



Remote Legal Work in the Digital Age

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Panelist Carole J. Buckner

- 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 Jan Jacobowitz

- **Founder – Legal Ethics Advisor**
 - *Legal ethics consulting*
 - *Testimony & litigation*
 - *Published author and speaker*
 - *Legal educator*
 - *Member of Florida State Bar and California State Bar*

Panelist Reza Ghaffari

- Founder and CEO of XIRA Connect, Inc.
 - *San Francisco*
 - *Advisor to SOTER AI*
 - *Former COO, Coriant*
- *XIRA Connect, Inc.*
 - *Online platform for lawyers with secure meeting and collaboration tools for online booking, invoicing & payment*

Panelist Ron Minkoff

- **Partner, Frankfurt Kurnit Klein + Selz**
 - *Chair, Professional Responsibility Group*
 - *Representing attorneys and law firms*
 - *Discipline, fee disputes, legal malpractice*
 - *Ethics opinions*



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

ABA Formal Op. 498 (2021)

Virtual Practice

- **Virtual practice = technologically enabled law practice beyond the traditional brick-and-mortar law firm, at home or on-the-go.**
 - **Ethical duties of Competence, Diligence, Communication & Supervision continue to apply**
 - **Security, access and virtual meetings**
 - **Disabling listening devices**
 - **Advertising – by appointment only, for mail delivery only**

Florida Bar Ethics Op. 00-4 (2000)

- Approves practice over the Internet “on matters not requiring in-person communication or court appearances”
- Attorney may communicate with client using “unencrypted email” under most circumstances
- Matters must be declined if they cannot be handled virtually due to complexity
- Duties of competence, communication and confidentiality and rules regarding conflicts of interest apply

NEW YORK BAR OP. 2014-02 (2014) – USE OF VIRTUAL LAW OFFICE

- Focus on identifying virtual law office in advertising and on business cards, letterheads and websites for lawyers who do not intend to maintain a traditional law office other than home
 - Use of a VLO street address on letterhead, business cards and website is not misleading
 - Provide for personal delivery by identifying an agent or arranging from the VLO to accept service
 - Duties of supervision, communication and confidentiality continue to apply



Remote Practice

ABA Formal Op. 495 (2020) – Remote Law Practice

- **Each jurisdiction determines what constitutes the unauthorized practice of law in that particular jurisdiction**
 - **Some states agree that just because a lawyer is engaged in practice outside the state in which the lawyer is licensed does not mean the lawyer is engaged in UPL**
 - **Other states follow the butt-in-the-seat approach**
 - **Other states have temporarily authorized remote practice**

California Unauthorized Practice & Multijurisdictional Practice

- Bus. & Prof. Code 6125, 6126 prohibit unauthorized practice of law
- Lawyers shall not practice law in a jurisdiction in violation of the rules of that jurisdiction - California Rule of Professional Conduct, Rule 5.5
- A lawyer not admitted in California shall not establish an office or other systematic/continuous presence in California except as permitted by law (e.g., pro hac, federal practice)
- Lawyer must not “hold out” to the public as authorized in a jurisdiction where physically located but not admitted.
- State Bar Rules govern multijurisdictional practice of non-licensee attorneys

New York Considering Safe Harbor Provision

- **§ 523.5 Working from home**
 - A lawyer who is not admitted to practice in this State but is authorized to practice law in one or more other jurisdictions identified in Section 523.2(a)(1), may practice law from the lawyer's residence in this State to the same extent that such lawyer is permitted to practice law in the jurisdiction(s) where the lawyer is duly admitted or authorized, provided such lawyer (1) avoids using a New York State address in any business document or otherwise holding out as authorized to practice law in this State, and (2) does not regularly conduct in-person meetings with clients or third parties in New York except as would be otherwise permitted under § 523.2 above.

FAO #2019-4, OUT-OF-STATE ATTORNEY WORKING REMOTELY FROM FLORIDA HOME

- *Attorney licensed to practice in New Jersey, New York and before the USPTO. Not licensed in Florida, but now moved to Florida and wants to work from his Florida home.*
- *Will have no “public” presence or profile as a Florida attorney; no advertising, and letterhead, website and business cards will have no physical address other than the firm’s New Jersey address.*
- *Practice will be limited to IP issues and will not advise on Florida law, or have involvement with Florida courts or Florida property.*
- *Virtually he will be in New Jersey while sitting in Florida.*



Advertising Considerations

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- ❑ Lawyers not admitted to practice law shall not hold out to the public or otherwise represent that the lawyer is admitted to practice law in a particular state.
- ❑ Lawyers are prohibited from making false or misleading statements.
- ❑ Advertising should reflect the jurisdictions in which the attorney is licensed.
- ❑ Consider letterhead, business cards, website
- ❑ Addresses for mailing and delivery
- ❑ By appointment only