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New Jersey to lawyer: Practice elsewhere

At the end of March, the New Jersey Advisory Committee on Professional Ethics and the Committee on Attorney Advertising issued a joint ethics opinion addressing, among other issues, whether a “virtual law office” met the state’s “bona fide office” requirement.

In Opinion ACPE 718/CAA 41, after a lot of twisted and convoluted reasoning, the committees concluded, in so many words, that the new fangled concept of a “virtual office” is a bunch of unacceptable gobbledy gook.

Although the vast majority of states wisely abandoned the “bona fide office” rule after accepting the fact that we now practice law in the 21st century, New Jersey continues to dig its heels firmly in the 19th century, presumably requiring its attorneys to ride horses and buggies into work, while also requiring them to comply with Rule 1:21-1(a): “For the purpose of this section, a bona fide office is a place where clients are met, files are kept, the telephone is answered, mail is received and the attorney or a responsible person acting on the attorney’s behalf can be reached in person and by telephone during normal business hours to answer questions posed by the courts, clients or adversaries and to ensure that competent advice from the attorney can be obtained within a reasonable period of time.”

The “virtual office” at issue in the New Jersey opinion was one in which lawyers shared a physical office in a “time-share” agreement. The office space was leased on an hourly or daily basis and each attorney was available by appointment only.

The building also had a receptionist who directed clients to the appropriate location for a meeting and under some lease agreements, the receptionist also forwarded mail and phone calls to respective attorneys.

In the Joint Opinion, the committees concluded that arrangement did not meet the bona fide office rule since the attorney generally is only present when she or he has reserved a space for a meeting, and the receptionist cannot act on the attorney’s behalf since he or she is not privy to the cases being handled by the attorney.

However, as detailed in the opinion, a home office meets the bona fide office requirement in New Jersey since the attorney

could, in theory, meet clients at the home office. Never mind that the attorney could, in theory, meet clients at the virtual office described above. Somehow, that’s different, although the opinion doesn’t really explain why.

Likewise, it is acknowledged in the opinion that many solo practitioners do not have support staff and frequently are out of the office due to court obligations, etc. In that case, if the absence is “occasional,” the rule is not violated as long as the attorney can be reached via e-mail or phone.

If the absence is “regular”, a responsible person must be present in the office. In other words, a solo attorney in New Jersey walks a precariously fine line between “regular absences,” “occasional absences” and an ethics violation — not to mention that this type of virtual office set-up isn’t one many would consider to be a true “virtual office.”

Some would define a virtual office as one without walls, with no physical address. Where lawyers store client files in the cloud and communicate with clients via e-mail, Web conferencing and other methods using secure online platforms. Where client meetings occur at the client’s place of business or another locale that is equally suitable and convenient for the client. Where modern technologies are leveraged to allow lawyers to practice law efficiently, economically and ethically.

However, let’s keep that definition of a “virtual office” to ourselves for now. I have a feeling it wouldn’t sit well with the New Jersey ethics committees.

Besides, I’m sure they’re quite busy searching for a quill and parchment upon which to write their next ethics opinion and I’d hate to intrude upon their efforts with a healthy dose of reality.

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