

ABA ethics group approves outsourcing

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Three months after a Bethesda lawyer filed a federal lawsuit challenging legal outsourcing, the American Bar Association's ethics committee has issued an opinion approving the practice but offering several caveats.

An ABA spokeswoman said the decision of the Standing Committee on Ethics and Professional Responsibility was unrelated to Joseph A. Hennessey's May complaint. Hennessey seeks a declaration that sending legal work abroad means waiving attorney-client privilege and Fourth Amendment protection from unreasonable search and seizure because of U.S. government surveillance of communications between U.S. residents and foreign nationals.

The ethics opinion touches on some of the same issues Hennessey has raised, though it does not explicitly discuss the waiver issue.

Attorneys who outsource should investigate the lawyers doing the work and disclose to clients that they are outsourcing their work, the opinion says. Sometimes, the client's informed consent may be necessary, the committee says.

"There is nothing unethical about a lawyer outsourcing legal and nonlegal services, provided the outsourcing lawyer renders legal services to the client with the 'legal skill, knowledge, thoroughness and preparation reasonably necessary for the representation,' as required by Rule 1.1," the opinion says.

It's the supervising attorney's responsibility to make sure that's happening, and e-mails back and forth may not be enough, the committee says. The supervisor could conduct background and reference checks of those doing the work, interview them or even visit their office, "regardless of its location or the difficulty of travel," the opinion suggests.

The supervising attorney should also consider whether the government in the country to which work is outsourced might seize documents "notwithstanding claims of client confidentiality," the opinion says.

The opinion was issued earlier this month but publicized by the ABA on Monday. The committee has been considering the outsourcing issue for more than a year, ABA spokeswoman Nancy Slonim said.

Hennessey, of Newman, McIntosh & Hennessey L.L.P., said he would have liked the committee to address his concern about U.S. surveillance but otherwise praised the opinion.

"I think it's definitely a step in the right direction in terms of there being enhanced scrutiny of outsource relationships that involve foreign nationals residing overseas," he said.

It is encouraging, he said, “that attorneys in some instances include site visits as part of the due diligence ensuring that the outsourced entity has sufficient security.”

Hennessey’s lawsuit, filed against President Bush and the American and Indian branches of Acumen, a legal process outsourcer based in Hyderabad, India, is before the U.S. District Court for the District of Columbia. Acumen has filed a motion to dismiss the complaint.
