



The Ethics of Federal Law Practice, Remote Lawyering, and a Technology-Driven Vision of the Future of Law

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 - Practice focused on counseling clients in matters related to intellectual property, licensing and standard-essential patents

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Ethics of Virtual Law Practice

COPRAC Op. 2012-184

- An attorney may maintain a virtual law practice
 - Cloud based practice
 - Communications with client via internet using third party servers
 - Secure internet portal that is password protected and encrypted
 - Payment for legal services through online portal
 - All services are conducted through a secure internet portal provided by a third-party internet-based vendor
 - *Can all types of representation be done virtually?*

Ethical Considerations in Virtual Law Practice

- **DUTY OF CONFIDENTIALITY**
 - Evaluate the quality of the vendor
 - Contractual assurances of confidentiality
 - Terms of Service
 - Understand and confirm protection of confidential information
 - RPC 1.6
 - B&P Code 6068(e)
- **Avoid the Unauthorized Practice of Law**
 - *Practitioners licensed outside California must avoid violating California's UPL statutes and rules*
 - *B&P C 6125 – 6127*
 - *CPRC 5.4*
 - *California licensed lawyers must not practice in another jurisdiction unless authorized*
 - *CRPC 5.4*

Ethical Considerations in Virtual Law Practice

- **Duty of Competence**
 - Understand technology being used
 - Assure client understands the technology
- **Document Limited Scope Representation**
 - Are particular services NOT being offered?
- **Duty of Communication**
 - Assure client is receiving communications
- **Duty of Supervision**
 - Supervise subordinates and staff
 - Implement procedures



Interstate Federal Practice



Federal Practice

Regulation of federal practice of law by individuals who limit their practice to federal matters may be preempted by federal law.

- *Sperry v. Fla ex rel. Fla. Bar, 373 US 379 (1963)*

Federal courts retain the power to regulate who may appear before them.

- *Check District Court Rules on Pro Hac Vice admission.*

State of California has no jurisdiction over federal law practice.

- *Benninghoff v. Sup. Ct, 38 Cal. Rptr. 3d 759 (Ct. App. 2006).*

Federal Practice

- **Federal Administrative Practice**

- Federal administrative practice may be authorized by rule
- Supremacy Clause applies
- In federal administrative proceedings, federal law governs whether or not a lawyer licensed in another state may represent a party in an administrative matter

- **Federal Tax Practice**

- Tax Court – apply for admission
- IRS – written declaration
- **CAUTION**
 - *Tax clients may want additional information and legal advice regarding peripheral matters*

Federal Bankruptcy Practice

- Federal bankruptcy courts regulate admission to practice
 - Pro Hac Vice admission
 - Illinois attorney assisting with California bankruptcy matter did not engage in UPL
 - *Cowen v. Calabrese*, 230 Cal.App. 2d 870 (1964)
 - Attorney not licensed in AZ, but admitted as non resident, compensated as Chapter 13 counsel
 - *In re Mendez* (9th Cir. BAP 1999) 231 B.R. 86, 90-92, *aff'd* (9th Cir. 2000) 230 F3d 1367

What is the “practice of law” in bankruptcy?

- *Advising regarding “bankruptcy” may crossover with state transactional law practice*
- *Negotiation and settlement*
- *Pre-petition practice*

Some discipline cases find attorney’s failure to limit bankruptcy practice is UPL

Federal IP Law

Federal trademark and patent law is federally regulated

Out-of-state attorneys may practice federal trademark and patent law before the USPTO

- 35 USC § 32(b)(2)(D) (patent law)
- 37 CFR § 11.14; see also 37 CFR § 11.1

Could out-of-state counsel advise California clients on IP licensing issues?

Federal Immigration Law

Out-of-state lawyers can practice immigration law in California.

- 8 CFR §§ 292.1 et seq., 1003.101 et seq., 1292.1 et seq.

Limit scope of practice to “immigration law”?

- *Avoid giving advice on non-immigration matters*
- *Some out-of-state authorities question feasibility*
- *Immigration matter may touch upon state law concerning domestic relations or criminal law*

Lawyers expanding practice beyond federal immigration law are subject to professional discipline



Advertising Considerations



Advertising

- ❑ Lawyers not admitted to practice law in California shall not hold out to the public or otherwise represent that the lawyer is admitted to practice law in California.
 - CRPC 5.4

- ❑ Lawyers are prohibited from making false or misleading statements.
 - CRPC 7.2

- ❑ Advertising should reflect the jurisdictions in which the attorney is licensed.