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## The ethics of virtual law offices, take two

Can a law firm ethically maintain a virtual law office? The Pennsylvania Bar Association Committee on Legal Ethics and Professional Responsibility answered that very question in its recent opinion entitled "Ethical Obligations on Maintaining a Virtual Office for the Practice of Law in Pennsylvania" (FEO 2010-200).

The short answer: Yes, Pennsylvania attorneys can maintain a virtual law office while still meeting their ethical obligations as attorneys.

Of course, this decision was not without qualifications, and we'll address those shortly. But first, let's consider how the committee defined the concept of a "virtual law office."

In the opinion, a virtual law office was described as "a law office that exists without a traditional physical counterpart, in which attorneys primarily or exclusively access client and other information online, and where most client communications are conducted electronically, e.g., by email, etc."

Thankfully, this definition squared with my understanding of a virtual law office far more so than the antiquated definition offered by the New Jersey ethics committee in a controversial opinion (Opinion ACPE 718/CAA 41) regarding virtual law offices that I discussed in an article last spring.

In fact, the overall gist of the Pennsylvania opinion was far less reactive and far more logical and forward-thinking than the New Jersey opinion on virtual law offices.

The Pennsylvania committee first noted that the opinion did not apply to client portals or cloud computing and then addressed what law firms operating virtual law offices may do. Most importantly, the committee concluded that lawyers may maintain a virtual law office in Pennsylvania and may operate the office from homes located within or outside of Pennsylvania.

The committee explained that physical addresses need not be listed on letterhead or in advertisements, thus allowing attorneys operating from a home office the ability to keep their home address private. Attorneys may use a post office box as their listed address, but must disclose that legal services will not be performed at that address.

While the lawyer is not required to meet with the client at any specific address listed in an advertisement, the lawyer must nevertheless conform with the Pennsylvania Rules of Professional Conduct by disclosing all relevant information as required by the rules.

The committee then qualified its determination, and, acknowledging the unique nature of the services provided by a virtual law office, set forth a number of specific requirements with which lawyers operating a virtual office must comply.

First, the committee noted that a virtual law firm may not advertise that their fees are lower than that of a traditional law office, explaining that "(l)egal fees vary from office to office, and from attorney to attorney, and it is not possible for an attorney to claim with any certainty, or with any reasonable basis, that his fees are lower than other attorneys' fees."

However, an explanation regarding the concept that the reduced overhead of a virtual law office may lead to reduced fees compared to a traditional law office is permitted.

The committee also explained that attorneys operating virtual law offices must take particular care to confirm the identities of their clients and must take reasonable steps to determine whether their clients have diminished capacity.

Finally, the committee addressed the duty to maintain client confidentiality, stating that lawyers operating virtual law offices should take steps to ensure that data shared online remains confidential, but noted that "no additional precautions (are) necessary for an attorney practicing in a VLO to comply with his or her duty of confidentiality beyond those required of all attorneys...."

The Pennsylvania committee's forward-thinking analysis in this opinion provides helpful guidance for other bar associations grappling with the difficult issues presented by emerging legal technologies. These technologies have the potential to re-shape the delivery of legal services for the betterment of clients and attorneys and thus should not be feared, but rather accepted and incorporated into law practices in a thoughtful, responsible manner.

This important and very useful opinion helps attorneys do just that, and represents a step forward for lawyers wishing to practice law using 21st century technologies.

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