

Tip of the Month

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Thinking About Transitioning to a Virtual Law Office? Consider These Tips.

After almost a year of working remotely, many solo practitioners and small law firms are discovering that a “brick and mortar” law office is not critical to their practices. A Virtual Law Office (VLO) is more convenient and significantly reduces overhead. There is less need to meet with clients in person. Most types of practices are compatible with a remote model. However, transitioning to a VLO can be risky. Here are a few tips and reference guides to keep in mind.

Duties of Communication, Competence, Confidentiality, and Supervision Apply to VLOs to the Same Extent as a Traditional Law Office.

Generally, rules of professional conduct do not bar telecommuting or VLOs. The model is permitted so long as the attorney or firm’s technology and procedures sufficiently safeguard confidential information; the attorney is able to practice and communicate competently under the rules; and managing attorneys are able to effectively supervise subordinate attorneys.

See, Cal. State Bar Form.Opn. 2012-184: <https://www.calbar.ca.gov/Attorneys/Conduct-Discipline/Ethics/Ethics-Technology-Resources/Ethics-Opinions-Related-to-Technology>.

See also, PA Bar Assoc. Formal Op. 2010-200: https://www.mytlawconnection.com/s/706/images/editor_documents/2014_tlaa_annual_meeting_cle_materials/2014tlaa_-_annualmeetingclematerials2.pdf?sessionId=8a027c6e-d1d2-4f07-a19e-519bf1a4f8b8&cc=1

Nevertheless, a remote practice may require additional disclosures and heightened vigilance. For example, the attorney practicing in a VLO should confirm at the outset of the representation the client’s understanding that the representation will not involve in-person meetings at a formal office. Supervising attorneys should adopt specific policies and procedures tailored to a remote

practice, which may include weekly or bi-monthly virtual meetings with associates and staff to review particular cases, manage caseloads, and resolve ethical and risk management issues. Firm management should also consider the well-being of its lawyers. Although a remote practice promotes flexibility and a work/life balance, it also contributes to a “silo effect” there is less informal interaction and comradery among the firm’s lawyers, which is an intangible benefit in an office environment. Regular wellness check-ins; organized virtual activities; and mentor/mentee arrangements are more critical in a VLO structure.

There are no additional precautions necessary for an attorney practicing in a VLO in order to comply with the duty of confidentiality. However, because VLOs rely almost entirely on computer and cloud-based systems to house confidential information and communicate with clients, attorneys practicing in a VLO must implement reasonable security measures to protect against cyber breaches and inadvertent disclosure of confidential information.

Duties Regarding Technology

With respect to cyber security, rather than provide specific rules for different types of technology (which will inevitably become obsolete) the ABA Model Rules, as well as state bar ethics opinions, provide a general framework for the attorney when considering various forms of technology. The test is one of reasonableness, and includes a balancing of factors. The bottom line is that attorneys are not required to become technological experts in order to comply with the duties of confidentiality and competence. An attorney must however have a basic understanding of the protections afforded by the technology being used. If the attorney lacks the competence to assess the security of certain technology, he or she must seek out additional information or consult with an expert.

See, Cal. State Bar Formal Opinions:

2010-179: <https://www.calbar.ca.gov/Portals/0/documents/ethics/Opinions/2010-179-Interim-No-08-0002-PAW.pdf>;

2015-193: [https://www.calbar.ca.gov/Portals/0/documents/ethics/Opinions/CAL%202015-193%20%5B11-0004%5D%20\(06-30-15\)%20-%20FINAL1.pdf](https://www.calbar.ca.gov/Portals/0/documents/ethics/Opinions/CAL%202015-193%20%5B11-0004%5D%20(06-30-15)%20-%20FINAL1.pdf)

The California Bar also issued a recent opinion on cyber security and responding to a breach: <http://www.calbar.ca.gov/Portals/0/documents/ethics/Opinions/Formal-Opinion-No-2020-203-Data-Breaches.pdf>

See also, https://www.americanbar.org/content/dam/aba/publications/professional_lawyer/24-3/preventiand-response-two-pronged-approach-cyber-security-and-incident-response-planning.pdf

Do I Need a Physical Office Address?

Many state bar rules require all attorney advertising to include an “address” of the attorney. For example, the California Rules of Professional Conduct, Rule 7.2(c) requires that advertisements contain the name and “address” of the lawyer responsible for advertising content. Presumably, this can mean an email address. However, other states require a physical address. New York requires that “all advertisements shall include the name, principal law office address and telephone number of the lawyer or law firm whose services are being offered.” Traditionally, this has been interpreted to mean a physical address.

Nevertheless, most state bars recognize the growing prevalence of VLOs and have evolved their interpretation of VLOs and have evolved their interpretation of advertising rules accordingly. New York Ethics Opinion 2019-2 is illustrative. There the

AHERN Tip of the Month *(continued)*

Committee determined that the address of “a facility that offers business services and meeting and work spaces to lawyers on an ‘as needed’ basis” as the firm’s principal law office address would not be per se misleading.

https://s3.amazonaws.com/documents.nycbar.org/files/2019509-Virtual_Law_Offices.pdf

In short, attorneys should consult their state bar advertising rules regarding “address” requirements to determine required disclosures about their “office” location.

Are VLOs Exempt from Unauthorized Practice of Law (UPL) Rules?

To put it bluntly: No. However, as with the loosening of rules requiring a physical address, state bar associations, and more recently, the ABA, have recognized that many lawyers can practice law “in” their home state from virtually anywhere.

***No portion of this article is intended to constitute legal advice. Be sure to perform independent research and analysis. Any views expressed are those of the author only.*