

Legal Process Outsourcing

When considering whether to outsource support services such as legal research, discovery (disclosure), document review, clerical services, and drafting of court documents we need to balance the perceived advantages against ethical concerns.

The main advantages of legal process outsourcing are said to be time and costs. The ethical concerns are:

- protecting client confidence and avoiding the waiver of a client's legal professional privilege;
- ensuring appropriate supervision – the provider needs to be bound by the same ethical standards that we are; and
- ensuring that the cost savings are for the client's benefits.

If we decide to engage an outsource provider the ethical duties we need to address are:

- competence (rule 4.1.3 Australian Solicitors Conduct Rule 2012 (ASCR));
- supervision (rule 37 ASCR);
- protection of confidential information (rule 9 ASCR);
- charging fair and reasonable fees (rule 4.1.1 ASCR – serving the best interests of the client); and
- avoiding conflicts of duties to former clients or concurrent clients (rules 10 and 11 ASCR).

In a recent English decision a costs order was made against a litigant for failing to provide proper discovery. The litigant's solicitors had outsourced the discovery obligations to two external providers. The discovery was wholly inadequate. The court found the claimant had failed in its duty to make proper disclosure and was ordered to pay the defendant's wasted costs in the sum of £135 000.¹

If contemplating outsourcing, ask yourself the following:

1. Can I adequately brief the service provider so that it understands what is required and expected?
2. Can I adequately supervise the process?
3. Can I make conflict checks?
4. Do the employees of the service provider have an adequate legal education to undertake the tasks to be assigned?
5. Does the provider have a security system that will protect confidential information when being transmitted and subsequently held?
6. How do I obtain my client's informed consent?
7. Are the costs to be charged 'fair and reasonable'?

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¹ *West African Gas Pipeline Company Ltd v Willbros Global Holdings Inc* [2012] EWHC 396 [107].