

Ethics Committee Cracks Down on Unauthorized Practice of Law by E-Discovery Vendors

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Authors: [David R. Cohen](#), [Caitlin R. Gifford](#)

As many e-discovery vendors and staffing companies have expanded the scope of services they offer, the District of Columbia Bar Ethics Committee (“BEC”) has considered whether they are engaging in the unauthorized practice of law. On June 30, 2012, the BEC issued Opinion 362, which formally adopted the opinions of the District of Columbia Committee on the Unauthorized Practice of Law, as set forth in Opinion 21-12 issued January 12, 2012. In Opinion 362, the BEC noted that final staffing selections and the supervision of document review attorneys’ work must be performed by an attorney. Likewise, the BEC gave the example of “a lawyer who simply gives a group of documents and a discovery request to a discovery service vendor and asks the vendor to select and organize responsive documents, produce a privilege log, and prepare the response to the request,” as potentially putting an e-discovery vendor in the position of practicing law. Accordingly, the BEC made clear that, in order to comply with the District of Columbia’s Rules of Professional Conduct, e-discovery vendors and staffing agencies cannot practice law and be partially or entirely owned by non-attorneys.

In Opinion 362, the BEC recognized the growing number of services that e-discovery vendors purport to offer, including services ranging from the staffing of document review attorneys, to e-discovery consulting and database management, to production, with some vendors describing their services as “comprehensive project planning, on-site review team supervision, privilege log preparation, e-vendor selection and more.”

As a result, attorneys who co-own or manage such e-discovery vendors or review bureaus with non-attorneys may be engaged in or assisting the unauthorized practice of law, and could face ethical sanctions. Likewise, attorneys who hire such e-discovery vendors or staffing bureaus may violate the Rules of Professional Conduct by assisting or aiding others in the unauthorized practice of law. Document review attorneys do not have a duty to investigate whether non-lawyers have an ownership interest in the company they are working for, but, if they learn that the company is owned or co-owned by non-lawyers, they too may be guilty of ethical violations.



As a practical matter, e-discovery vendors and review bureaus not owned solely by attorneys should avoid providing legal services, and outside attorneys should avoid hiring such vendors or service providers to perform legal services absent the work being directed and supervised by licensed outside attorneys. Otherwise, both inside and outside counsel could be guilty of ethical violations and therefore subject to sanctions.

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