

ETHICAL IMPERATIVES IN AN LPO

PART II - PROTECTING CLIENT CONFIDENTIALITY



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Ethical Imperatives in an LPO

Part-II Protecting Client Confidentiality

Counselors' decision to entrust aspects of their work to a Legal Process Outsourcing firm entails a layer of consideration beyond just the matter of cost. In addition to the significant financial savings (and the high quality of work that is requisite), there is the less quantifiable, yet equally necessary, requirement for an LPO to ensure adherence to counselors' ethical obligations, like confidentiality.

When firm-based or in-house counselors partner with an LPO, they are outsourcing more than just legal functions; they are outsourcing trust. Counselors' reputations are built on both performance and ethical stringency, and working with an LPO represents counselors' inherent conveyance of those ethical responsibilities. It is essential that an LPO be prepared to embrace that responsibility.

An LPO's commitment to upholding confidentiality should encompass both Personnel Protocol and Security Infrastructure.

Personnel Protocol

*"A lawyer shall be subject to the Rules of Professional Conduct with respect to the provision of law-related services...that might reasonably be performed in conjunction with and in substance are related to the provision of legal services."*¹

Maintaining confidentiality on the LPO side of the equation starts with training and education. Internal written protocols and thorough training -- at both the outset of employment as well as periodic refreshers -- are fundamental. Admission to the Bar in most jurisdictions is contingent on passing the Multistate Professional Responsibility Examination, so it reasons to follow those offshore attorneys should be proficient in the same model rules.

Along with training and education, an LPO should exercise diligence by instituting internal constraints in the form of Confidentiality and Non-Disclosure Agreements with all employees. These agreements should be used in conjunction with thorough background checks, as well.

¹ ABA Model Rules for Professional Conduct 5.7

An additional mechanism that can be employed is an individual confidentiality agreement between the LPO and counsel. The ABA strongly advises these agreements, and the Association of the Bar of the City of New York (Ethics Opinion 2006-3) recommends *“contractual provisions addressing confidentiality and remedies in the event of breach, and periodic reminders regarding confidentiality.”*

Another consideration for an LPO, albeit a less tangible one, is cultivating a corporate culture that puts a premium on low attrition. While this is less quantifiably tenable or enforceable, a stable work force can mitigate confidentiality risks by minimizing the number of former employees in circulation.

Data Security

Along with Personnel Protocols, protecting client confidentiality is a direct function of Data Security Infrastructure. The first component of Data Security lies in the systems implemented in the actual physical location where any work is being done.

Physical security considerations should include:

- Employee security swipe cards that log every entry and exit
- Badge identification with photo IDs for all employees
- An escort program for visitors
- Fulltime security personnel
- The prohibition of cell phones and cameras in any area where client work is processed
- A secondary, offsite location where digital audit trail records are stored

Data Security includes all systems and networks for data access, collection, and storage. Data Security considerations should include:

- United States based servers for the storage of all data
- Network monitoring and tracking capable of producing audit trail records of all files accessed on the server and logs of all incoming and outgoing mail from the servers
- A secure internet network incorporating Proxy/Firewall NAT and Port filtering

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- External internet access restricted to certain sites/computers within office locations
- Restricted computer functionality for individual computers with limited user rights and disabled media drives and USB/printer ports
- Secure individual computers with PC firewall and antivirus protection
- A paperless office. No paper or writing instruments except as necessary for the project and only those provided by the LPO
- If not a paperless office, paper should be shredded and writing instruments collected at the end of each work session

Summary

Inherent in both firm-based and in-house attorneys' decisions to outsource legal work is a conveyance of trust to the LPO. The support an LPO provides to counsel entails more than just the work. Unlike other business outsourcing functions, mistakes in the form of breaches of confidentiality are not easily rectifiable. It is vital for an LPO to proactively acknowledge counsels' ethical obligations and institute comprehensive systems to protect client confidentiality.
