIRTUAL LAW OFFICE AND USE OF
EXECUTIVE OFFICE SUITES

This opinion is an examination of the ethical issues involved in a lawyer or firm's use of a virtual law office, including cloud computing, and/or executive office suites. These issues include marketing, supervision of lawyers and nonlawyers in the firm, and competence and confidentiality when using technology to interact with or serve clients.

A virtual law practice involves a lawyer/firm interacting with clients partly or exclusively via secure Internet portals, emails, or other electronic messaging.¹ This practice may be combined with an executive office rental, where a lawyer rents access to a shared office suite or conference room. This space is generally either unstaffed or staffed by an employee of the rental company who provides basic support services to all users of the space, rather than by an employee of the lawyer. The space is also not exclusive to the lawyer – even if she has exclusive access to a particular office or conference room, the suite is open to all other “tenants.” Lawyers who maintain a virtual practice, who work from home, or who wish to expand their geographic profile without the higher costs of exclusive office space and staff all use these spaces as client meeting locations. In other words, virtual law offices and executive office suites do not always go together, but they frequently do.

APPLICABLE RULES AND OPINIONS

The applicable Rules of Professional Conduct are Rules 1.1², 1.6(a) and (d)³, 5.1(a) and (b)⁴, 5.3(a)

¹ Stephanie Kimbro, a practitioner and scholar of virtual law offices, defines a virtual law practice as one where “[t]he use of an online client portal allows for the initiation of the attorney/client relationship through to completion and payment for legal services. Attorneys operate an online backend law office as a completely web-based practice or in conjunction with a traditional law office.” <http://virtuallawpractice.org/about/>, accessed Jan. 22, 2013.

² **Rule 1.1 Competence**

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

³ **Rule 1.6 Confidentiality of Information**

(a) A lawyer shall not reveal information protected by the attorney-client privilege under applicable law or other information gained in the professional relationship that the client has requested be held inviolate or the disclosure of which would be embarrassing or would be likely to be detrimental to the client unless the client consents after consultation, except for disclosures that are impliedly authorized in order to carry out the representation, and except as stated in paragraphs (b) and (c).

(b) To the extent a lawyer reasonably believes necessary, the lawyer may reveal:

(6) information to an outside agency necessary for statistical, bookkeeping, accounting, data processing, printing, or other similar office management purposes, provided the lawyer exercises due care in the selection of the agency, advises the agency that the information must be kept confidential and reasonably believes that the information will be kept confidential.

(d) A lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information protected under this Rule.

⁴ **Rule 5.1 Responsibilities of Partners and Supervisory Lawyers**

- (a) A partner in a law firm, or a lawyer who individually or together with other lawyers possesses managerial authority, shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers in the firm conform to the Rules of Professional Conduct.
- (b) A lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct

and (b)⁵, and 7.1⁶. The relevant legal ethics opinions are LEOs 1600, 1791, 1818, and 1850.

~~Finally, Regulation 7 Governing Applications for Admission to the Virginia Bar Pursuant to Rule 1A:1 of the Supreme Court of Virginia applies to lawyers who are admitted or seeking admission by motion to the Bar of Virginia.⁷~~

ANALYSIS

Virtual law offices involve issues that are present in all types of law offices – confidentiality, communication with clients, and supervision of employees – but that manifest themselves in a new way in this context. *See also* LEO 1850 (exploring similar concerns in context of outsourcing legal support services).

A lawyer must always act competently to protect the confidentiality of clients' information, regardless of how that information is stored/transmitted, but this task may be more difficult when the information is being transmitted and/or stored electronically through third- party software and storage providers. The lawyer is not required, of course, to absolutely guarantee that a breach of confidentiality cannot occur when using an outside service provider. Rule 1.6 only requires the lawyer to act with reasonable care to protect information relating to the representation of a client. See Rule 1.6(d). When a lawyer is using cloud computing or any other technology that involves the use of a third party for the storage or transmission of data, the lawyer must follow Rule 1.6(b)(6) and exercise care in the selection of the vendor, have a reasonable expectation that the

⁵ Rule 5.3 Responsibilities Regarding Nonlawyer Assistants

With respect to a nonlawyer employed or retained by or associated with a lawyer:

- (a) a partner or a lawyer who individually or together with other lawyers possesses managerial authority in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer;
- (b) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and...

⁶ Rule 7.1 Communications Concerning a Lawyer's Services

(a) A lawyer shall not, on behalf of the lawyer or any other lawyer affiliated with the lawyer or the firm, use or participate in the use of any form of public communication if such communication contains a false, fraudulent, misleading, or deceptive statement or claim. A lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services. A communication is false or misleading if it contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading.

~~⁷ 7. Intent to Practice Full Time in Virginia. An applicant must intend, promptly after being admitted to practice in Virginia without examination, to establish his or her office in Virginia and to practice full time from such Virginia office. Full time is defined as being engaged in the active practice of law (as defined above) as one's primary occupation for at least thirty-five (35) hours weekly and having an office where clients can be seen on the premises. The Board shall not approve an application unless the applicant has verifiable plans to practice in Virginia (i.e., a job offer from a Virginia firm, a relocation to the Virginia office of the applicant's firm, an executed lease for office space in Virginia, etc.). Practice from one's residence shall not constitute satisfactory evidence of intent to practice law full time unless the applicant's residence is in a zoning classification which permits seeing clients on the premises and displaying an exterior sign identifying the law office. Virtual offices or shared occupancy arrangements shall not be acceptable. In addition, an applicant shall not divide his or her time between an office within Virginia and one in another jurisdiction. An applicant who is a member of or associated with a firm which has offices outside Virginia must be resident at such firm's Virginia office, shall not maintain an office at a location outside Virginia, and may work at one of his or her firm's other offices only on an occasional and not on a regular basis. The Court will monitor to determine whether an applicant maintains his or her Virginia office.~~

vendor will keep the data confidential and inaccessible by others, and instruct the vendor to preserve the confidentiality of the information. The lawyer will have to examine the third party provider's use of technology and terms of service in order to know whether it adequately safeguards client information, and if the lawyer is not able to make this assessment on her own, she will have to consult with someone qualified to make that determination.⁸⁷

Similarly, although the method of communication does not affect the lawyer's duty to communicate with the client, if the communication will be conducted primarily or entirely electronically, the lawyer may need to take extra precautions to ensure that communication is adequate and that it is received and understood by the client. The Committee previously concluded in LEO 1791 that a lawyer could permissibly represent clients with whom he had no in-person contact, because Rule 1.4 "in no way dictates whether the lawyer should provide that information in a meeting, in writing, in a phone call, or in any particular form of communication. In determining whether a particular attorney has met this obligation with respect to a particular client, what is critical is *what* information was transmitted, not *how*." On the other hand, one of the aspects of communication required by Rule 1.4 is that a lawyer must "explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation." Use of the word "explain" necessarily implies that the lawyer must take some steps beyond merely providing information to make sure that the client actually is in a position to make informed decisions. A lawyer may not simply upload information to an Internet portal and assume that her duty of communication is fulfilled without some confirmation from the client that he has received and understands the information provided.

Finally, the technology that enables a lawyer to practice "virtually" without any face-to-face contact with clients can also allow lawyers and their staff to work in separate locations rather than together in centralized offices. As with other issues discussed in this opinion, a partner or other managing lawyer in a firm always has the same responsibility to take reasonable steps to supervise subordinate lawyers and nonlawyer assistants, but the meaning of "reasonable" steps may vary depending upon the structure of the law firm and its practice. Additional measures may be necessary to supervise staff who are not physically present where the lawyer works.

The use of an executive office/suite rental or any other kind of shared, non-exclusive space, either in conjunction with a virtual law practice or as an addition to a "traditional" office-based practice, raises a separate issue. A non-exclusive office space or virtual law office that is advertised as a location of the firm must be an office where the lawyer provides legal services. ~~Depending on the facts and circumstances, it may be improper under Rule 7.1 for a lawyer to list or hold out a rented office space as her "law office" on letterhead or other public communications. Factors to be considered in making this determination include the frequency with which the lawyer uses the space, whether nonlawyers also use the space, and whether signage indicates that the space is used as a law office. In addition, a~~ lawyer may not list alternative or rented office spaces in public communications for the purpose of misleading prospective clients into believing that the lawyer has a more geographically diverse practice and/or more firm resources than is actually the case. See Rule 7.1. As discussed above in the context of Internet-based service providers, a lawyer must also

⁸⁷ See LEO 1818, where the Committee concluded that a lawyer could permissibly store files electronically and destroy all paper documents as long as the client was not prejudiced by this practice, but noted that the lawyer may need to consult outside technical assistance and support for assistance in using such a system.

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pay careful attention to protecting confidentiality if any client information is stored or received in a shared space staffed by nonlawyers who are not employees of the law firm and may not be aware of the nature or extent of the duty of confidentiality.

~~For lawyers who are licensed to practice in Virginia by motion rather than by bar exam, Regulation 7 of the Regulations Governing Applications for Admission to the Virginia Bar Pursuant to Rule 1A:1 of the Supreme Court of Virginia creates an additional difficulty in using an executive office rental or virtual office. This Regulation requires that a lawyer who is seeking admission, or who is already admitted, by motion maintain an office in Virginia where clients can be seen on the premises, and specifically provides that virtual office or shared occupancy arrangements are not acceptable for purposes of satisfying the office requirement.⁹ Accordingly, a lawyer who is admitted by motion should first ensure that any office space arrangement complies with Regulation 7 before there is any need to consider the ethics issues raised.~~

~~This opinion is advisory only and is not binding on any court or tribunal.~~

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⁹ *But see* Proposed Amendments to Rules 1A:1 and 1A:3, proposed October 22, 2012, available at http://courts.state.va.us/news/draft_revisions_rules/2012_rules_1_3_draft.pdf (proposing change to requirements for admission by waiver from “full time” practice requirement to “predominant” practice requirement).