

WHEN THE LONE WOLF NEEDS A PACK: Delegation, Workflow, and Working in Teams



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TEAM ETHICS

The Issues

Confidentiality

Using the Cloud

Supervising Non-Lawyers

Capturing the “Client File”

Client Communication

TEAM ETHICS

The “Client File”

TIP: Capture team communications.

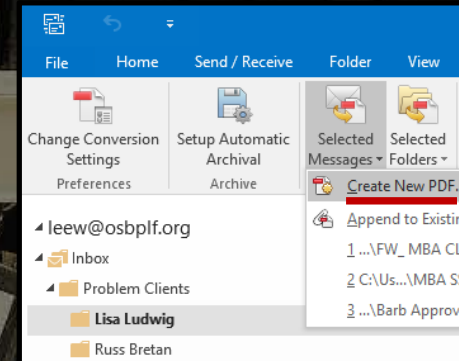
FORMAL OPINION NO 2017-192

Client Property:

**Duplication Charges for Client Files,
Production or Withholding of Client Files**

- You are obligated to produce the “client file” upon request (ORPC 1.15-1(d), ORPC 1.16(d))
- “Client file” means “the sum total of all documents, records, or information that the lawyer maintained...for use in representing a client.”
- “Client file” includes “litigation materials,” “discovery materials,” “all correspondence,” “e-mail,” “and even text messages.”

*Organize emails by client,
save in PDF batch.*



*Print to PDF or screen shots
for hard-to-save content.*



*If you must
text your
team, try:*

SMS Backup+

iExplorer

Decipher
TextMessage



TEAM ETHICS

Using the Cloud

TIP: Be picky.

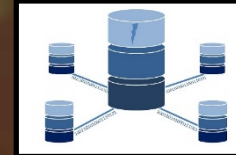
FORMAL OPINION NO 2011-188

[REVISED 2015]

Information Relating to the Representation of a Client: Third-Party Electronic Storage of Client Materials

- ORCP 1.1 (Competence) and 1.6 (Confidentiality) are implicated.
- Lawyers “must take reasonable steps to ensure that the storage company will reliably secure client data and keep information confidential.”

Q: Encryption in transit/at rest?



Q: History of data breach?

Q: Vulnerabilities?



Q: User agreement?



Q: HIPAA compliance?



Q: “Zero-knowledge” encryption for shared files?



TEAM ETHICS

Supervising Non-Lawyers

TIP: Don't let team members go rogue.

RULE 5.3 RESPONSIBILITIES REGARDING NONLAWYER ASSISTANCE

With respect to a nonlawyer employed or retained, supervised or directed by a lawyer:

(a) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and

(b) except as provided by Rule 8.4(b), a lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:

(1) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or

(2) the lawyer is a partner or has comparable managerial authority in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

In re Taylor, 23 DB Rptr 151 (2009)

- Lawyer's investigator uses blank subpoena to obtain victim's school records in violation of statute.
 - Lawyer uses information from school records in motion to obtain DHS records.
- Lawyer violated ORPC 5.3(a): failure to make reasonable efforts to ensure investigator's conduct compatible w/lawyer's professional obligations.
 - Lawyer violated ORPC 5.3(b)(2): ratified investigator's misconduct by accepting, reviewing, and using school records.

TEAM ETHICS

Supervising Non-Lawyers

TIP: Don't let non-lawyers play lawyer.

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In re Nishioka, 23 DB Rptr 44 (2009)

- Lawyer's assistant files probate documents, advises client (PR), bills at attorney's rate, botches probate.
 - Lawyer gives assistant access to pleadings and letterhead, barely supervises, fails to check assistant's work.
-
- Lawyer violated ORPC 5.3(a): failure to make reasonable efforts to ensure assistant's conduct compatible w/lawyer's professional obligations.
 - Lawyer violated ORPC 5.5(a): failing to ensure assistant wasn't engaged in unauthorized practice of law.

RULE 5.5 UNAUTHORIZED PRACTICE OF LAW; MULTIJURISDICTIONAL PRACTICE

(a) A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.

TEAM ETHICS

Client Communication

TIP: Keep client informed re: who's on the team/what they're doing.

RULE 1.4 COMMUNICATION

(a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

In re Koch, 345 Or. 444 (2008)

- Lawyer used another attorney to prepare QDRO, failed to inform client until 6 months later.
- Lawyer violated ORPC 1.4(a): failing to keep client reasonably informed about the status of a matter.

TEAM ETHICS

Confidentiality

TIP: Use a confidentiality agreement.

ABA Formal Op No 08-451 – Lawyer’s Obligations When Outsourcing Legal and Nonlegal Support Services

“[T]he outsourcing lawyer should be mindful of the obligation to ‘act competently to safeguard information relating to the representation of a client against inadvertent or unauthorized disclosure...”

“This requires the lawyer to recognize and minimize the risk that any outside service provider may inadvertently – or perhaps even advertently – reveal confidential information...”

“Written confidentiality agreements are, therefore, strongly advisable in outsourcing relationships.”

TEAM ETHICS

Confidentiality

TIP: Informed consent can't hurt!

ABA Formal Op No 08-451 – Lawyer's Obligations When Outsourcing Legal and Nonlegal Support Services

"[W]here the relationship between the firm and the individuals performing the services is attenuated, as in a typical outsourcing relationship, no information protected by Rule 1.6 may be revealed without the client's consent."

HUMAN MANAGEMENT

Selection

TIP: Keep cultural competence and diversity of experience in mind.

- Put emphasis on diversity in age, ethnicity, gender, SES, etc.
- Young people are digital natives, silverbacks are not.

HUMAN MANAGEMENT Division

TIP: Divide the team into groups.

- Create teams for specific purposes (e.g., Fact Team, Mitigation Team)
- Designate a captain for each team.

HUMAN MANAGEMENT

Leadership

TIP: The team needs a hierarchy, the attorney needs to lead.

- It's your bar card if a team member runs afoul of your professional obligations.
- Confidentiality needs to be taught and modeled – consider a written agreement for team members.

HUMAN MANAGEMENT

Meeting

TIP: Meet with an agenda.

- Trust is normally built over time, but may need to be built quickly through meetings.
- Set aside social time.
- Keep it tight – team members' time is valuable.

HUMAN MANAGEMENT

Supervision

TIP: Identify team members' strengths and weaknesses.

- This will help you assign tasks and decide who you want to hire again in the future.

HUMAN MANAGEMENT Transitions

TIP: Document all team member transitions, from hiring to firing.

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May 24, 2019

XXXXXXXXXXXX
Licensed Investigator, #XXX
PO Box XXXXX
Portland, Oregon 97240

Via e-mail only [XXXXXXXXXXXX](#)

RE: Investigation, CLIENT NAME

Dear XXXXXXXX:

This letter is to confirm that I have been retained to represent CLIENT, in pre-indictment Yamhill County criminal matters. My law partner Robin Runstein has been retained by him to handle civil matters in Yamhill County. By this letter you have agreed to provide your services as an investigator on these matters. We are hiring you as our representative and any and all work that you do in these matters falls under the attorney-client privilege. All materials, observations and opinions that you derive from your work are to be considered confidential unless authorized for release by either a court of competent jurisdiction or by Ludwig Runstein LLC. The statute in which this authority is set forth is ORS 40.225 (Lawyer-Client Privilege), and, also, in OEC 530.

You have agreed to work with my firm at the rate of \$75.00 an hour for work product and expenses that are instructed by the attorneys.

Please let Linnea or me know if you need additional information, or if you have any other questions or concerns.

We look forward to working with you.

Sincerely,

/s/ Lisa J. Ludwig
Lisa J. Ludwig
Attorney at Law

Expert or Service Provider name and address

Re: Case name, case number

Dear Expert or Service Provider,

The engagement of your services for this case is subject to the following:

1. You will be compensated at a rate of \$__ per hour. The maximum payment amount for which I am applying to the court for preauthorization as of this date for your services is \$____. Expenses are not counted toward this total. Additional funding will require the court's approval of a separate preauthorization request.
2. You will submit your vouchers (CJA Form 21) to me, and it is my responsibility as counsel to certify to the court that the services were rendered. Payment for your services will be subject to approval by the presiding judge and, in certain circumstances, the 9th Circuit Administrative Judge for our District. Approved payments are made by the Department of the Treasury.
3. The presiding judge (and the circuit chief judge, if applicable) has discretion to reduce a voucher. Specific reasons include: (a) a mathematical error; (b) non-compliance with the Guidelines for Administering the CJA and Related Statutes (CJA Guidelines), Guide to Judiciary Policy, Volume 7, Part A, or court policies; and (c) a determination that the services claimed are unreasonable either in terms of the work performed or the amount of time and expenses submitted. Accordingly, this Engagement Letter is not a guarantee of payment for all services rendered or expenses incurred.
4. Do not perform services or incur expenses that would result in an invoice in excess of the maximum payment amount authorized by the court (as set forth in paragraph (1)). Doing so creates a risk that the court will not authorize the payment for the work done or expenses incurred in excess of the maximum authorized amount, even if the services performed or expenses incurred are necessary. You must advise me before you exceed the court's maximum authorized payment amount, and if I determine such additional work and/or expenses are necessary for the representation, I will seek approval from the court for a new maximum authorization level, before such work is performed or expenses incurred.
5. Travel expenses will be reimbursed on the basis of actual expenses incurred. Please consult with me regarding the maximum reimbursement amounts for travel expenses.

- Firing a team is less comfortable for you, better for the team.

- Document all transitions: use an engagement letter for new team members and an exit memo for fired team members.

HUMAN MANAGEMENT Platform

TIP: Every team member should use the same platform.

- This can be difficult for the non-tech-savvy and those who resist something new.



INFORMATION MANAGEMENT Workflow

Different cases, same process.

Active Case
(Cloud Platform)

Closed Case
(Archive Platform)

(1) OCR

(2) Unitize

(3) Transport

(4) Investigate

(5) Store



INFORMATION MANAGEMENT

Folders

TIP: Organize your folder system based on your needs.

- One folder for a pristine, chronological copy of discovery received
- One folder for each witness, with annotations and cross-references

INFORMATION MANAGEMENT

Big Platforms

TIP: Big platforms, small cases.

- Learn complex platforms on simpler cases (e.g., Assault before Aggravated Murder)



INFORMATION MANAGEMENT

Communication

TIP: Include client's name in the subject line of every email.

- Instruct team members to do the same.

INFORMATION MANAGEMENT

Clutter

TIP: Try the “Inbox Zero” approach.

- Delete or archive when you can.
- Forward what others can answer better.
- Respond immediately if it won't take long.
- Create a “Requires Response” folder for the rest, chip away when you can.

INFORMATION MANAGEMENT

Sharing & Discovering

TIP: Keep track of what you've shared and with whom.

- Use a watermark to signal that something has been discovered to the state.
- Protective orders and statutes may prohibit certain information sharing.
- Save redacted copies of discovery because clients may request them later.

INFORMATION MANAGEMENT Trial

TIP: Convert data to a useable format well in advance of trial.

- Courthouse wireless is unreliable, so everything in the cloud needs a local backup.

INFORMATION MANAGEMENT

Storage

TIP: Don't rely on the cloud for long-term storage.

- Using NAS or a physical drive is preferable to relying on a 3rd party who charges monthly, may be bought, may go under.

INFORMATION MANAGEMENT

Storage

DO:

- Select an archive-friendly format.
- Save batches of emails in PDF.

DON'T:

- Hoard post-it notes – if it's important, scan it, upload it, save it.
- Rely on the cloud for closed cases.

Team technology



OCR & Unitize



Search & Investigate



everlaw



Trial & Archive



TRIALPAD



WORKING TOGETHER



Collaboration



slack



everlaw



Sharing

Dropbox



ShareFile®