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Ethics and the Virtual Law Office

By Michael Downey

In the December 2012 issue of *Forbes*, the article “You Don't Have To Quit Lawyering To Have A Life” extols the virtues of a “virtual law practice.” Meanwhile, legal news sources report that a Virginia disciplinary panel has determined lawyer Atchuthan Sriskandarah should be reprimanded for promoting and operating his virtual law practice in violation of Virginia’s Rules of Professional Conduct. See *Virginia State Bar v. Sriskandarah*, Case No. CL 2012-4137 (VSB Docket 10-022-081527) (Cir. Ct. Fairfax County, June 28, 2012).

Seeking to harmonize such messages, this column offers practical guidance on how lawyers can operate a virtual practice in compliance with the ethics rules.

Background. As explained in the *Forbes* article, a virtual law office (or VLO) is “a law firm, run by a lawyer or group of lawyers, that meets the legal needs of its clients securely over the internet and through other technological tools.”

Those who invoke a more pure definition of a VLO usually require that the VLO employ a secure internet portal to actually provide legal work to clients. For example, e-lawyer Stephanie Kimbro defines a VLO as providing “attorneys and clients [with] the ability to securely discuss matters online, download and upload documents for review and handle other business transactions in a secure digital

environment.” Stephanie Kimbro, *Practicing Law Online: Creating a Web-Based Virtual Law Office* (2009), at 4.

Ethics Rules and VLOs. Missouri has not yet issued definitive ethics guidance on VLOs. But ethics opinions from several other jurisdictions – including California, Florida, Illinois, and Pennsylvania – do provide ethics and risk management guidance specific to VLOs.

These opinions generally provide that the Rules of Professional Conduct do not impose greater or different duties on lawyers operating VLOs; rather, the same rules apply and impose the same ethical obligations. See, e.g., Cal. Formal Opinion 2012-184; see also Florida Ethics Opinion 00-4 (2000). Thus, a Missouri lawyer who complies with the Missouri Rules of Professional Conduct should be okay practicing from a terrestrial office or in the cloud.

That said, VLOs do require heightened attention to at least eight facets of a law practice. Those facets are:

1. **Admission in Appropriate Jurisdictions.** A lawyer operating a VLO must take care to ensure that the lawyer is authorized to provide legal services in the appropriate jurisdictions. If the lawyer is not authorized, the lawyer may face discipline – under Missouri Rule 4-5.5 or a comparable rule in another jurisdiction,

plus possible criminal charges or civil claims for engaging in the unauthorized practice of law (UPL).

When operating a VLO, a lawyer should be concerned about two jurisdictions: where the lawyer is physically located, and where the legal work is being provided. Of course, this may be the same jurisdiction, if for example a lawyer uses a computer in Missouri to provide legal services virtually to a Missouri resident.

Under existing regulations, the lawyer generally should be admitted to practice in the state where the lawyer is located when providing legal services. Rule 4-5.5(b) – and comparable rules in other states – requires a lawyer who “establishes an office” in a state to be admitted in that state. Missouri Informal Opinion 20030078 likewise advises that a lawyer officed in Missouri should be admitted in Missouri, even if that lawyer intends only to provide legal services in another state where the lawyer is admitted.

Some virtual lawyers chaff at this requirement, usually arguing that they have no “office” and thus have not “established an office” in any state. The safer course, however, is to be admitted in the jurisdiction where the lawyer is normally located when providing the legal services through the VLO. A lawyer who is physically located in a jurisdiction for a brief period, however, may still comply with Rule 4-5.5 without gaining admission in that jurisdiction, because Rule 4-5.5(c) identifies numerous instances when temporary practice is ethical.

The second jurisdiction where the lawyer likely needs to be admitted is the location where the legal services are being provided. This second jurisdiction is usually the location of any court involved in the matter, or the location of the client if

no court is involved. Again, temporary practice in a jurisdiction may be authorized under Rule 4-5.5(c). But a lawyer who regularly provides legal services to a client in a particular jurisdiction generally should be authorized to practice in that jurisdiction. After all, Rule 4-5.5(b) requires a lawyer to be authorized in any jurisdiction where the lawyer has a “systematic and continuous” presence, and such a presence may be established “even if the lawyer is not physically present” in the jurisdiction. Mo. S. Ct. 4-5.5 cmt [4].

2. ***Candor about practice.*** A lawyer operating a VLO should also be candid about his or her status as a virtual lawyer. Missouri Rule 4-7.1 – plus other rules including Rule 4-8.4(c) – prohibit a lawyer from making false or misleading statements about the lawyer or his or her practice. This carries over to the VLO context, where the lawyer must be candid regarding, for example, whether the firm actually has a physical office or staff, including associates.

Failure to advertise candidly – regarding office locations, relationships with staff attorneys, and the staff attorneys’ practices – appears to be the driving reason that the Virginia hearing panel recommended Atchuthan Sriskandarah be reprimanded. In fact, the order dated June 28, 2012, cites Sriskandarah for violating Virginia Rule of Professional Conduct 7.4, which like Missouri Rule 4-7.4, regulates a lawyer’s communications about fields of practice, specialties, and certifications. The order said Sriskandarah represented that his “associates” – who were likely really independent contractors – focused their practice on particular specialties, when in fact they did not have focused practices.

3. ***Verification of client authority.*** Another concern that arises in a VLO is

ensuring that the lawyer actually has authorization to act from an appropriate person. California Opinion 2012-184 discusses the need for a lawyer to verify that the person directing the lawyer is the actual client or someone acting with authority from the client. “Whether Attorney must take additional steps to confirm the prospective client’s identity,” California Opinion 2012-184 states, “will depend on the circumstances of the representation and initial communications, and the information Attorney obtains from the prospective client.” *Id.* Missouri lawyers operating VLOs should likewise take reasonable steps to make sure that they are receiving valid directions from an appropriate, authorized client.

4. ***Provision of competent services.*** Under Missouri Rule 4-1.1, a lawyer must provide legal services competently. In some circumstances, this may require the lawyer operating through a VLO to decline work that would require in-person or physical resources that a virtual lawyer lacks, or where the lawyer would otherwise be unable to provide competent representation.

Alternatively, the lawyer may be able to associate with co-counsel who can be physically present, or limit the scope of the engagement (under Rule 1.2) to provide only those services appropriate for a VLO.

5. ***Adequate client communications.*** Missouri Rule 4-1.4 requires a lawyer to keep a client reasonably informed about a matter. As California Opinion 2012-184 discusses, this includes making sure at the outset that the client adequately understands the legal matters at issue. The virtual nature of the lawyer-client relationship in a VLO may complicate such communications, although video

conferencing and other resources are easing such concerns.

In addition, Rule 4-1.4 requires the lawyer to keep the client reasonably informed about the status of the matter. Posting information virtually may satisfy this obligation, but California Opinion 2012-184 cautions the lawyer to make sure the client is actually receiving the information.

6. ***Protection of confidences.*** The virtual lawyer should also ensure that the system for delivering client services virtually employs reasonable safeguards to protect client-related information. Ordinarily this requires an initial investigation of the systems employed, as well as periodic reassessments. *See, e.g.,* Cal. Formal Opinion 2012-184. These concerns are discussed in significant detail in my July 2012 column, “Legal Ethics, Online Data Storage, and Proposed Rule 1.6.”

7. ***Adequate supervision of subordinates.*** Missouri Rules 4-5.1 and 4-5.3 respectively require lawyers to exercise reasonable supervision over subordinate lawyers and non-lawyer assistants. As California Opinion 2012-184 warns, such supervision can be quite challenging “if Attorney and her various subordinate attorneys and employees operate out of several different physical locations.” A virtual lawyer should take steps to ensure that he or she is prepared to satisfy ethical obligations requiring supervision despite such challenges.

8. ***Backup of data and systems.*** Finally, as discussed in my April 2009 column “Is Your Firm Ready for Disaster,” lawyers need to ensure they have adequate systems in place to provide data and system backup should computer or other problems arise. Such concerns may be particularly acute with a VLO because the

lawyer's computer system may be the only one containing records and information the client needs.

Conclusion. Advancing technology, changing lifestyles, and the current economic climate will inevitably lead to an increase in virtual law offices. As long as a lawyer takes care to comply with applicable ethics rules, including the eight

facets discussed in this article, he or she should be able to have – as the *Forbes* article discusses – a rewarding virtual practice.

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