

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

December 16, 2020

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- Partner & GC, Procopio, Cory, Hargreaves & Savitch, LLP, San Diego Office
  - Practice emphasizes legal ethics and professional responsibility,
    State Bar defense, legal malpractice, and expert witness engagements
  - Former chair of COPRAC, California State Bar Committee on Professional Responsibility and Conduct & Member of California Lawyers Association Ethics Committee



#### **Panelist Chris Celentino**

Partner, Dinsmore, San Diego Office

Practice focused on creditor's rights, fiduciary services
 litigation, business reorganization and workouts, and insolvency
 and bankruptcy law

 Certified business bankruptcy specialist – American Board of Certification



## **Panelist David Djavaherian**

President, PacTech Law, PC

Practice focusing on intellectual property including patents

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

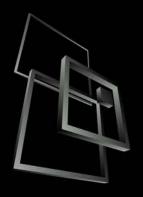


#### **Panelist Reza Ghaffari**

Founder and CEO of XIRA Connect, Inc.

- San Francisco
- Advisor to SOTER AI
- Former COO, Coriant





# **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



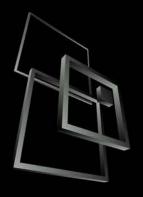
#### **Ethical Considerations in Virtual Law Practice**

- Duty of <u>Competence</u>
  - Understand technology being used
  - Assure client understands the technology
- Document <u>Limited Scope</u> Representation
  - Are particular services NOT being offered?

- Duty of <u>Communication</u>
  - Assure client is receiving communications

- Duty of <u>Supervision</u>
  - 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.

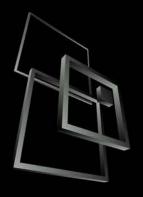
- 8 CFR §§ 292.1 et seq., 1003.101 et seq., 1292.1 et seq.

#### 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.

