



## **ADVISORY COMMITTEE ON PROFESSIONAL ETHICS**

**Appointed by the Supreme Court of New Jersey**

### **ACPE OPINION 734**

#### **Ethical Responsibilities of Lawyers Who Use Third Party Vendors to Electronically File Documents**

The Advisory Committee on Professional Ethics received an inquiry about the ethical responsibilities of New Jersey lawyers who use third party vendors to electronically file documents with the courts. Third party vendors must use the lawyer's credentials to electronically file documents. While the use of vendors for this purpose has been approved by the Supreme Court consistent with the User Participation Agreement, some lawyers using such services may not be aware of their ethical obligations under the Rules of Professional Conduct.

Rule of Professional Conduct 5.3(a) (Responsibilities Regarding Nonlawyer Assistance) requires lawyers to make reasonable efforts to ensure that the conduct of nonlawyers who work on firm matters act in a way that is compatible with the professional obligations of a lawyer. The lawyer "should communicate directions appropriate under the circumstances to give reasonable assurance that the nonlawyer's conduct is compatible with the professional obligations of the lawyer." Official Comment to RPC 5.3.

The Committee previously reviewed the ethical obligations of lawyers who entrust client information or documents to third parties to scan into a digitized format. ACPE Opinion 701 (“Electronic Access and Storage of Client Files”) (April 2006). The Committee found that lawyers must carefully select the vendor to preserve the confidentiality of the clients’ files. “The touchstone in using “reasonable care” against unauthorized disclosure is that: (1) the lawyer has entrusted such documents to an outside provider under circumstances in which there is an enforceable obligation to preserve confidentiality and security, and (2) use is made of available technology to guard against reasonably foreseeable attempts to infiltrate the data.”

Accordingly, while lawyers may use third party vendors to electronically file documents with the court, they must exercise reasonable care in selecting the vendor. As some filed documents may be under seal, lawyers must ensure that there is an enforceable obligation to preserve confidentiality and security and be satisfied that the vendor uses appropriate methods to safeguard the documents. Lawyers must also be satisfied that the vendor will adequately preserve the security of the lawyer’s credentials. Further, as noted in the Comment to Rule of Professional Conduct 5.3, lawyers must “communicate directions appropriate under the circumstances to give reasonable assurance that the nonlawyer’s conduct is compatible with the professional obligations of the lawyer.”