

**THE STATE BAR OF CALIFORNIA
STANDING COMMITTEE ON
PROFESSIONAL RESPONSIBILITY AND CONDUCT
FORMAL OPINION INTERIM NO. 20-0004**

ISSUES: What are a California lawyer’s ethical duties when working remotely?

DIGEST: Remote practice does not alter a lawyer’s ethical duties under the California Rules of Professional Conduct and the State Bar Act. Managerial lawyers must implement reasonable measures, policies, and practices to ensure continued compliance with these rules in a remote working environment, with a particular focus on the duties of confidentiality, technology competence, communication, and supervision.

**AUTHORITIES
INTERPRETED:** Rules 1.1, 1.3, 1.4, 1.6, 5.1–5.3, and 5.5 of the Rules of Professional Conduct of the State Bar of California.¹

Business and Professions Code section 6068, subdivision (e).

Business and Professions Code sections 6125 et seq.

STATEMENT OF FACTS

A law firm (“Law Firm”) decides that it would like to provide its lawyers and staff with the flexibility to work remotely and plans to move to a smaller, shared office space. Law Firm plans to implement a hybrid work environment to provide its lawyers and staff with the flexibility to work remotely and in the physical office when necessary. It plans to rent shared workspace for its new physical office. Law Firm wants to know what ethical obligations arise for Law Firm and its lawyers as a result of this anticipated transition to its working environment.

INTRODUCTION

In response to advances in technology, the California wildfires, the COVID-19 pandemic, and other circumstances, more and more lawyers are working remotely. The same rules of professional conduct that apply to attorneys practicing in traditional law firm offices apply to attorneys practicing remotely.² The application of the rules, however, raises unique issues for lawyers working remotely.³ This opinion will focus on the primary rules that may be implicated by a lawyer’s remote legal practice. While this opinion presents hypothetical facts to provide one common example, the ethical obligations discussed

¹ Unless otherwise indicated, all references to “rules” in this opinion will be to the Rules of Professional Conduct of the State Bar of California.

² See also, Cal. State Bar Formal Opn. No. 2012-184 (discussing lawyers’ ethical obligations when practicing in a virtual law office).

³ Many of these same issues are likewise implicated by lawyers who practice in virtual law offices. See, *id.*

herein would apply to lawyers who work remotely regardless of the underlying reasons or whether a traditional, physical office space remains available.

DISCUSSION

1. **Duty of Confidentiality, Rule 1.6; Business and Professions Code Section 6068, Subdivision (e)**

Because more lawyers and staff will be working remotely, Law Firm⁴ needs to ensure that the technology it uses to facilitate remote practice is consistent with applicable ethical obligations, including the duty of confidentiality. Many of this committee's ethics opinions emphasize that lawyers must take reasonable measures to safeguard confidential client information when using technology to transmit and store confidential client information.⁵ Law Firm may use third-party cloud providers to store or backup confidential client files or other technology solution vendors to facilitate remote practice. In doing so, Law Firm's managerial and supervisory lawyers must engage in reasonable efforts to ensure that these vendors' conduct is compatible with the lawyers' ethical obligations.⁶ Reasonable measures include investigating the provider's reputation, history, security, and backup measures; limiting access to confidential information; carefully reviewing the terms of service to ensure that they contain adequate provisions concerning data security and the handling of breaches of confidentiality; and periodically reviewing and monitoring providers' policies, practices, and procedures to ensure that they remain compatible with the lawyers' ethical obligations.⁷ If a lawyer is unable to evaluate the security of the technology used, the lawyer must seek additional information, or consult with someone who possesses the requisite knowledge to ensure compliance with the lawyer's duties of competence and confidentiality.⁸

When working from home, lawyers must implement reasonable measures to safeguard confidential client information, particularly if other household members share or have access to a home computer,

⁴ Rule 1.0.1(c) defines a "law firm" as "a law partnership; a professional law corporation; a lawyer acting as a sole proprietorship; an association authorized to practice law; or lawyers employed in a legal services organization or in the legal department, division or office of a corporation, of a government organization, or of another organization." "Law Firm" is used in this opinion as shorthand in reference to the responsibilities of Law Firm's managerial lawyers. The rules regulate the conduct of lawyers, rather than law firms, through professional discipline. See, rule 1.0(a).

⁵ See, e.g., Cal. State Bar Formal Opn. Nos. 2010-179 (addressing attorney's ethical duties of confidentiality and competence when using technology to transmit or store confidential client information); 2012-184 (addressing attorney's ethical obligation when practicing in a virtual law firms); 2015-193 (addressing attorney's ethical duties concerning e-discovery and referencing Comment [8] to ABA Model Rule 1.1); 2020-203 (addressing attorney's ethical obligations regarding data breaches); see also ABA Formal Ethics Opn. Nos. 477R (2017) and 483 (2018).

⁶ Rule 5.3(a)–(b).

⁷ For additional factors to consider in vetting and overseeing cloud providers, see Cal. State Bar Formal Opn. No. 2012-184 at pp. 3-4; Illinois State Bar Ass'n Professional Conduct Advisory Opn. 16-06; New York State Bar Ass'n Committee on Professional Ethics Opn. 842; and Pennsylvania Bar Ass'n Committee on Legal Ethics and Professional Responsibility Opn. 2011-200 at pp. 8-11. While beyond the scope of this ethics opinion, it would also be prudent for lawyers to consider applicable privacy laws, particularly if data are hosted outside of the United States. See ABA Model Rule 1.6, Cmt. [18]; Pennsylvania Bar Ass'n Committee on Legal Ethics and Professional Responsibility Opn. 2011-200 at p. 9.

⁸ *Id.*

laptop, or printer.⁹ Reasonable security measures might include creating separate accounts for household members, implementing two-factor authentication, strong passwords, and automatic logging off when the computer becomes inactive, and disabling the listening capability of smart speakers, virtual assistants, or other listening-enabled devices unless needed to assist with legal services.¹⁰ To the extent physical files are used, lawyers must ensure that they are stored and disposed of securely. This opinion does not intend to set forth specific mandatory measures as technology and associated risks are continually evolving and the reasonableness of security measures will depend upon multiple factors, including the client's instructions or needs, the sensitivity of the information, the remote working environment (e.g., kitchen/dining room office or backyard), and the presence of third parties, such as household members, neighbors, and repair workers. The failure to implement reasonable security measures may jeopardize the duty of confidentiality or the attorney-client privilege.¹¹

Because Law Firm will be moving to a smaller, shared office space, Law Firm will also need to implement reasonable measures to ensure that confidential client files (hard copy and electronic) are securely stored and not accessible by third parties sharing the office space. This committee and several bar associations have issued ethics opinions addressing lawyers' ethical obligations relating to shared office space, including protecting confidential client information, avoiding client confusion regarding the nature of the relationship among lawyers who share office space, and avoiding conflicts of interest.¹²

2. Duty of Competence, Rule 1.1

California recently amended rule 1.1 to incorporate a version of Comment [8] to ABA Model Rule 1.1, which is commonly referred to as a lawyer's "duty of technology competence."¹³ Our prior ethics opinions also explain a lawyer's duty of technology competence.¹⁴ The duty of technology competence applies to multiple aspects of a lawyer's practice, such as those involving electronic discovery, social media, law practice management, virtual law offices, and remote practice. The ABA Standing Committee on Ethics and Professional Responsibility declined to endorse strict rules relating to a lawyer's duty of technology competence but adopted a "reasonable efforts standard" and "fact-specific approach" based on the ABA Cybersecurity Handbook.¹⁵ This committee agrees that this reasonableness standard applies to a lawyer's duty of technology competence.¹⁶

Law Firm must ensure that its technology solutions are sufficient to permit lawyers to reasonably access client files while working remotely. Requiring files to be saved to a centralized, secure case management

⁹ This duty applies to other remote situations. See, Cal. State Bar Formal Opn. No. 2010-179.

¹⁰ ABA Formal Ethics Opn. No. 498 (2021) at p. 6.

¹¹ See, e.g., Cal. State Bar Formal Opn. No. 2010-179 at p. 6; ABA Formal Ethics Opn. 498 at p. 5; ABA Formal Ethics Opn. 477R at p. 8.

¹² See, e.g., Cal. State Bar Formal Opn. No. 1997-150; Colorado Bar Ass'n Ethics Opn. No. 89 (revised and reissued on March 12, 2018); NYSBA Ethics Opn. No. 939 (2012); see also California Rule of Professional Conduct 7.1 and 7.5.

¹³ Rule 1.1 (effective March 22, 2021), Cmt. [1] ("The duties set forth in this rule include the duty to keep abreast of the changes in the law and its practice, including the benefits and risks associated with relevant technology.").

¹⁴ See Cal. State Bar Formal Opn. Nos. 2010-179; 2012-184; and 2015-193.

¹⁵ ABA Formal Ethics Opn. No. 477R (2017) at p. 4.

¹⁶ See, Cal. State Bar Formal Opn. Nos. 2020-203 at p. 5; 2010-179 at pp. 2-6.

system may help ensure reasonable access, for instance, if local files are lost or corrupted. Law Firm must also regularly back up files to ensure reasonable access in the event of data loss.¹⁷

Lawyers must also stay abreast of relevant court rules and procedures relating to COVID-19 and other disasters, including the closure or limited hours of courts, and be adequately prepared to render competent legal representation at remote court hearings and conferences.

In addition, a lawyer's duty of competence includes the "mental, emotional, and physical ability reasonably necessary for the performance" of legal services.¹⁸ The health, personal (e.g., school closures, childcare, or other family responsibilities), or financial impacts of pandemics and other disasters may interfere with a lawyer's physical, mental, or emotional ability to competently perform legal services. Similarly, the remote working environment itself may also affect a lawyer's mental or emotional health.¹⁹ The duty to render competent legal services is not generally excused under these circumstances.²⁰ Lawyers must take reasonable measures to ensure that they are able to provide competent legal services to their clients even in the event of a disaster. One way of doing so is to plan in advance to ensure that competent representation may still be rendered to clients in the event that a disaster adversely affects a lawyer's ability to render competent and diligent legal services.²¹

3. Duty of Communication, Rule 1.4

While working remotely, lawyers may increasingly communicate with prospective or current clients via a secure website portal, email, or other form of online communications, instead of in-person meetings. In communicating with prospective clients, Law Firm should take reasonable steps to avoid forming unintended attorney-client relationships, such as including disclaimers on its website or other online communications that posted information is not legal advice and that communication through the website does not create an attorney-client relationship. In addition, before entering into an engagement agreement, lawyers should obtain sufficient information from the client to screen for conflicts of interest and ensure that the party they are communicating with is the actual client or someone with authority to act on the client's behalf.²²

Lawyers also need to ensure that any alternative means of communications with clients are adequate to fulfill their duty of communication. Among other requirements, a lawyer must "reasonably consult with

¹⁷ ABA Formal Ethics Opn. No. 498 (2021) at p. 5.

¹⁸ Rule 1.1(b)(ii).

¹⁹ See, e.g., ABA Commission of Lawyers Assistance Program, January 2021 Update: https://www.americanbar.org/groups/lawyer_assistance/well-being-in-the-legal-profession/; California Lawyers Assistance Program: <https://www.calbar.ca.gov/Attorneys/Attorney-Regulation/Lawyer-Assistance-Program>; and Patrick Smith, *As Remote Work Brings Isolation, How Can Firms Keep Lawyers in the Fold?*: <https://www.law.com/americanlawyer/2020/03/31/as-remote-work-brings-isolation-how-can-firms-keep-lawyers-in-the-fold/>.

²⁰ *Smith v. State Bar* (1985) 38 Cal.3d 525, 540 [213 Cal.Rptr. 236] (decided under former rules).

²¹ Rules 1.1 and 1.3; ABA Formal Ethics Opn. No. 482 ("Lawyers also must take reasonable steps in the event of a disaster to ensure access to funds the lawyer is holding in trust.").

²² See, Cal. State Bar Formal Opn. No. 2012-184 at p. 5 (explaining that while lawyers in a traditional office environment have this same duty, the lack of in-person communication in connection with a virtual law office may make it more difficult for lawyers to make this determination, thus potentially requiring extra measures).

the client about the means by which to accomplish the client’s objectives in the representation,” and “keep the client reasonably informed about significant developments relating to the representation, including promptly complying with reasonable requests for information and copies of significant documents”²³ A lawyer must also “explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.”²⁴ When using electronic forms of communication, the lawyer must ensure that the client is receiving and understanding the information exchanged.²⁵ In certain circumstances, teleconferences or videoconferences may be needed. Even if litigation matters are delayed because of an emergency or another disaster, lawyers must continue to maintain communications with clients regarding the status of the case and any significant updates.²⁶

Exchanging alternative contact information with clients will help ensure lawyer’s continued ability to communicate with clients during an emergency.²⁷ Confirming schedules and availability with clients, which may be altered during an emergency, may help ensure that clients have sufficient time to review draft responses to discovery, pleadings, and other important documents relating to the representation.

If an emergency or illness adversely affects the lawyer’s ability to represent clients, the lawyer must communicate with clients about the effect on the lawyer’s representation to permit a client to make an informed decision regarding the representation.²⁸

4. Duty of Supervision, Rules 5.1–5.3

California’s rules relating to the duty of supervision reflect three separate sets of duties. First, rule 5.1 requires managerial and supervisory lawyers to make reasonable efforts to ensure compliance by other lawyers with the Rules of Professional Conduct and the State Bar Act. Second, a subordinate lawyer has an independent duty to comply with the rules and cannot simply follow the instruction of the lawyer’s supervisor.²⁹ Third, lawyers responsible for managing non-lawyer staff are responsible for implementing reasonable steps to ensure that the conduct of non-lawyer staff, including independent contractors, is consistent with the lawyer’s duties under the Rules of Professional Conduct.³⁰ In addition, lawyers with managerial authority in a law firm “shall make reasonable efforts to ensure that the firm has in effect

²³ Rule 1.4(a)(2)–(3).

²⁴ Rule 1.4(b).

²⁵ See, Cal. State Bar Formal Opn. No. 2012-184 at p. 5.

²⁶ See also rule 1.3(b) (“reasonable diligence” requires that “a lawyer acts with commitment and dedication to the interests of the client and does not neglect or disregard, or unduly delay a legal matter entrusted to the lawyer.”).

²⁷ See, ABA Formal Ethics Opn. No. 482 at pp. 2–3 (“To be able to reach clients following a disaster, lawyers should maintain, or be able to create on short notice, electronic or paper lists of current clients and their contact information. This information should be stored in a manner that is easily accessible.”).

²⁸ Rule 1.4(b); see also Oregon State Bar Coronavirus Response: Legal Ethics FAQ (2020) (providing detailed guidance on communications with clients relating to potential impacts of COVID-19 on representation, including manner of meetings, delay, assistance from another attorney, the continued ability to provide competent, diligent representation, and the potential need to withdraw).

²⁹ Rule 5.2.

³⁰ Rule 5.3(b), Comment.

measures giving reasonable assurance that the nonlawyer's conduct is compatible with the professional obligations of the lawyer."³¹

Under the facts presented, Law Firm must ensure that it provides appropriate tools and equipment, technology support, training, and monitoring to its lawyers and staff. Managerial lawyers could consult with appropriate information technology staff or consultants in implementing technology measures to assist with Law Firm's remote practice.

In addition, managerial lawyers at Law Firm must implement reasonable remote policies and practices, such as confidentiality and cybersecurity policies and training, to ensure the security of remote access and that the conduct of its lawyers and non-lawyers complies with the Rules of Professional Conduct. As an example, it is a good practice to carefully review the terms of any client guidelines for outside counsel, which may require specific confidentiality practices and cybersecurity insurance. To the extent Law Firm permits lawyers to use their own devices while working remotely, it is advisable for Law Firm to implement "Bring Your Own Device" (BYOD) policies that require lawyers and staff to maintain the confidentiality of firm and client data on personal devices.³² Managerial lawyers are responsible for enforcing Law Firm's remote policies and procedures and regularly updating them to keep pace with advances in technology. In addition, all lawyers, including associates, who are working remotely must implement reasonable measures to comply with their professional duties while working remotely regardless of whether Law Firm has implemented any formal policies and procedures.³³

Managerial lawyers and lawyers overseeing nonlawyers or other lawyers must maintain regular communications to oversee their work. Because Law Firm is maintaining a physical office, in-person trainings or meetings may assist in confirming that everyone is receiving and understanding the directions and guidance being provided. For law firms that decide to transition to "virtual only" environments, it is a good practice to use videoconferencing for important trainings or meetings.

Finally, as described above in connection with the duty of confidentiality, lawyers must adequately vet outside vendors and contractors and oversee their work to ensure it is consistent with the lawyer's ethical obligations. Written nondisclosure or confidentiality agreements may be appropriate for certain vendors as well as procedures to maintain reasonable access and control of client data.³⁴

5. Unauthorized Practice of Law, Rule 5.5 and Business and Professions Code Sections 6125–6133

The committee recognizes that lawyers working remotely may temporarily or permanently relocate to another state where the lawyer is not licensed to practice law. This committee does not opine on issues of unauthorized practice of law, including whether a particular conduct or activity constitutes the

³¹ Rule 5.3(a).

³² For additional suggested BYOD practices, see ABA Formal Ethics Opn. No. 498 (2021) at p. 7. The Association of Corporate Counsel has also published resources for BYOD policies. See, e.g., Daniel B. Garrie, Senior Managing Partner, Law & Forensics LLC, *Top Ten Tips for Managing the "Bring Your Own Device to the Workplace" Environment*, available at: <https://www.acc.com/resource-library/top-ten-tips-managing-bring-your-own-device-workplace-environment>.

³³ See, rule 5.1(a) ("A lawyer shall comply with these rules and the State Bar Act notwithstanding that the lawyer acts at the direction of another lawyer or other person.").

³⁴ See, e.g., ABA Formal Ethics Opn. No. 498 (2021) at p. 7; Cal. State Bar Formal Opn. No. 2010-179 at pp. 4–5; New York State Bar Ass'n Ethics Opn. No. 842; Oregon State Bar Ethics Opn. No. 2011-188 (revised 2015).

unauthorized practice of law. California licensed lawyers practicing California law remotely in another state where they are not licensed should consult the multijurisdictional practice and unauthorized practice of law rules and authorities of the state where they are physically present.³⁵ The ABA and some other state bar and local ethics committees have issued opinions regarding unauthorized practice of law considerations for attorneys remotely practicing the law of the jurisdictions in which they are licensed while physically present in a jurisdiction in which they are not admitted.³⁶

³⁵ See, rule 5.5(a)(1).

³⁶ See, e.g., ABA Formal Ethics Opn. No. 495 at pp. 3–4 (“[I]n the absence of a local jurisdiction’s finding that the activity constitutes the unauthorized practice of law, a lawyer may practice the law authorized by the lawyer’s licensing jurisdiction for clients of that jurisdiction, while physically located in a jurisdiction where the lawyer is not licensed if the lawyer does not hold out the lawyer’s presence or availability to perform legal services in the local jurisdiction or actually provide legal services for matters subject to the local jurisdiction, unless otherwise authorized.”); D.C. Court of Appeals Opn. No. 24-20 (2020) at p. 3 (concluding that the “incidental and temporary practice” exception under D.C. Court of Appeals Rule 49(c)(13) permitted an attorney who is not licensed in D.C. to practice law from their residence located in D.C., as long as the attorney “(1) is practicing from home due to the COVID-19 pandemic; (2) maintains a law office in a jurisdiction where the attorney is admitted to practice; (3) avoids using a D.C. address in any business document or otherwise holding out as authorized to practice law in D.C., and (4) does not regularly conduct in-person meetings with clients or third parties in D.C.”); Delaware State Bar Ass’n Committee on Professional Ethics Opn. 2021-1 (concluding that “lawyers licensed in Delaware . . . may ethically engage in the practice of Delaware law, for clients with Delaware matters, while physically present in another jurisdiction in which they are not admitted” unless prohibited by the law of the other jurisdiction; lawyers may not hold themselves out as being licensed to practice in the other jurisdiction and may not advertise or otherwise hold themselves out as having an office in the other jurisdiction); Florida Bar Standing Committee on the Unlicensed Practice of Law Proposed Advisory Opn. No. FAO #2019-4, Out-of-State Attorney Working Remotely From Florida Home (2020) (approved by the Supreme Court of Florida on May 20, 2021) (finding that a New Jersey lawyer physically working from his home in Florida exclusively on federal intellectual property matters for his New Jersey law firm is not committing UPL in Florida as long as he does not hold himself or his firm out to the public as having a Florida presence, does not give advice about Florida law, and provides no legal services to Florida residents); New Jersey Committee on the Unauthorized Practice of Law Opn. 59 and Advisory Committee on Professional Ethics Opn. 742 (October 6, 2021) (non-New Jersey-licensed lawyers may practice out-of-state law from New Jersey, provided they do not maintain a “continuous and systematic presence” in New Jersey or hold themselves out as being available for the practice of law in New Jersey); Utah Ethics Advisory Committee Opn. No. 19-03 (2019) at p. 1 (“The Utah Rules of Professional Conduct do not prohibit an out-of-state attorney from representing clients from the state where the attorney is licensed even if the out-of-state attorney does so from his private location in Utah. However, in order to avoid engaging in the unauthorized practice of law, the out-of-state attorney who lives in Utah must not establish a public office in Utah or solicit Utah business.”); Bar Ass’n of San Francisco Ethics Opn. 2021-1 (“A lawyer who is not licensed in California, and who does not advertise or otherwise hold himself or herself out as a licensed California lawyer, does not establish an office or other systematic or continuous presence for the practice of law in California, and does not represent a California person or entity, but is merely physically present in California while using modern technology to remotely practice law in compliance with the rules of the jurisdiction where the lawyer is licensed, should not be held in violation of California’s Unauthorized Practice of Law (“UPL”) rule and laws, specifically California Rules of Professional Conduct (“CRPC”) Rule 5.5, or the State Bar Act, Business & Professions (“B&P”) Code §§6125-6126.”).

Lawyers not licensed in California who are working remotely in California should consult rule 5.5(b), California Rules of Court 9.40–9.48, Business and Professions Code sections 6125 et seq. and relevant authorities regarding multijurisdictional practice and the unauthorized practice of law.³⁷

CONCLUSION

Lawyers may ethically practice remotely under the California Rules of Professional Conduct and the State Bar Act, provided they continue to comply with these rules, including the duties of confidentiality, competence, communication, and supervision. Lawyers must implement reasonable measures to ensure compliance that are tailored to the relevant circumstances and remote working environment.

This opinion is issued by the Standing Committee on Professional Responsibility and Conduct of the State Bar of California. It is advisory only. It is not binding upon the courts, the State Bar of California, its Board of Trustees, any persons, or tribunals charged with regulatory responsibilities, or any licensee of the State Bar.

[Publisher's Note: Internet resources cited in this opinion were last accessed by staff on February 25, 2022. Copy of these resources are on file with the State Bar's Office of Professional Competence.]

³⁷ See, *Birbrower, Montalbano, Condon & Frank, P.C. v. Sup. Ct.* (1998) 17 Cal.4th 119, 128–129 [70 Cal.Rptr.2d 304] (stating that “one may practice law in [California] in violation of section 6125 although not physically present here by advising a California client on California law in connection with a California legal dispute by telephone, fax, computer, or other modern technological means”); *In re Estate of Condon* (1998) 65 Cal.App.4th 1138, 1145–1146 [76 Cal.Rptr.2d 922] (“In the real world of 1998 we do not live or do business in isolation within strict geopolitical boundaries. Social interaction and the conduct of business transcends state and national boundaries; it is truly global. A tension is thus created between the right of a party to have counsel of his or her choice and the right of each geopolitical entity to control the activities of those who practice law within its borders.”).

Public Comment - Proposed Opinion 20-0004 [60-day]

Commenting on behalf of an organization	Yes
Professional Affiliation	Sole Practitioner Family Law
Name	Patricia J. Long (Brown)
City	CLOVIS
State	California
Email address	kinlawfresno@comcast.net
From the choices below, we ask that you indicate your position. (This is a required field.)	Oppose
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below.	<p>I have not only been a sole practitioner in Family Law for thirty years, I have had a home-based law practice from my bedroom office during that period. I have no staff, no other attorneys I am affiliated with. I do everything myself from the initial client conference to trial. After clerking for a federal judge, I opened my home-based law practice--the first and for many years, the only one-- in order to stay home with my infant who is now 26. I have never met with clients at home because my condo regulations prohibit it and for my security. Instead, i have made house calls to my clients before the pandemic. Now, a reported 45 million Americans work from home. I took a MCLE course on Ethics and attorney's responsibility in 2020, so I am aware of my responsibilities, but I am opposed to this proposed opinion for the following reasons. In fact, based upon the demands it puts on me and my practice, I am considering retiring instead.</p> <p>1) The technology demands to ensure confidentiality are beyond my skill and knowledge. I bought a new printer with a tech</p>

warranty, which expired. i bought Adobe fill and sign also with a tech warranty, and took several courses on how to use it, but it is less than satisfactory, and still doesn't work, even for simple court fillings through my attorney's remote service. I expanded my icloud storage and remembered from my MCLE course that I should get a cloud account for a domestic--not foreign--server, but Apple never confirmed where its server is. I still don't know how to get documents off my cloud storage, sign my documents, or create pdfs to file with the court.

2) This is to point to a major problem. i am both...

... the working lawyer and the managerial attorney--there is only me. My administrative duties have ballooned to almost 75% of my practice. As we know, we cannot charge the client for educating ourselves while our learning curve is high. I am just now getting clients after the number of clients dropped off because of the pandemic and my husband was hospitalized for Covid. Today, I spent 50 minutes holding for the Family Court Services that is also understaffed because of Covid, and cannot bill my client. This proposed opinion undermines my earning ability Retirement is looking better even though my thirty-year experience is invaluable to my clients at the top of my game..

3) I do have a secure environment, but not surprisingly, my 26-year-old is the only person I can call upon for tech issues.

4) My client does like that I am available 24/7 via text and email, noting however, they are not secure and are discoverable. With a potential Russian hack possible are you suggesting that I

have to also learn how to encrypt all communications too? While I want to comply with all the rules of Professional Responsibility, it are the demands of this Opinion, that increases the mental, pedalogical, and financial stresses on this attorney. For these reasons, I oppose this.

Public Comment - Proposed Opinion 20-0004 [60-day]

Commenting on behalf of an organization No

Name Robin Brune

City Pasadena, California

State California

Email address robin@erinjoycelaw.com

From the choices below, we ask that you indicate your position. (This is a required field.) Support if Modified

ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below.

Hello I think the subject of this opinion-remote work-would be best served if the Committee also addressed the question of upl while working remotely. I recommend review of Supreme Court of Florida, The Florida Bar Re: Advisory Opinion-Out of State Attorney Working Remotely from Florida Home, at 318 So. 3d. 538 (2021) .

Robin Brune

Public Comment - Proposed Opinion 20-0004 [60-day]

Commenting on behalf of an organization

No

Name

anonymous

From the choices below, we ask that you indicate your position. (This is a required field.)

Oppose

ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below.

The idea that lawyers would need to disable smart speakers prior to conducting their legal practice is completely unrealistic an expectation. These devices are ubiquitous and adoption is only growing. In addition to being an unnecessary hassle, I think a rule like this would reflect poorly on the legal profession as it reflects a complete lack of understanding of our voice forward future as a society and shows a failure to keep with the times.

I don't think anyone has shown how smart speakers are any greater theft to privacy/ confidentiality than smart phones, security cameras, and even email which is often processed by the same companies that process voice recordings that go through smart speakers (e.g., Google Assistant/Gmail, Siri/Apple mail).

Public Comment - Proposed Opinion 20-0004 [60-day]

Commenting on behalf of an organization	Yes
Professional Affiliation	Silicon Valley Public Trust Committee
Name	Susan Bassi
City	Los Gatos,
State	California
Email address	gilroybassi@gmail.com
From the choices below, we ask that you indicate your position. (This is a required field.)	Support if Modified
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below.	<p>Before the bar can address conduct of lawyers related to virtual conduct, the bar must address failings demonstrated before remote work and hearings were generally acceptable.</p> <p>The state bar has repeatedly failed to address the misconduct of lawyers acting as private judges , referees and special masters in family law matters. During the pandemic lawyers were appointed as private judges, while the courts were closed. These lawyers ordered their own private pay ,were given immunity equivalent to public court judges and lawyers who assured them regular income assured them client signatures that gave these lawyers the power to issue court orders that impacted litigants property , income and custody of children. It was during the pandemic that private judges began migrating to virtual proceedings that were not publicly noticed or accessible, This made evidence and exhibits impossible to properly handle, or view. Virtual proceedings allow for misconduct to run out of control.</p>

During the pandemic when court files were shuttered inside of locked courthouses, and hearings before public judges were accessible only by phone , Zoom or Virtual proceedings, lawyers acted as private judges, in private offices and conducted hearings designated as "open by state and federal law", virtually.

In 57 counties it was determined that lawyers were not noticing court clerks of their appointments or withdrawals as California Rules of Court 2.834 demanded. Personal inspections found private offices at JAMS , ADR Services and Signautre Resolution, not providing public access to records and hearings as CRC 2.400 demands. Reporters seeking this access these hearings, even...

... the virtual links were faced with legal threats from JAMS lawyers Long & Levitt and had the Sunnyvale police called on them, as private judges and lawyer associates threatened arrest. vetting

Complaints made to the bar about lawyers acting as private judges, were repeatedly ignored. Lawyers acting in these cases routinely failed to assure their own clients were afforded full disclosures and notices that would be relevant to recusal and disqualification.

Lawyers acting as private judges , and lawyers bringing these private judges regular business, conducted open proceedings, where information was secreted from the public. Concealment , or alteration of a public record, is a crime under Government Code 6200, yet in private judge cases, it is done with impunity, as the local DA, state bar and courts pay no mind to it.

An audit of public discipline, shows that the bar has never publicly disciplined an attorney for misconduct as a private judge, despite hundreds of complaints submitted on this very topic. One private judge, Nat Hales, was given private discipline, believed to have been encouraged by former Chief Trial Council of the State Bar, Jim Towery.

The complaint against Nat Hales alleged he had (1) failed to make his disclosures (2) charged \$100,000 for his " private judge services" without a fee agreement (3) accepted a bribe for appointment of Intero Real Estate Agent Patty Filice, and had engaged in moral turpitude , which included lying to the court for the benefit of one lawyer who brought him regular private judge business, Brad Baugh. Jim Towery was the judge supervising Nat Hales, and the bar said it would do nothing publicly without a...

... judge's order or referral. Despite allegations, the bar gave Mr. Hales private discipline . Hales continued to be paid as a private judge, while secreting his disclosures in other cases. In secreting the conduct, the bar failed to protect the public from lawyers earning unconscionable fees to act as judges.

Secreting any information from the public about misconduct of a lawyer playing judge, is harmful. The public has a right to on record disclosures of all private judges, and judges connected with the Bar Court's discipline proceedings,

The public, litigants and lawyers have a right to know about social, personal and financial relationships that could taint legal rulings, or

discipline proceedings. The public also has a right to know about conflicts secreted in virtual proceedings that are not held in open court. If persons aware of the conflict might entertain a doubt that a judge, or private judge, could be fair, the conflicts need to be openly disclosed.

In 2016 the bar produced the Form 700s for Chief Trial Counsel Jim Towery. The form failed to disclose Towery's real estate holdings, and income from two law firms (Hoge Fenton, Jones and Appel, and Rossi, Hamerslough, Reichl, and Chuck). It also failed to disclose Towery's wife's income as a Santa Clara County prosecutor as the bar investigated prosecutorial misconduct based on the San Jose Mercury's Tainted Trial Series. This was an important conflict and financial interest Jim Towery held through his wife, Karyn Sinunu Towery, as they endorsed and financially supported DA Jeff Rosen's political campaigns. In the Office of Chief Trial Counsel, Towery would have had the duty of...

... investigating or prosecuting lawyers in Santa Clara County associated with the DAO. Allowing Towery to secret these conflicts, and file defective Form 700s, the bar allowed Towery the ability to kill or cover up complaints of lawyers associated with his wife or former law partners.

In 2022 another CPRA production was made related to email records between Jim Towery and Vanessa Holton in 2017 as related to a CPRA request for Jim Towery's records related to his bar employment.

In the records produced, the bar altered and

omitted information contained in the public records, a violation of Government Code 6200. The records also show that Jim Towery stated to Ms. Holton, while asking for special favors related to a CPRA, that he had a "strong friendly" relationship with her predecessors: Diane Yu, Marie Moffett and Star Babcock. Jim Towery dropped these names and made these disclosures when seeking favorable treatment from Ms. Holton, but there is no record that these relationships were disclosed when Jim Towery was charged with discipline of lawyers, and providing information to the Board of Trustees, and public. And while these conflicts were noted in state bar records in 2017, Ms. Holton appears to have done nothing to see if Jim Towery's "strong friendly" relationships with state bar employees may have tainted formal proceedings, as the conflicts were secreted.

Two days before the records were produced, Vanessa Holton announced her retirement. Three days after the altered records were produced in violation of Government Code 6200, the bar announced security breeches in confidential files which it blamed first on a "Hack" and then on Tyler Technologies which...

... operates the IT services for California's courts in a system commonly referred to as the Odessey System.

Before the bar considers any future disqualification and appointment issues, or about the ethical issues of virtual work, the bar will need to address the foundational issues that existed long before virtual work was a matter of discussion. If lawyers use virtual proceedings to hide conflicts, or offer subpar legal services,

without proper oversight, public harm will ensue.

Public Comment - Proposed Opinion 20-0004 [60-day]

Commenting on behalf of an organization	No
Name	Jeff Hoffman
City	Oakland
State	California
Email address	jeff.h@jdhoffmanlaw.com
From the choices below, we ask that you indicate your position. (This is a required field.)	Oppose
ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below.	<p>The requirements regarding attorney/client trust accounts are already unduly burdensome to solo practitioners. Only a small minority of attorneys are thieves, and many of us are solo practitioners, some without any or with minimal staff. While it's not a substantial burden for larger firms to account for trust funds by three different documents, it is for some of us.</p> <p>The state bar would do a lot better for the public by focusing on problem lawyers instead of creating big hassles for the large majority of us who do nothing wrong. In addition to harming the public, the problem lawyers give all of us a bad name and are a scourge on our profession. I understand that it would take effort to focus on the bad apples in our profession, but in addition to being more helpful to the public than your current model of casting your huge net over all of us, you would have much more support from attorneys.</p> <p>We pay substantial yearly dues in order for you to police us. Those funds should be spent going after lawyers who illegitimately take advantage</p>

of, steal from, or otherwise harm the public.

Casting your overly broad net so that it creates undue burdens for all of us does not protect the public as much as focusing on bad attorneys would, and it creates an unnecessarily adversarial relationship between the majority of attorneys and the state bar.

I strongly oppose the proposed changes and urge you in the strongest terms to reconsider them. Creating ever more burdens for the large majority of attorneys, and especially for solo practitioners, is not the right thing to do.



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THURGOOD MARSHALL BAR ASSOC.

P.O. BOX 6130
NEWPORT BEACH, CA 92658
TELEPHONE 949/440-6700
FACSIMILE 949/440-6710
WWW.OCBAR.ORG

April 27, 2022

Office of Professional Competence, Planning and Development
State Bar of California
180 Howard Street
San Francisco, California 94105-1639

Re: Proposed Formal Opinion Interim No. 20-0004

Dear Sir/Madam:

The Orange County Bar Association (OCBA) respectfully submits the following comments concerning Proposed Formal Opinion Interim No. 20-0004.

Founded over 100 years ago, the OCBA has over 7,000 members, making it one of the largest voluntary bar associations in California. The OCBA Board of Directors made up of practitioners from large and small firms, with varied civil and criminal practices, of different ethnic backgrounds and political learnings, has approved these comments prepared by the Professionalism and Ethics Committee.

We appreciate that COPRAC has taken the time to provide thoughtful guidance regarding remote working and to revise the earlier version of its opinion. We continue to agree with much of the analysis and offer the following comments.

First, we suggest that Section 5, regarding “Unauthorized Practice of Law, Rule 5.5, and Business and Professions Code Sections 6125-6133,” be further expanded. The practice of law in other jurisdictions remains a subject of tremendous interest among attorneys. The Committee explains in the Opinion that it does not opine on issues regarding unauthorized practice of law, but given the heightened interest in the subject, perhaps the Committee could explain why it does not opine on these matters.

An additional way this section may be helpful is if the Committee outlined examples of issues for attorneys to consider when they are evaluating the authorities or rules of other states. For example, at the end of the sentence ending “where they are physically present,” the Committee could add, “such as understanding whether there are requirements regarding holding one’s self out within a jurisdiction, or temporal restrictions.”

With respect to footnote 9, it may be helpful to provide specific examples of “other remote situations” that the Committee has in mind, such as when staying in a hotel or working at a Starbucks.

Further, there are instances in the Opinion when “disasters” are raised, such as on page 4, at the end of section 2. The Opinion’s focus on remote working is appropriate and timely given the prevalence and seeming permanence of remote working. The references to disasters may cause some to believe that the Opinion’s

OCBA Comment to State Bar

4/27/2022

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guidance would not apply in all remote working situations. Thus, the Committee may wish to delete references to disasters.

With respect to security measures that are discussed on pages 2 and 3, the Committee may wish to suggest that when hosting a virtual meeting or conference call, an organizer may require use of passwords before participants can enter the meeting, which will help to enhance security and confidentiality.

On page 4, consider deleting the word “generally” before “excused under these circumstances.”

Thank you for your consideration of our comments and suggestions.

Sincerely,

A handwritten signature in dark ink, appearing to read 'DR', with a stylized flourish at the end.

Daniel Robinson

2022 President

Orange County Bar Association