



Ohio Board of Professional Conduct

OPINION 2017-05

Issued June 9, 2017

Virtual Law Office

SYLLABUS: An Ohio lawyer may provide legal services via a virtual law office through the use of available technology. When establishing and operating a virtual law office, a lawyer must maintain the requisite competence regarding the technology he or she employs and use reasonable efforts to prevent the inadvertent disclosure of information related to the representation of the client. A lawyer operating a virtual law office must maintain adequate communication with his or her client, regardless of the type of technology used.

The “office address” of a lawyer required in a lawyer’s written and electronic communications must include the address of the lawyer’s home or physical office, the address of shared office space, or a registered post office box.

A lawyer operating a virtual law office may utilize shared, nonexclusive office space with lawyers or nonlawyers, within certain guidelines.

This nonbinding advisory opinion is issued by the Ohio Board of Professional Conduct in response to a prospective or hypothetical question regarding the application of ethics rules applicable to Ohio judges and lawyers. The Ohio Board of Professional Conduct is solely responsible for the content of this advisory opinion, and the advice contained in this opinion does not reflect and should not be construed as reflecting the opinion of the Supreme Court of Ohio. Questions regarding this advisory opinion should be directed to the staff of the Ohio Board of Professional Conduct.



Ohio Board of Professional Conduct

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QUESTIONS PRESENTED: 1) Is it proper for a lawyer to provide legal services exclusively, or almost exclusively, via a “virtual law office?” 2) Is it proper for a lawyer operating primarily as a “virtual law office” to lease a shared, nonexclusive office space for purpose of occasional face-to-face meetings with clients, or receiving mail?

APPLICABLE RULES: Prof.Cond.R. 1.1, 1.4, 1.6, 5.3, 7.1, and 7.2.

OPINION: A virtual law office “VLO” typically involves a lawyer communicating with clients almost exclusively through secure Internet portals, emails, or other electronic messaging.¹ *See also* Adv. Op. 1999-9. A VLO permits lawyers to work remotely, offers clients and lawyers the ability to discuss matters electronically without meeting in person, affords clients the opportunity to review their client file online, and reduces or eliminates the overhead typically associated with traditional offices. A VLO is uniquely situated to provide limited scope representation or “unbundled legal services” through electronic means, including “document drafting assistance, document review, representation in dispute resolution, legal advice, case evaluation, negotiation counseling, and litigation coaching.” N.C. Ethics Op. 2005-10. *See also* Prof.Cond.R. 1.2(c).

The Rules of Professional Conduct apply equally to lawyers who operate in a traditional office setting or a VLO. However, a lawyer’s establishment of a VLO requires close scrutiny of the rules regarding competence, communication with clients, confidentiality, and the supervision of nonlawyers vendors, Prof.Cond.R. 1.1, 1.4, 1.6, and 5.3. This opinion is limited to addressing the obligations of an Ohio lawyer who establishes and operates a VLO.

Question One

Because of the nature of a VLO, a lawyer who chooses to maintain a virtual office must competently manage and maintain the technology used to run the practice and “keep abreast of . . . the benefits and risks associated with relevant technology.” Prof.Cond.R. 1.1, cmt. [8]. Consequently, a VLO lawyer should possess a general knowledge of the security safeguards for the technology used in the lawyer's practice, or in the alternate hire or associate with persons who properly can advise and inform the lawyer. Fl. Bar Op. 10-2 (2010). At the outset of representation, a lawyer should discuss the office technology he or she employs with the client and determine if the client requires the implementation of additional technological safeguards. ABA Formal Op. 477 (2017); Prof.Cond.R. 1.4(a)(2). The use of technology and any additional client-specific safeguards can be addressed in the client fee agreement.

¹ Kimbro, *Practicing Law Without an Office Address: How the Bona Fide Office Requirement Affects Virtual Law Practice*. 36 Dayton Law Rev 1. (2010).

Client communication

A VLO lawyer's professional obligation to maintain adequate communication with the client is not diminished because of the use of technology. Reliance on electronic communication by a VLO lawyer can have obvious limitations when compared to traditional voice or face-to-face communication with a client. For example, a lawyer relying exclusively on technology to meet and communicate with a client must take extra precautions to verify the identity of a client, especially at the outset of the representation. Pa. Ethics. Op. 2010-200. Consequently, a VLO lawyer must take steps to ensure that all electronic communications are adequately understood by the client to a degree that the client is able to make informed decisions regarding the representation. Prof.Cond.R. 1.4(a)(1). Additional steps that should be taken by a VLO lawyer may include a standing offer to meet in person at the client's reasonable request or to communicate by telephone. If the lawyer is unsure whether the client comprehends a particular communication, the lawyer is obligated to change the mode of communication to ensure the client is adequately informed under the rules. Prof.Cond.R. 1.4.

A lawyer operating a VLO must ensure the client is kept reasonably informed about the status of a matter. Prof.Cond.R. 1.4(a)(3). Given the nature of a VLO, the available means of technology to keep the client informed are nearly endless, but a lawyer should carefully consider the best mode of communication, *e.g.*, texting, emailing, online chat, or voice that will work best for each individual client. Based on the individual client's access to or familiarity with technology, some clients may require more traditional modes of communication. VLO lawyers are advised to consult with the client about the preferred method of communication at the beginning of the representation and address the issue in the fee agreement.

"Reasonable efforts"

When a lawyer utilizes cloud computing, email, or other technology that relies on a third-party for the storage or transmission of data, the lawyer must take "reasonable efforts" to prevent the inadvertent or unauthorized disclosure of or unauthorized access to information related to the representation of the client. Prof.Cond.R. 1.6(c). "Reasonable efforts" can be determined through the analysis of several nonexclusive

factors including 1) the sensitivity of the information, 2) the likelihood of disclosure if additional safeguards are not employed, 3) the cost of employing additional safeguards, 4) the difficulty of implementing the safeguards, and 5) the extent to which the safeguards adversely affect the lawyer's ability to represent clients. Prof.Cond.R. 1.6(c), cmt. [18].

Third-party technology vendors

In addition, when purchasing internet, email communication and cloud-based services, a lawyer must undertake reasonable efforts to ensure that the services are provided "in a manner compatible with the lawyer's professional obligations." Prof.Cond.R. 5.3(a). This requires the lawyer to diligently investigate the measures undertaken by the vendor to ensure its operations are compatible with the lawyer's professional obligations. *See* Prof.Cond.R. 5.3, cmt. [3]. Specifically, the lawyer should:

- Determine that the vendor understands and agrees to maintain and secure stored data consistent with the lawyer's duty of confidentiality;
- Ensure that client files and data will be maintained and regularly backed up;
- Require that the vendor give the lawyer notice of subpoenas for client data, nonauthorized access to the stored data, or other breach of security, and a reliable means of retrieving the data if the agreement is terminated or the vendor goes out of business.

Wa. Adv. Op. 2215 (2012)

Question Two

The most obvious feature of a VLO is the lack of a physical office where the lawyer works, meets with clients, and stores client files. A VLO practice is often combined with a shared office arrangement, where a lawyer reserves access to a shared office suite or conference room. The space can be used to receive mail, meet clients, conduct depositions, or provide other legal services on an infrequent basis. The space may be staffed by an employee of the building owner who provides basic office support services (mail handling, reception, etc.) to all users of the space. The office suite and conference

rooms are available to all other “tenants.” The use of a shared office arrangement as part of a VLO is permissible under the Rules of Professional Conduct when the following guidelines are observed.

*“Office address” requirement*²

Prof.Cond.R. 7.2(c) requires that “[a]ny communication made pursuant to this rule shall include the name and office address of at least one lawyer or law firm responsible for its content.” The Board interprets the term “office address” in Prof.Cond.R. 7.2(c) to include situations other than when a lawyer works from a physical office.³ Several jurisdictions analyzing the permissibility of VLOs under Model Rule 7.2(c) have concluded that the rule does not require a lawyer to provide an address that matches a physical office location. N.C. Ethics Op. 2012-6, Wa. Adv. Op. 20161 (2016). Based on the foregoing, the Board advises that in order for a VLO lawyer to satisfy the office address requirement in Prof.Cond.R. 7.2(c), a VLO lawyer must provide an office address in all communications that corresponds to the lawyer’s home or physical office, the address of shared office space, or a registered post office box.

A lawyer operating a VLO also must be careful to avoid making a false, misleading, or nonverifiable communication about the lawyer's practice, including the office address and nature of the practice. Prof.Cond.R. 7.1. In addition to providing an office address, the lawyer should be transparent about the nature of the VLO in all communications, including office letterhead. Conveying or implying that the lawyer regularly works from a physical office, when it is not the case, implicates the prohibitions contained in Prof.Cond.R. 7.1. A VLO lawyer providing an office address in compliance with Prof.Cond.R. 7.2(c) complies with Prof.Cond.R. 7.1 by stating that the lawyer is able to meet in person with clients "by appointment only" or that the lawyer operates a virtual office and can arrange to meet with clients through the use of available technology, or in person at the client's request.

² This opinion does not interpret or address the “office address” requirement contained in Gov.Bar R. VI, Sec. 4(B). Given the likely proliferation of virtual law offices in the future, a clarifying amendment to the Rules for the Government of the Bar concerning the “office address” of VLO lawyers may be warranted.

³ Many jurisdictions have a “bona fide office requirement” that requires an admitted lawyer to maintain a traditional office. The Board does not interpret Prof.Cond.R. 7.2(c) as a bona fide office requirement. *See* Kimbro, *supra* at 9.

Client confidentiality in shared offices

Lawyers entering into a shared, nonexclusive office arrangement with lawyers or nonlawyers must ensure that client confidentiality is maintained at all times and that all information related to the representation is protected from inadvertent disclosure to third parties. Prof.Cond.R. 1.6(c). This may require consultation with the leasing agent or owner to take the steps necessary to inform other tenants and staff of the facility of the nature of your business and the lawyer's professional responsibilities. *See* Adv. Op. 1990-9 (office sharing with non-lawyer business). The use of a shared office environment inevitably will require the VLO lawyer to consider the use of a private Wi-Fi network, virtual private networks, firewalls, and other technology to protect client information and communications.

CONCLUSION: The Rules of Professional Conduct permit a lawyer to operate a VLO. Given the inherent nature of a VLO, a lawyer must ensure that he or she understands the technology being employed and stays abreast of developments concerning the underlying security of the technology. The use of technology raises unique issues about client confidentiality and requires a lawyer to undertake reasonable efforts to avoid the inadvertent disclosure of client information. The hiring of vendors to assist in the provision of technology requires the lawyer to ensure that the vendor's services are provided in a manner consistent with the lawyer's professional obligations.

Although a physical office is not required for a lawyer to comply with the "office address" mandate in Prof.Cond.R. 7.2(c), an office address provided in a lawyer communication can reflect a lawyer's home or physical office, the address of shared office space, or a registered post office box. A VLO lawyer must avoid the implication or misrepresentation that the lawyer works from a physical office when it is not the case. Additionally, the use of a shared office arrangement with lawyers or nonlawyers is permissible so long as the lawyer ensures that client confidentiality and communications are adequately safeguarded.