LEGAL OFFSHORING: A WELCOME CHANGE TO THE AMERICAN LEGAL PROFESSION

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This essay is submitted to satisfy the expository writing requirement at the University of Tennessee College of Law and is solely the work of the undersigned.

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INTRODUCTION

This past May, law schools across America held commencement ceremonies and conferred approximately 44,000 law degrees.[1] While competition in law school can be fierce, soon these students will soon learn that competition does not stop with law school grades. Last year over 79,000 new lawyers, nearly double the amount of graduates in the United States, emerged from Indian universities alone. [2] That's right, India, not Indiana. In the era of globalization American law graduates must begin to realize that their competition extends beyond the persons in their graduating class and those graduating around the country; but instead, their competition for jobs and work include thousands and thousands of well-trained, hard-working, and competent persons from around the world. To add insult to injury, after all the years of hard work, the American graduate must compete with foreign attorneys who are willing to do the same work for a third of the salary most first year associates earn.[3]

Globalization has reached America's legal profession and it is an ever-increasing phenomenon. More and more law firms and businesses in the United States are learning that much of the work performed at home can be offshored with impressive cost-savings and without a decline in work quality. Today, legal offshoring is a viable option for U.S. firms and businesses. It is important to make clear the distinction between "outsourcing" and "offshoring." The former refers to "the process by which a company or firm retains outsiders to perform functions or tasks that the company or firm historically has

[1] "Enrollment and Degrees Awarded," American Bar Association Website at <http://www.abanet.org/legaled/statistics/stats.html> (accessed April 25, 2007).
[2] "Legal Services Offshoring: Hype vs. Reality," Investrend (January 3, 2007).
[3] Khozem Merchant and Matthew Richards, "Legal work in pastures new, Outsourcing has found a new field to exploit," Financial Times UK, (April 12, 2006).

performed itself."[4] The latter is a subset of the former, when work is outsourced to persons in another country, that work has been offshored. While the words are often used interchangeably, this essay only deals with legal offshoring. For, while law firms have been outsourcing work for years in various forms (by using temporary attorneys, title abstractors, and the like), the use of legal offshoring in the form of foreign attorneys and paralegals is a relatively new phenomenon.

To be sure, when most people hear the terms outsourcing or offshoring their mind immediately conjures up visions of blue-collar factory jobs that are now being performed in Mexico and China. Often the idea of sending work abroad is characterized in a very negative light. Even legal offshoring, a relatively new phenomenon, is beginning to receive intense scrutiny and criticism. While the jury is still out on what the long-term effects of legal offshoring will be on the American legal profession, it is clear that much of the current criticisms are unfounded. Many critics point specifically to ethical considerations as grounds for rejecting and restricting the practice of offshoring legal work. However, the ethical "dilemmas" that critics often cite are not very different in form or degree to problems that the U.S. legal community has been successfully dealing with for years. Critics have also decried offshoring as a practice that will hurt not only the American attorney's wallet, but the economy of the nation as well. However, while all the effects of offshoring are yet to be seen, the current information available falls far short of condemning the practice, but rather on the contrary, it shows that legal offshoring can be done ethically while also increasing the quality, productivity, and earnings of American lawyers.

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[4] Douglas R. Richmond, "Outsourcing Legal Work: Do Professional Liability and Responsibility Go Along?", 24 NO. 2 Of Counsel 5; see also Marcia L. Proctor, "Considerations in Outsourcing Legal Work," 84-SEP Mich. B.J. 20.

Before legal offshoring can be condemned it is important for members of the U.S. legal community to understand who is using legal offshoring and what kind of work is being sent abroad. Moreover, a review of the significant benefits that accrue from legal offshoring practices will alleviate many critics' worries that offshoring is somehow detrimental to the U.S. legal market or is some new form of Western exploitation of developing countries. Finally, the most oft-cited criticism of legal offshoring, the ethical duties of U.S. attorneys, must be examined to demonstrate how U.S. attorneys can utilize this phenomenon without failing in their duties to their clients. Unfortunately, there is already an existing bias towards legal offshoring as is exampled by the various anti-offshoring legislation. However, as more data is collected and a better picture of the practice emerges there is no reason to doubt the continued growth of legal offshoring along with the amazing benefits the phenomenon has to offer.

I. THE CURRENT STATE OF LEGAL OFFSHORING

Until recently the U.S. legal profession has been insulated from offshoring because of the "sheer logistical difficulties associated with transporting paper documents across large geographical distances."[5] However, the huge steps that have been taken in telecommunications and Internet accessibility around the world have made the logistical problems all but disappear.[6] The telecommunications infrastructure put in place by the technology boom of the late 1990s is not only an information superhighway, it's also a labor superhighway for those in the service industries. White-collar jobs such as accounting, computer engineering, and legal work are now easily offshored and are part

[5] Zachary J. Bossenroek and Puneet Mohey, "Should Your Legal Department Join the India Outsourcing Craze?" ACC Docket 22, no. 9 (October 2004), 46-68, at 52.
[6] Id.

of the "new wave" of outsourcing.[7] While offshoring legal work abroad has not always been a viable option, the idea of having legal work performed by lawyers from outside of the firm originally retained by the client has been around for some time domestically. For instance, Dov Seidman has been offering legal outsourcing for the past thirteen years in the United States.[8] The number of employees at Seidman's U.S.-based and American staffed Legal Resource Network grew over 430% in just one year. In less than six years the business had already written over 10,000 legal memoranda for law offices across the country that were low on staff or were just looking to save money.[9] In the world of legal offshoring it is not only law firms that are utilizing legal work produced by foreign offshoring companies, large Fortune 500 companies are also realizing the benefits of offshoring legal work.[10] The in-house counsel for corporate America and U.S. law firms generally use one of two offshoring models: an offshore office that is owned and operated by the law firm or corporation, or a third-party company that will do work on a case-by-case basis as needed and provides legal work for a number of different clients.[11] A review of some of the third-party legal offshoring providers will illustrate exactly what types of services are being performed outside of the United States. Also, an overview of some law firms and corporations who have offshored some legal functions will demonstrate the widespread nature of the legal offshoring phenomenon as it stands at present.

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[7] Mark B. Baker, "'The Technology Dog Ate My Job': The Dog-Eat-Dog World of Offshore Labor Outsourcing," 16 Fla. J. Int'l L. 807, at 810.
[8] Lori Tripoli, "Another Chip Off Market Share…How and Why Outsourced Legal Research Can Make Inroads on Law Firm Turf," 19 No. 5 Of Counsel 2, at 3.
[9] Id.
[10] Mary B. Guthrie, "Executive Director's Report," Wyoming Lawyer (December 2005), at 7.
[11] Bossenroek and Mohey, at 100-102.

Offshoring Companies

In May of 2004 Sanjay Kamlani and David Perla, law school classmates at the University of Pennsylvania, quit their respective jobs at OfficeTiger and Monster.com to launch a legal offshoring company in Mumbai, India called Pangea3.[12] The two classmates have watched their company grow at exponential rates. In 2006 Pangea3 was seeing 50% growth *per quarter* in terms of actual net income.[13] The company has over one hundred employees with most located in India but some located in their New York and California offices. Pangea3 specializes in patent drafting, patent litigation, contract drafting, due diligence, and legal research.[14] In the patent drafting field it has three U.S. patent lawyers who supervise the work done by a host of Indian lawyers, scientists, and engineers who perform the time-consuming tasks of prior art searches, patent proofing, and assessments of whether a product can be patented.[15] To ensure security and confidentiality every client is given a project code which allows the client sole access to the on-line material which is protected by extensive network safety nets.[16] At just three

[12] "Legal Outsourcing Firm Gets Funding," Hindu, (August 5, 2006).
[13] Id.
[14] "Pangea3," <www.pangea3.com> (accessed April 20th, 2007).
[15] "Pangea3 Patents," <www.pangea3.com/patent1.htm> (accessed April 20th, 2007).
[16] Pangea3 describes its network infrastructure as "high speed, secure and 'always on' MPLS IP WAN bacbone managed by top-tier ISPs bound by tight SLAs. Capability to priorize and control traffic and bandwidth allocation at user/application level with QosS monitoring. Capability to seamlessly integrate ino client networks using MPLS VPNs with the highest levels of security and confidentiality." High availability, hybrid LAN setup employing fiber backbone, Layer 3 distribution layer and 802.11g+ WiFi desktop connectivity, securd using policy based firewalls, WPA and Radius for authentication and authorization. The network is capable of hosting converged data and voice based applications with guaranteed latencies for VOIP traffic. Our Linux on Intel based servers, hosting mission-critical applications, are co-located at a state-of-the-art managed Datacenter with network uptime guarantees, SLAs on temperature and power, top notch access security systems and fire protection. At Pangea3, data security is our prime concernfocus [sic]. In addition to the security measures deployed at the network level, we have policies in force to restrict access to removable media where required. The communication and collaboration tools we use for Messaging, E-mail, and VOIP calls support Blowfish/ AES encryption. We have the capability to encrypt all intermediate and final work products to prevent access outside the intended work group." Taken from "Technology,"< http://www.pangea3.com/technology.htm >(accessed April 20th, 2007).

years old Pangea3 can already claim ten Fortune 100 companies as its clients.[17] And its not stopping there, this past year the company received another $4 million in addition to the $1.5 million it received in 2005 from the GlenRock Group investment firm.[18] GlenRock founder Lawrence Graev is a chairman of Pangea3 and sees the investment as a chance to get in on the front end of the changing legal market.[19] In 2006 the company had revenues of approximately $2 million and its co-founders believe that in 2007 it will hit $6 million in annual revenues.[20]

Minneapolis-based Intellevate, another legal offshoring success story started in 1999, seems ancient compared to Pangea3. Intellevate also specializes in patent searching and patent proofreading.[21] In less than four years the company had already proofread over one thousand issued patents, many of these for software giant Microsoft.[22] This element of patent work is often overlooked because it is time-consuming and expensive. Even though the task can have very drastic consequences if done inadequately it is often left to young associates or paralegals because the work is seen as menial. Intellevate brags of its high rate of spotting patents that need corrections.[23] In 34% of the patents proofread by Intellevate a Certificate of Corrections is necessary because of errors made by the U.S. patent lawyers.[24] By comparison, the United States Patent and Trademark Office normally only receives a Certificate of Correction for about 12% of the U.S.

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[17] "Pangea3."
[18] Anthony Lin, "The View from Mumbai," The American Lawyer, (September 2006); see also Hindu.
[19] Lin.
[20] Steve Garmhausen, "2 Firms Pioneer Legal Outsourcing," Crain's, (September 11-17, 2006).
[21] "Intellevate," <http://www.cpaglobal.com/patents/intellevate/about-intellevate> (accessed April 20th, 2007).
[22] Molly McDonough, "IP Goes Indian," ABA Journal E-Report (April 23, 2004); see also Daniel Brook, "Made in India: Are your Lawyers in New York or New Delhi?" Legal Affairs (May/June 2005) at 11.
[23] "Patent Proofreading," at <www.cpaglobal.com/intellevate> (accessed April 20th, 2007).
[24] Id.

patents it grants.[25] Intellevate is specially equipped to review patents because of its highly skilled workforce of which only 1/5 are lawyers with the rest being highly trained scientists and engineers.[26] Recently, Intellevate placed an ad in a newspaper for a patent researcher and received over 1700 resumes in response.[27] With that kind of response Intellevate is able to pick from India's brightest minds because of the lack of jobs and the relatively high-wages, in Indian terms, provided by legal offshoring companies. Leon Steinberg, Intellevate's CEO, describes the process of offshoring from its origination with a description of a company's invention being sent to Intellevate and then, "We [Intellevate] would have a computer science expert, or some other kind of trained specialist, do research and determine whether the invention can be patented. They use proprietary databases and online tools to conduct research. Then they post their search result on a Web site that only our client can access."[28]

While the traditional method is for the client to contact Intellevate, Steinberg has taken more aggressive measures to secure business for the company. All patents filed with the U.S. Patent and Trademark Office become public record a year and a half after an application has been made.[29] Recently, Steinberg had Intellevate workers proofread several of the most recent patent applications to become public and then reported all the errors to the U.S.-based firm which had drafted the patent.[30] In the process of pointing out the mistakes, Steinberg offers the services of Intellevate. If the U.S.-based attorney remains unconvinced of Intellevate's skill, Steinberg says, "there's nothing stopping us

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[25] "Patent Proofreading."
[26] Brook, at 10.
[27] Id.
[28] Helen Coster, "Briefed in Bangalore," The American Lawyer (November 1, 2004) at < http://www.law .com/> (accessed April 29th, 2007).
[29] Brook, at 11.
[30] Id, at 12.

from sending it to the corporation [who hired the U.S.-based attorney to draft the patent]."[31] While these aggressive tactics are not the norm, it illustrates the increased competition provided by legal offshoring companies which can lead to better work-product and less expensive legal services for U.S. clients.

Patent research and drafting are particularly popular forms of legal work to offshore due to their high expense because of the large time requirements. These jobs do not require legal expertise and are seen as very susceptible to offshoring. Indeed, while there were over one hundred legal offshoring companies in India as of early 2006, many believe only a handful of these companies have the ability to perform high-end legal work.[32] However, offshoring companies like Lexadigm, an offshoring company with branches in India and Michigan, are not restraining themselves to simple menial legal tasks. In addition to doing standard patent research, contract drafting, and litigation support, Lexadigm also does research on SEC filings, has written Circuit Court briefs, and in 2005 Lexadigm drafted a brief for the United States Supreme Court "involving the application to a tax dispute of the Fifth Amendment's due process clause."[33] The quality of foreign lawyers found at Lexadigm, and other offshoring companies, is often equal to or superior to that of the U.S. lawyers who are using their services. Indeed, Lexadigm employees Indian lawyers who have interned at the World Trade Organization and clerked for the Indian Supreme Court, and many of them graduated from top law schools in the United States only to return to India after their student visas expired.[34] In India

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[31] Brook, at 12.
[32] Siddharth Nayani and Sruti Nayani, "LPOs here head for consolidation," Economic Times (India), (May 22, 2006).
[33] Brook, at 11; see also "Legal Research," < www.lexadigm.com/services-legal-research.php> (accessed April 20th, 2007): and see also Appendix A and B for a sample Memorandum of Adverse Possession and a Motion filed in a California District Court which were prepared by Lexadigm for its U.S. based clients.
[34] Brook, at 12.

these attorneys are making anywhere $6,000-$36,000 a year.[35] While this may seem paltry in comparison to U.S. legal wages, it is considered very high wages in India. Employees at legal offshoring companies earn approximately 40% more per year than their Indian counterparts who do not perform offshoring services. Indeed, some paralegals make enough to employ multiple servants in their private homes including chauffeurs for their multiple cars.[36] Clearly, the majority of offshoring companies are specializing in work that is not high-end legal work. However, the service provided by these offshoring companies is providing exceptional value for law firms and corporations that have utilized their services.

Law Firms Offshoring

The beneficiaries of the cost-saving and time-efficient legal offshoring companies are often law firms that lack the time and resources to hire additional lawyers and staff to keep up with incoming work. Often times a law firm will find itself understaffed for certain projects that simply don't necessitate hiring more full-time employees but they still need additional assistance in the short-term interim period. Steve Lundberg's intellectual property practice would find itself months behind because of the time requirements for proofreading patents.[37] Now his 55-lawyer Minneapolis firm, Schwegman, Lundberg, Weossner & Kluth, uses Intellevate to proofread patents and is no longer falling behind schedule.[38] Moreover, it has reduced its cost by more than 50% in the process.[39] Lundberg's firm represents the mid-sized firms across America who are

[35] Brook, at 12.
[36] Id.
[37] McDonough.
[38] Id.
[39] Id.

learning that costs can be reduced and productivity increased, while never sacrificing the higher-end work which makes up the core of the firm's practice.

It was actually a fairly small firm from Texas that first tapped into the massive potential for offshoring legal work abroad. Bickel & Brewer, a 34-lawyer firm in Dallas, began offshoring some of its back-office work in 1995.[40] It all began when managing partner Bill Brewer was having lunch with an in-law of Indian descent. "I asked, 'You can have a lawyer for how much an hour in India?' He said, 'Two dollars an hour.' We didn't make it to dinner before we were setting up the subsidiary in India."[41] Now Bickel & Brewer has a standalone offshoring company with several hundred employees who "Scan, code, index, and abstract documents," for several other clients in addition to Bickel & Brewer.[42] Solan Schwab, a solo practitioner, echoes the concerns that were facing Lundberg and Brewer. Schwab was faced with "an erratic work flow that doesn't justify the overhead of a full-time staff."[43] As a result of offshoring Schwab has been able to increase his revenues $50,000-$60,000 a year and he only spends about 1/3 on Indian legal offshoring compared to the cost of a full-time employee.[44]

Small and mid-sized law firms are not the only ones reaping the benefits of legal offshoring. Indeed, the world's largest law firm, Clifford Chance, announced this past year its plan to begin offshoring much of its back-office administrative work to India.[45]

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[40] Brook, at 11.
[41] Brook, at 11.
[42] Coster.
[43] Id.
[44] Id.
[45] "Legal Services Offshoring," ; see also "World's largest law firm to outsource work to India," Hindustan Times (November 5, 2006).

Clifford Chance has over 6,700 employees in over twenty countries world-wide.[46] The mega-firm chose to use an established offshoring company to help with the transition of its major back-office work to India. Integreon, an Indian offshoring company with over 1000 employees and revenues in 2006 of approximately $15 million, will manage over 300 employees who will work exclusively on Clifford Chance's back-office tasks.[47] To house this massive undertaking Integreon is building a new 45,000 square foot office complex of which Clifford Chance's operations will occupy approximately 15,000 square feet.[48] To date, this is the single largest offshoring effort by a law firm ever undertaken.[49] Clifford Chance projects it will reduce costs by approximately $18 million in 2007.[50]

While the aforementioned firms are reaping the benefits of offshoring most firms do not realize the advantages of offshoring or are wary of the practice. However, as more and more firms shift work abroad the pressure to reduce costs may force many more law firms to consider offshoring some parts of their work. Some analyst expect offshoring to totally change the way legal work is produced over the next few years. They argue that the practice will allow small firms to do work traditionally reserved for large law firms and because of the reduction in price it may encourage a greater number of litigants to come forward with claims.[51] Others believe that as soon as some firms begin undercutting the prices of other firms a bidding war could ensue that makes offshoring

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[46]"Clifford Chance Careers," < http://www.cliffordchance.com/careers/our_people/?LangID=UK&> (accessed April 15, 2007); "Clifford Chance About Us," <http://www.cliffordchance.com/about_us/about_the_firm/?LangID=UK&> (accessed April 15, 2007).
[47] Chhavi Dang and K. Yatish Rajawat, "Integreon eyes private equity investors for management buyout," Economic Times (India) (October 12, 2006).
[48] "Legal Services Offshoring,"; see also "World's largest law firm."
[49] "Legal Services Offshoring,"; "World's largest law firm,"; see also, "Clifford Chance," <http://www.integreon.com/htms/featuresandnews/Clifford%20Chance.asp> (accessed April 23, 2007).
[50] "Clifford Chance,"; see also, "Legal Services Offshoring."
[51] Guthrie, at 7.

necessary just to compete in today's changing legal markets.[52] Of course, companies like Intellevate are not waiting for law firms to come looking for help. As described above, it is aggressively pursuing clients both law firms themselves and their individual clients. It is not uncommon at all for offshoring companies to "cold call" a U.S. firm either on the phone or in a letter offering their assistance.[53] Today, as much as 40% of U.S. law firms outsource some work albeit non-legal for the most part.[54] In the future this percentage is expected to increase with much of that increase coming due to increased offshoring of back-office legal work.

In-House Corporate Counsel Offshoring

The value of offshoring legal work has not gone unnoticed in the corporate world. Pangea3 alone serves over a dozen Fortune 500 companies in one capacity or another.[55] In a world where the bottom-line dictates much of a business' decision-making, legal offshoring makes perfect sense. The corporations most prone to offshoring legal work have been those involved in technology-driven industries which require significant amounts of patent work. Companies that file hundreds of patents per year normally have a large in-house legal staff that performs prior art searches and patent research to ensure that the companies' intellectual property is properly patented and protected. There is some hesitation in the corporate world to disclose the amount of legal offshoring that has occurred due to the potential for bad publicity.[56] As a result, there is a dearth of concrete data about the processes corporations use to offshore legal work and very little is known

[52] Brook, at 12.
[53] Guthrie, at 7; see Appendix C for example of a "cold call" letter from an offshoring company soliciting work from U.S.-based attorneys.
[54] Terry Gaschler, "More and More Firms Outsourcing," 12 No. 2 Legal Mgmt. 9, at 9.
[55] Lin.
[56] Brook, at 11.

about how much profits corporations actually accrue from the process. However, there are some notable names who are offshoring and gaining significant profits therefrom.

For instance, in 2001 GE began offshoring its legal compliance and legal research functions for GE Plastics and GE Consumer Finance.[57] As of last year GE had a total of thirty Indian attorneys who do support work for all of its "critical legal services …worldwide."[58] GE immediately began seeing cost-reductions in 2001 when it only had eight lawyers and nine paralegals located in India. In the first year it reduced its legal fees for GE Plastics and GE Consumer Finance by $2 million.[59] Of course, GE continues to employ several attorneys in the United States who are licensed in U.S. jurisdictions. GE's senior in-house counsel does all the interviewing, hiring, and oversight of the overseas lawyers that are producing legal work for GE.[60]

DuPont is another corporate giant which has been saving millions of dollars per year by offshoring legal work. Initially DuPont was only outsourcing its in-house work to domestic firms in the countries where it was applying for patents and it was saving approximately $8.8 million per year.[61] In 2006, DuPont announced its plans to open a legal office in Manila that will house thirty Filipino attorneys who will analyze documents for pending litigation.[62] DuPont expects to save an additional $6 million by offshoring this portion of its in-house legal staff.[63] However, the company is not solely

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[57] Brook, at 11; see also Guthrie, at 6.
[58] Priyanka Bhardwaj, "India courts US case: It's aiming for half the pie of outsourced US legal services by 2015," Business Times (Singapore), (April 8, 2006).
[59] Jennifer Fried, "Outsourcing Reaches Corporate Counsel," Corporate Counsel, (August 25, 2004).
[60] Fried.
[61] Bossenroek and Mohey, at 50.
[62] Molly F. Dillbeck, "Overburdened? How about sending your legal support work to India?" Minnesota Lawyer, (November 20, 2006).
[63] Id.

interested in cost-savings produced by offshoring; DuPont has also seen an increase in the quality of legal work that is being produced by the outside counsel.[64]

One of the most stunning offshoring success stories comes from Motorola which has taken an aggressive approach to cutting legal costs. Motorola produces approximately 1,000 new patents per year which require extensive amounts of time and research which is very costly.[65] To decrease costs Motorola began offshoring much of its patent work to India and simultaneously demanded its other external legal teams to reduce their costs. If the external counsel was unwilling or unable to reduce the costs Motorola terminated the relationship.[66] The resulting profits from these moves are extraordinary. In 2000 Motorola spent upwards of $400 million per year on legal work and has now reduced its legal costs to just under $200 million per year.[67] External counsel for Motorola has been reduced considerably, many of them taking heavy losses as a result of losing Motorola's patronage. In-house counsel for Motorola has also taken considerable cut-backs as it reduced its staff from 400 persons to 200 persons. [68] Interestingly, the external law firms that were able to survive the drastic reductions by providing Motorola with less-costly legal services are the firms that are offshoring legal work to India. Baker & McKenzie, Motorola's preferred outside counsel for matters in Europe, has already begun offshoring many elements of its operations in an effort to reduce costs to better serve clients like Motorola.[69]

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[64] Bossenroek and Mohey, at 50.
[65] "Motorola slashes legal spend to tune of $200m," The Lawyer.com, (October 31, 2005) at <http://www.thelawyer.com/cgi-bin/item.cgi?id=1178284&d=pndpr&h=pnhpr&f=pnfpr> (accessed April 22, 2007).
[66] "Motorola slashes legal spend."
[67] Id.
[68] Id.
[69] "World's largest law firm,"; see also "Motorola slashes legal spend."

In-house counsel is not normally viewed by corporate boards as a money-making portion of the company. The focus of these in-house attorneys is to grease the wheels of the corporation and to avoid future litigation in the process. As a result, many corporate boards may see their legal team as an unfortunate but necessary expense. There is a growing trend to reduce this necessary expense by offshoring the legal work. Corporations like Microsoft may remain hesitant to admit the extent of their legal offshoring (it already uses Intellevate to perform prior art searches for patent applications), but the real savings of the practice cannot be ignored.[70] Some critics, among them former ABA president Jerome Shestack, argue that the legal research performed by foreign attorneys is not of the same quality as that produced by American attorneys.[71] However, in today's world where legal databases like Westlaw make legal research simple and accessible from anywhere in the world, advocates of offshoring argue that the legal research produced by a foreign attorney is of the same quality as work produced by a first year associate in a U.S. firm.[72] In a funny bit of irony, when a young U.S. associate reads the head notes attached to Westlaw cases he or she is already relying on an foreign attorney. Westlaw, a corporation based on legal research, has already begun offshoring much of the responsibilities for head notes and cataloguing of cases to foreign attorneys.[73]

II. BENEFITS OF LEGAL OFFSHORING

It is clear from the above success stories that there are great benefits associated with legal offshoring. Admittedly, the impressive cost-savings are among one of the

[70] Coster.
[71] Brook, at 11.
[72] Tripoli, at 3.
[73] "Thomas W. Lyons III Interview," Rhode Island Lawyers Weekly, (September 4, 2006).

major benefits that first catches the eye of the U.S. law firm considering offshoring but that is definitely not the sole benefit. Offshoring advocates point to a variety of benefits from offshoring as evidence that the practice is a viable solution for a plethora of problems confronting law firms. The lower cost of legal work is the most-oft repeated benefit that lawyers and corporations cite as the main reason for offshoring. However, offshoring legal work is not just a way of cutting costs, it also provides a means for growing a small firm's practice and can lead to greater productivity. Moreover, the quality of legal work being produced in places like Manila, Seoul, and New Delhi is of a very high quality.

It is well known that wages in many places across the globe pale in comparison to Western standards. In 1995 when Bickel & Brewer, a Texas based law firm, first began considering offshoring legal work to India the average Indian lawyer charged $2 an hour for legal work.[74] Today, legal offshoring companies pay their Indian-based attorneys anywhere from $12,000 to $21,000 a year.[75] Compare that to the $100,000 salaries many first year U.S. associates receive and the savings from offshoring are immediately apparent. The paralegals in the United States that work in "back-office" occupations earn on average $17.86 per hour whereas their Indian counterparts will do the same work for an average of $6-$8 per hour.[76] For a variety of reasons, most law firms cannot establish a wholly-owned subsidiary in a foreign country, but, rather, the law firm will sign a contract with one of the many offshoring companies and pay by the hour for the work performed. The cost of legal work bought in this fashion, even with the mark-up from the offshoring firm, is still much lower than it would be were the law firm paying its own

[74] Brook, at 11.
[75] Merchant and Richards.
[76] McDonough.

associate or paralegal to perform the same work. For instance, Lexadigm, a legal offshoring company with bases in India, charges between $65-$95 per hour depending on the nature of the work and the time constraints it must deal with for the job. Lexadigm's rates are only a third to a half of what it would cost to employ an American lawyer to do the same work.[77] Intellevate allows a law firm to customize the offshoring agreement to best fit the law firm's needs. If the law firm needs research in a sporadic fashion Intellevate will charge by the hour or set a fixed rate for a particular type of work. Also, if the law firm intends to offshore a significant amount of work Intellevate will assign an Indian attorney to work exclusively for that particular law firm and the law firm can pay a monthly "seat" license.[78] Estimates vary as to the extent of the savings available via legal offshoring and the amount will depend on whether a law firm has an offshore subsidiary or uses a third party offshoring company, however, some estimates place the savings from offshoring between 60-75%.[79] Admittedly, the gap between the wages of Indian attorneys and their American counterparts is closing as Indian wages have risen approximately 15% per year since 2004, however, comparatively wages in India remain substantially lower than in America.[80] Also, U.S. law firms see significant savings when offshoring legal work because "they don't have to pay for workers' benefits, insurance, taxes…and holiday/sick/vacation leaves."[81]

Another advantage of offshoring is the similarities between many foreign legal systems and the United States' legal system. In India for instance the legal system is

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[77] Brook, at 10.
[78] Coster.
[79] "Legal Services Offshoring,"; "World's largest law firm,"; see also Bossenroek and Mohey, at 52.
[80] Assif Shameen, "The Philippines' Awesome Outsourcing Opportunity," Business Week Online, (September 20, 2006); see also Anand, "Trade secrecy laws needed to boost legal outsourcing," Financial Express, (February 9, 2006).
[81] Kunoor Chopra, "Getting it Done: Dispelling the Myths of Outsourcing," 25 NO. 7 Legal Mgmt. 20, at 22.

based on the British common law tradition.[82] Politically India is similar to the United States in that it has a federal system of government with a central government and several state governments. Much like the U.S. there is a Supreme Court in India that is the final court of appeals under which are the several state High Courts and other lower courts.[83] Moreover, all Indian law schools teach in the English language and unlike the British, Indians are all "advocates" instead of having a split between barristers and solicitors.[84]

As stated earlier, every year in India there is a fresh supply of approximately 79,000 new law graduates that will compete for jobs. While many fresh law school graduates might find that figure a threat to their job security, "the good news is that [offshoring] should not be viewed as doom and gloom by attorneys."[85] In fact, offshoring may be the very thing that allows those first year associates to stop doing the menial tasks normally assigned to them and allow them to be involved in the more high-skilled, complex legal problems. Offshoring will allow U.S. lawyers to stop worrying about the "time-consuming paperwork" and allow them to focus on their core value-added material.[86] Moreover, it allows sole practitioners and small firms to leverage their skills and take on bigger cases without having to shell out big dollars to expand their support staff.[87] Another benefit of offshoring is that it creates an opportunity for legal fees to become less expensive for clients. As law firms compete for clients the use of offshoring will allow those firms to reduce their costs in an effort to attract clients. As a result, clients who might otherwise have foregone a lawsuit due to high expenses might instead

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[82] Anand.
[83] Mark J. Riedy, "Legal and Practical Considerations in Structuring Business Transactions in India," Cardozo Journal of Int'l and Comp. Law (Summer 1995) 313- 355, at 331-332.
[84] Anand; see also Riedy, at 332.
[85] Guthrie, at 7.
[86] Id.
[87] Id.

choose to litigate the matter. Therefore, rather than reducing the amount of work for U.S. attorneys, offshoring has the potential to increase an attorney's client base.[88]

As the story of solo-practitioner Solon Schwab demonstrated above, the benefits of offshoring do not stop at allowing small firms get cheaper legal support, it also increases the productivity of the firm. By offshoring some of a firm's non-core functions to low-cost offshoring companies, a law firm can devote all of their energy and attention to core functions which allows them to spend more time cultivating new clients and taking in more work.[89] Furthermore, when an attorney in the United States heads home for the office in the evening he or she can e-mail the details of the work needed from the offshoring company and around the same time his or her Indian counterpart will be arriving at the office in India. It amounts to 24 hour workdays which can provide quicker turnaround for a client. Whether it be in the form of cost-savings, increased productivity, or the ability to rapidly expand and contract a firm's legal support team, legal offshoring provides another tool that can help U.S. attorneys not only produce a work product faster and cheaper, but at the same high quality clients expect.

III. ETHICAL IMPLICATIONS OF OFFSHORING

One aspect of the legal profession that cannot be outsourced or offshored, but which remains of vital importance, is an attorney's professional liability and responsibility. It is this aspect of offshoring that critics of the practice most often point to as an example of why they believe offshoring to be unacceptable. However, while foreign attorneys may prepare documents and conduct legal research, ultimately, the U.S.-based attorney must insure that all ethical obligations to the client are observed. Admittedly, the

[88] Guthrie, at 7.
[89] Kim Newby, "Outsourcing, At Home and Abroad," Maine Bar Journal (Spring 2006), 74-77, at 74.

American Bar Association Model Rules do not specifically address offshoring of legal work. As a relatively new phenomenon, offshoring has not received significant attention regarding the ethical issues surrounding it.[90] Moreover, there is little case law aimed directly at offshoring that can guide an attorney.[91] However, the ethical challenges of offshoring are very similar to those challenges facing U.S. attorneys in everyday practice. Conflicts of interest, confidentiality, disclosure, and fee-sharing are not new ethical minefields. These areas of legal ethics have always been around and U.S. attorneys are already dealing with these issues successfully. The only difference for the U.S. attorney who is offshoring when dealing with an ethical issue is that his or her legal support may not be down the hall or across town, but instead, they are across the globe. However, U.S. attorneys are not left totally to their own devices, there are some analogous situations where the Model Rules and ABA Formal Ethics Opinions have given guidance.

Without a doubt, while sending legal work abroad is a relatively new phenomenon, outsourcing of legal work is not new at all. Law firms have been using "temporary and contract lawyers," to perform legal work and firms also "subcontract legal research, discovery, and even court appearances to outside companies," for several years.[92] These older practices have come under more scrutiny than offshoring per se and many of the lessons learned from these older practices can be applied to today's offshoring questions. For instance, in response to the use of temporary lawyers, a practice not dissimilar from offshoring, the ABA Formal Ethics Opinion 88-356 highlighted

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[90] Richmond, at 5.
[91] Id.
[92] Mark L. Tuft, "Offshoring of Legal Services: An Ethical Perspective on Outsourcing Abroad," Practicing Law Institute, at 100.

major ethical issues that a law firm must be aware of when using outside legal help.[93] The Opinion notes that "the lawyer and the firm must exercise care…to avoid conflicts of interest, to maintain confidentiality of information…, to disclose to clients the [temporary lawyer] arrangement…in some circumstances, and to comply with other applicable provisions of the Rules and Code."[94] Some of the "other applicable provisions of the Rules" that must be considered are rules related to fee-sharing and the supervisory role of U.S.-based lawyers over foreign lawyers and non-lawyers.

The U.S.-based attorney offshoring legal work must always be aware that the ultimate ethical obligations belong to him or her and not to the foreign attorney. An essential step one must take to fulfill this ethical duty is to review the credentials of the persons who will be completing the work. Also, it is important to always explain the ethical rules to the offshoring company to help ensure that no violations occur in the future.[95] Most of the work sent abroad will be performed by non-lawyers by U.S. standards, the foreign attorney will be licensed to practice in his or her home country but not in the United States. Therefore, the person will be considered a non-lawyer and when working with non-lawyers the U.S.-based attorney must "make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer."[96] Obviously, it is more difficult to supervise an assistant living in India than to supervise the assistant that is down the hall, so it is important that before any work begins it is confirmed that the offshoring company is competent. However, this does not reduce the responsibility to

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[93] ABA Formal Ethics Opinion 88-356 (December 16, 1988).
[94] Id.
[95] Alison M. Kadzik, "The Current Trend to Outsource Legal Work Abroad and the Ethical Issues Related to Such Practices," 19 Geo. J. Legal Ethics 731, at 739.
[96] Model Rules of Professional Conduct, 5.3(b).

supervise the work as it is performed. Therefore, a law firm should build into the offshoring arrangement a method for reviewing the work as it is completed.[97] If proper supervision is maintained throughout the process the chance for an ethical slip is greatly reduced.

Conflicts of Interest

Model Rule 1.7 strictly prohibits a lawyer from representing a new client if such representation is "directly adverse" to the lawyer's other client or if such representation would be "materially limited" because of the lawyer's obligation to another client or third party.[98] If there is such a conflict the lawyer cannot represent the new client unless the lawyer "reasonably believes" that he or she can give competent counsel to both clients and each client is made aware of the conflict and consents in writing.[99] Clearly, such a conflict of interest can easily arise where a U.S. firm is offshoring to a foreign law firm or company. Many offshoring companies in India specialize in providing specific types of legal services such as patent review. Where the offshoring company reviews patents for several different U.S. law firms there is a significant chance that a conflict of interest will arise where the offshoring company reviews or prepares documents for clients with similar patents. The ABA Formal Ethics Opinion 88-356 notes that "a temporary lawyer could not, under Rule 1.7, work simultaneously on matters for clients of different firms if the representation of each were directly adverse to the other (in the absence of client consent…)."[100]

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[97] Merri A. Baldwin, "Ethics Issues," Practising Law Institute, at 159.
[98] Model Rules of Professional Conduct, 1.7(a)(1)-(2).
[99] Model Rules of Professional Conduct, 1.7(b)(1) and (4).
[100] ABA Formal Ethics Opinion 88-356.

Along, the same lines, Model Rule 1.9 prohibits an attorney from representing a new client where that new client's interests are "materially adverse to the interests of [a] former client" unless that former client is informed and gives his or her consent in writing.[101] Again, the Opinion 88-356 would prohibit a temporary lawyer from working on a matter for a client if he or she had previously worked on a "substantially related matter" for a previous client without that previous client's consent.[102] In most U.S. jurisdictions a temporary attorney "may be employed by more than one law firm."[103] This will often be the case where the legal work is offshored abroad to a third party who does work for several different U.S. firms. What is not clear is how the disqualification rules will apply to a non- U.S. attorney.

The problem is complicated further by the fact that there is a high turnover rate in the offshoring labor market. The increase in jobs created by U.S. companies offshoring back office work to places like India has created a competitive market for labor. The increased competition has led to a low retention rate as workers constantly change jobs in search for higher paying jobs. This problem raises keen concerns in the legal offshoring world because of the conflict of interest issues it can create.[104] It is difficult to keep track of the possible conflicts of interests that are created by such job changes because "lawyers who move from one firm to another carry their conflicts with them."[105]

While the prospect of conflicts of interest when offshoring is very real it is not significantly different from ethical problems that arise in U.S. law firms all the time. Like in the U.S. law firm there are several steps that can be taken to prevent conflicts of

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[101] Model Rules of Professional Conduct, 1.9(a).
[102] ABA Formal Ethics Opinion 88-356.
[103] Tuft, at 112.
[104] Baldwin, at 162.
[105] Baldwin, at 162

interest when employing a foreign offshoring company. First, while there are some foreign jurisdictions that have rules pertaining to conflicts of interest, those foreign rules cannot be relied upon by a U.S. attorney. It is important that before any information is sent to the offshoring company that there is a system in place to check for conflicts of interest.[106] This system should include some form of record-keeping that will indicate where a conflict of interest may arise by tracking the work of the foreign attorneys and the files which each foreign attorney was assigned. Indeed, the U.S. law firm should compile its own records documenting what information has been sent to the offshoring company and whom came in contact with the information. Moreover, the foreign employee should be screened from any information or documents that the foreign employee has not been assigned.[107] Where proper precaution, record-keeping, and screening techniques are in place, the risk of a conflict of interest can be greatly reduced, or at the very least, quickly identified when it exists.

Confidentiality of Client Information

Another major concern for any client is that the information given to the attorney be kept confidential. The lawyer's duty of confidentiality is a "fundamental and sacred trust."[108] Model Rule 1.6(a) commands that "a lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent…"[109] However, in many countries, confidentiality is not a highly valued feature of the attorney-client relationship. For instance, in India the Indian Advocates Act of 1961 does not

[106] Richmond, at 6.
[107] Kadzik, at 735.
[108] Richmond, at 6.
[109] Model Rules of Professional Conduct, 1.6(a).

extend the attorney-client privilege to foreign legal work.[110] Moreover, the Indian common law breach of privacy action is not a certain protection against breaches of the duty of confidentiality.[111] Indeed, it may be common for a person to boast about the client's work he or she is performing.[112] Clearly, it is not a violation of the confidentiality requirements when an attorney discloses some of the client's information while carrying out the client's requested legal work. For instance, attorney's routinely share client information with secretaries and paralegals who help prepare the documents involved.[113] Similarly, there is no violation when an attorney uses an offshoring company to perform certain parts of the client's requested work.

It is the U.S.-based attorney's duty to make sure that the offshoring company performing the work understands the strict confidentiality standards that apply in the United States and that the offshoring company meets those standards. The U.S.-based firm must make sure that the offshoring company has procedures that will ensure client confidentiality.[114] Due to the lack of extensive protections under most foreign jurisdictions the agreement between the U.S.-based attorney and the offshoring company becomes more important.[115] This agreement must include provisions requiring the offshoring company maintain the client's confidentiality. Furthermore, "both the [offshoring] firm and the persons who work on the particular client matter should be trained to understand the difference between American concepts of 'privilege' and mere

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[110] Diljeet Titus, "Bar Council Should Draw a Code of Conduct for LPO Units," Financial Express, (February 29, 2006).
[111] Anand.
[112] Kadzik, at 735; see also Baldwin, at 158.
[113] Richmond, at 6.
[114] Richmond, at 6.
[115] Kadzik, at 735.

'confidentiality.'"[116] Another safeguard the U.S.-based attorney can use to ensure the client's confidential information remains confidential is to limit the access of the offshoring company.[117] This can be achieved by using secured databases which only allows access to pre-approved persons or which tracks the usage of documents.

Disclosure to Client

Of course, as a relatively new development in the legal world, offshoring is not widely accepted. The potential for a public backlash to the offshoring of legal work is real and many attorneys will choose not to offshore for this reason alone.[118] Where offshoring is used, the question of disclosure becomes a significant issue. However, offshoring legal work is very similar to the current practice of using temporary attornesy and the ABA has provided some guidelines for the latter situations which can help attorneys who are planning to offshore in the future. It is not the case at present that if an attorney offshores a client's work then that offshoring must be disclosed. The lawyer planning to offshore a client's work must, in certain circumstances, disclose to that client that some or all of the work will be offshored, but three major factors that must be weighed in deciding whether disclosure is necessary. Thos factors are: the nature of the work to be offshored, the relationship between the attorney and the offshoring company, and the expectations of the client.[119] An ethical issue related to disclosure is the method of charging for the offshoring company's work and this will be discussed in the next section.

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[116] Proctor, at 22.
[117] Kadzik, at 736.
[118] Baker, at 819.
[119] Tuft, at p. 111.

While Model Rule 1.2(a) does require an attorney to consult with the client to determine by what means the client's objectives are to be achieved this does not mean that the choice to offshore the client's work must be disclosed to the client.[120] The nature of the work being performed abroad must first be considered. For instance, if the nature of the work being offshored is merely a "back office" service then disclosure is probably not necessary.[121] However, where the work is more closely related to legal issues and there is little supervision over the foreign offshoring company by the U.S.-based attorney, then disclosure is recommended.[122] However, turning again to the example of a temporary attorney, where that temporary attorney's work is closely supervised by the retaining attorney, then, according to Formal Opinion 88-356, there is no requirement for disclosure.[123] It would stand to reason that where the U.S.-based attorney closely supervises the offshored work it is not necessary to disclose this information to the client. Nevertheless, if the client's reasonable expectation is that the U.S.-based attorneys perform all the work, then none of the work can be offshored without consulting with the client and gaining the client's consent.[124] In consulting with the client, the attorney should "explain the associated advantages and disadvantages [of offshoring], whatever they may be."[125]

During this infant stage of the legal offshoring trend, where ethical rules are not specifically written with offshoring in mind, it is probably best to error on the side of caution and always disclose the fact that offshoring may be an option regardless of the

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[120] Model Rules of Professional Conduct, 1.2(a); see also ABA Formal Ethics Opinion 88-356.
[121] Tuft, at p. 111.
[122] Id, at p. 110.
[123] Kadzik, at 737.
[124] Tuft, at p. 110.
[125] Richmond, at 6.

nature of the work or the amount of supervision provided. This can easily be achieved in a simple engagement letter that the client must sign when hiring the attorney which provides for the use of foreign attorneys for specific tasks.[126]

Fee Arrangements

In the legal profession the collection of fees must be done with a careful eye towards meeting certain ethical requirements. A lawyer cannot, for instance, share fees with other lawyers without the client's prior consent, or charge an unreasonable amount for services performed, or make certain surcharges when a third party performs a service in the course of representing the client, or assist another person in the unauthorized practice of law.[127] These ethical responsibilities should all be considered prior to commencing work on behalf of a client. This responsibility is especially important when a portion of the work will be offshored.

Offshoring tasks related to the legal representation of a client is generally permitted under the Model Rules and does not constitute the unauthorized practice of law but jurisdictions vary in their interpretation of what it means to practice law. [128] For instance, using the services of a paralegal is perfectly acceptable under the Model Rules as long as the authorized attorney is supervising the work.[129] However, the definition of "practice of law" is not provided in the Model Rules and the local jurisdictions' definitions may vary.[130] Indeed, "legal research, brief writing and preparation of legal documents may well be considered the practice of law depending on the jurisdiction" so

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[126] Richmond, at 6.
[127] Model Rules of Professional Conduct, 1.5(a) and (e)(2); ABA Formal Ethics Opinion 88-356; ABA Formal Ethics Opinion 00-420 (November 29, 2000); and see also Model Rules of Professional Conduct, 5.5(b).
[128] Model Rules of Professional Conduct, 5.5(b), comment (1).
[129] Id.
[130] Tuft, at 104.

U.S. attorneys that have this type of work offshored should make themselves familiar with the local jurisdictions restrictions before proceeding.[131]

Also, when billing a client for work that was provided by an offshoring company, the U.S. attorney must be careful not to run awry of Model Rule 1.5(a) which requires that the fee be reasonable.[132] By and large, the client will be billed for the cost of the offshored work in one of two ways: either by including the costs as part of the U.S. attorney's legal fees, or by charging it as a separate cost or expense.[133] Neither billing practice is unethical in and of itself, however, the two practices require different levels of disclosure and also effect the amount which can be charged. Where the cost of the offshored work is included in the U.S. attorney's legal fee the U.S. attorney is allowed to include a surcharge in addition to the actual cost of the work.[134] ABA Formal Ethics Opinion 00-420 ruled that a "surcharge" has been made "when the retaining lawyer charges the client more for the services of the contract lawyer than the cost incurred by the retaining lawyer for obtaining those services…in other words, a surcharge is profit."[135] The U.S. attorney does not have to disclose to the client that such a surcharge has been included in the legal fee, however, if such is the case, it is presumed that the work provided by the offshoring company was supervised by the U.S. attorney.[136] This practice is not dissimilar from the permissible billing practice where an attorney includes in the legal fee the cost of overhead and secretarial work.[137] Critics can rest assured that ethical difficulties related to offshoring are very similar to those faced in everyday

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[131] Tuft, at 104.
[132] Model Rules of Professional Conduct, 1.5(a).
[133] Tuft, at p. 108.
[134] ABA Formal Ethics Opinion 00-420.
[135] Id.
[136] Id.
[137] Proctor, at 23.

practice ad the ABA Model Rules and Formal Opinions go far in addressing the critics' concerns by providing proper procedures for avoiding ethical violations.

The obligations of disclosure changes where the offshored work is not included as part of the U.S. attorney's legal fee, rather, it is billed as a cost or expense. In this circumstance the attorney cannot increase the amount billed to the client beyond the actual cost of the offshored work.[138] If the U.S. attorney discloses that surcharge will be added to the actual cost of the offshored work before work commences and the client consents to such a surcharge, only then is it a permissible practice where the offshored work is billed as an expense.[139]

Regardless of how the client is billed for the work, the sharing of fees with non-lawyers remains strictly prohibited.[140] The approved procedure for fee-sharing between lawyers not associated with the same firm requires disclosure to the client and client consent.[141] Where the payment is not made to another U.S. attorney but to a foreign lawyer or paralegal, the Model Rules do not provide a clear procedure for proper fee-sharing. In the situation most analogous to offshoring, use of a temporary lawyer, Ethics Opinion 88-356 did allow the placement agency to be paid by the retaining lawyer for the placement agency's services (providing of the temporary attorney who did the work) and it did not consider this arrangement impermissible fee-sharing.[142] Also, in California State Bar Formal Opinion 1994-138, the fee-sharing restrictions were found not to apply where the foreign lawyer "must be paid whether or not the [retaining U.S.] lawyer is paid by the client" and the payment is not based on the amount the U.S. attorney receives from

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[138] ABA Formal Ethics Opinion 00-420.
[139] Id.
[140] Model Rules of Professional Conduct, 1.5(e).
[141] Id.
[142] ABA Formal Ethics Opinion 88-356.

the client.[143] While these opinions do support the conclusion that use of an offshoring company does not violate the fee-sharing restrictions, it is probably best to err on the side of caution and always disclose to the client the fee arrangement that exists with the offshoring company and receive written consent for such arrangement.

Ethical Offshoring Solutions

Clearly, the ethical challenges facing U.S. attorneys who use legal offshoring is not dissimilar from the challenges he or she would face in the normal practice of law. U.S.-based attorney must have an eye towards the ethical obligation he or she owes to the client regardless of whether the legal support staff is located down the hall, across town, or in a distant foreign city. As noted above, the best way to protect against ethical violations is in the contract the U.S.-based attorney has with the foreign offshoring company. This contract can outline the ethical expectations that must be met. The difference in jurisdictions and the complete lack of responsibility in some countries makes such a contract a necessity. In particular, the contract should address prevention of conflicts of interest, confidentiality, and procedures for supervision. It also should give the U.S.-based attorney a remedy against the offshoring company if there is a breach. The other step that should be taken involves the engagement letter the client should be asked to sign when hiring an attorney. This letter can serve as a disclosure statement of the fact that some work may be offshored. It can also serve to indemnify the attorney from responsibility of errors committed by the offshoring company.[144] If these precautions are taken the likelihood of an ethical violation will be greatly reduced.

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[143] Tuft, at p. 110.
[144] Richmond, at 7.

Critics can also take reassurance from the fact that foreign jurisdictions are also beginning to provide greater protections for foreign clients. For example, India is taking steps to strengthen protection of privacy and confidentiality through amendments to the Indian Advocates Act of 1961 and the Indian Information Technology Act of 2000.[145] There is also a movement for promulgating new rules under the Bar Council of India that will better protect foreign clients, however, these rules do no alleviate the duty of the U.S.-based attorney to protect his or her client's confidential information.[146] Before entering an offshoring agreement the local jurisdiction's rules and regulations should be carefully evaluated to identify potential differences that could lead to future violations. These new protections will be very helpful in creating an environment that is more respectful of client privacy and confidentiality which will hopefully lead to greater utilization of legal offshoring companies in these foreign jurisdictions.

IV. ANTI-OFFSHORING LEGISLATION

Despite the fact that legal offshoring can provide great benefits to U.S. attorneys and clients alike, when the words "outsourcing" or "offshoring" is mentioned, it often derives dubious looks and even anger in many Americans. For many, the idea of offshoring conjures up images of a mass exodus of American jobs to foreign lands coupled with economic decline in the cities and towns affected by the loss of jobs. In a recent AP poll 69% of Americans said that they viewed offshoring jobs abroad was a detriment to the U.S. economy.[147] And indeed, for those most severely affected by offshoring, the men and women that lose their jobs as a result, offshoring is a terrible

[145] Titus.
[146] Id.
[147] Adam Mordecai, "Anti-Offshoring Legislation: The New Wave of Protectionism," 5 Rich. J. Global L. & Bus. 85, at 95.

trend. For the U.S. attorney considering offshoring legal work the current public attitude towards offshoring is a significant factor that should be considered. Indeed, the United States Congress and a majority of state legislatures have already proposed or passed some form of regulation on the offshoring of work abroad.[148] Of course, most offshoring to date has only affected people manufacturing furniture, textiles, automobiles, and the like.[149] However, the newest trend in offshoring has seen a migration of technology jobs abroad of considerable magnitude.[150] Forrester Research has predicted that as many as 3.3 million jobs will be offshored by 2015. [151] The sheer numbers are staggering, however, Forrester Research believes the number of jobs offshored is insignificant because as many as 22 million new jobs will be added in the United States by 2010 and per year offshoring will only affect approximately 0.2% of the U.S. workforce.[152] While these numbers are only projections based on rough estimates, critics must be aware of these type of mitigating circumstances before discarding offshoring wholesale. Nevertheless, regardless of the actual affect offshoring has on American jobs, as more American jobs become offshored abroad there will be an increase in public scrutiny of the practice.

Even though most of offshoring's publicity is negative not everyone in America believes offshoring to be a gloom and doom affair. Former Federal Reserve Chairman Alan Greenspan believes offshoring is a vital part of being engaged in the global economy and any type of protectionist measures by Congress would only encourage

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[148] Baker, at 821.
[149] Id, at 810.
[150] Id, at 811.
[151] Id, at 812.
[152] Baker, at footnote 16.

retaliatory tariffs by other countries that would result in an overall loss of jobs.[153] Moreover, Gregory Mankiw, a White House economist, believes that offshoring is allowing the U.S. to buy cheaper goods and services that allows "household budgets go further."[154] However, even though many economist support offshoring because of the long-term benefits they believe it accrues to the United States, they are facing opponents such as labor unions and a public perception that views offshoring in a negative light.

Various Forms of Anti-offshoring Legislation

The anti-offshoring legislation, fuelled by the negative public perception of offshoring, has taken various forms in state legislatures across the country. There are at least thirty-five states that have either introduced or passed some sort of legislation that regulates or restricts offshoring jobs from their respective states.[155] While many of these proposals never had much chance of passing, it is illustrative of the current attitude America has towards offshoring. One of the favored types of restrictions is in relation to government contractors. These bills would not allow a government contract to be awarded unless the majority of the work was performed in the United States.[156] Some states have proposed legislation that would require companies to disclose the fact that some of the work is offshored and to notify any worker who is laid-off as a result of offshoring of the relocation of his or her job.[157] Legislation that could greatly damage the possibility for offshoring legal work is a bill proposed in Tennessee that would restrict the transmission of any "'financial, credit, or identifying' information to a foreign

[153] Mordecai, at 102.
[154] Id, at 93.
[155] Mordecai, at 96.
[156] Id.
[157] Id, at 98-99.

country."[158] The other major brand of anti-offshoring legislation would penalize companies that offshore jobs by revoking certain tax breaks and requiring the return of any government assistance money.[159]

Constitutional Considerations

Fortunately for the lawyers who are currently offshoring legal work or are considering offshoring legal work, there are Constitutional issues that could preempt any state from passing legislation that interferes with foreign policy.[160] The United States Supreme Court found unconstitutional a Massachusetts statute that restricted Massachusetts companies from doing business with Burma.[161] The Court reasoned that such a statute not only undermines the President's ability to form a policy for Burma but is at odds with the President's authority to lead the country's foreign policy.[162] The United States Supreme Court also found unconstitutional an Oregon statute which would prevent any inheritance passing from an estate to an individual who would not enjoy the distribution because the individual lived in a Communist state.[163] Admittedly, laws governing descent and distribution of estates are generally left to the individual states to determine but that does not allow the state the right to exercise any control over the President's foreign policy.[164] It stands to reason that any state legislation which would ban the practice of offshoring would also be found unconstitutional for similar reasons.[165]

There are bills in the U.S. Congress which could curtail the offshoring phenomenon if they pass into law. The United States Workers Protection Act of 2004

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[158] Mordecai, at 100.
[159] Id, at 101.
[160] Baker, at 823.
[161] Id, at 824.
[162] Baker, at 825.
[163] Id, at 826.
[164] Id.
[165] Id.

restricts any federal contract work from being performed overseas unless the President decides the work is in the United States' national security interest to do so.[166] In the same vein, the Jobs for America Act of 2004 would require any American company that sends a job overseas that results in the unemployment of 15 American workers must report such lay-off to the Department of Labor.[167] One successful anti-offshoring piece of legislation was attached to the 2004 Omnibus Spending Bill limited offshoring work related to U.S. Treasury and Department of Transportation contracts.[168] Admittedly, most of the offshoring legislation from both the state and U.S. legislative bodies does not directly prohibit private corporations, or law firms more specifically, from offshoring work abroad. However, to say that no such legislation is possible would be a foolhardy assumption based on the current trends to regulate and restrict offshoring in certain areas.

Foreign Governments' Reaction to Offshoring

Indeed, one need only look to the reactions of other industrialized countries that are also dealing with the offshoring phenomenon to realize that restrictions on offshoring are a very real possibility. Last year in the United Kingdom legislation was proposed that would require foreign contractors to compensate British workers who lose their jobs because of offshoring.[169] This Transfer of Undertakings (Protection of Employment) regulation would basically require the offshoring company to charge more for their services in order to pay the cost of unemployment in the United Kingdom.[170] Another interesting complication for those looking to offshore work involves legislation in the very countries that are enjoying new jobs because of offshoring. In India there has been

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[166] Mordecai, at 98.
[167] Id, at 99.
[168] Baker, at 834.
[169] Rashmee Roshan Lall, "New UK law to hit Indian BPOs," Economic Times (India), (April 6, 2006).
[170] Id.

steady liberalization in commercial practices since 1991 which made the country much more attractive to foreign direct investment.[171] However, the recent elections in 2004 saw a more socialist-styled political party come to power which many fear will either slow or reverse the economic liberalization process.[172] Even though offshoring is no longer widely seen as an exploitation of the world's poor, there are some who still view it as a form of neo-colonialism.[173] Of course, this perception is generally connected to the well-known "sweatshops" connected to multi-national corporations in underdeveloped countries in the manufacturing of goods and not in relation to service sector jobs such as legal offshoring.[174]

It is beyond the scope of this paper to discuss the long-term economic benefits and detriments of offshoring both at home and abroad in great detail. That topic is better suited for economist and policy-makers. However, it is important to realize that in legislatures across the country, far a field in foreign parliaments, and in the realm of public opinion a spirited and vigorous debate is on-going which could greatly affect the future of legal offshoring. To be sure, it is not just state-sponsored legislation that could greatly curtail the offshoring of legal work, public opinion could create such a backlash against law firms and companies that utilize foreign workers as to make the practice untenable.

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[171] Mordecai, at 105.
[172] Id, at 98.
[173] Mimi Samuel and Laurel Currie Oates, "From Oppression to Outsourcing: New Opportunities for Uganda's Growing Number of Attorney's in Today's Flattening World," 4 Seattle J. for Soc. Just. 835, at 867.
[174] Samuel and Oates, at footnote 318.

CONCLUSION

At the present time it is important that all the facts are taken into account before a final judgment is passed in either the Halls of Congress or in the minds of the American public. Companies like Pangea3 and Intellevate are growing at a staggering rate trying to keep up with U.S. law firms' and corporations' increasing demand for quicker and cheaper legal support. As with anything that is new, some people will reject offshoring without a second thought. Admittedly, there are challenges to offshoring which are unique to the practice. Anytime a different culture is involved there will be differences of practice that must be taken into consideration. It would take a very pessimistic view of the world to think that such differences cannot be overcome, not to mention a blind eye to all of the success stories where people from different countries and cultures are working together everyday to produce new and better ideas and products. Today, we live in a global society.

Of course, as a lawyer the overriding concern should always be the advocacy and protection of the clients' interest. Without doubt, there are ethical considerations related to offshoring that cannot be overlooked. Nevertheless, while the critics' concern with conflicts of interest, confidentiality, disclosure, and fee-sharing are not misplaced, it is clear that these ethical considerations are not dissimilar from those facing American attorneys everyday. The same measures that are taken when a conflict of interest arises in a U.S. firm can be taken with legal offshoring to alleviate the risk of an ethical violation. Indeed, by giving a client full disclosure of the offshoring arrangement and negotiating an offshoring agreement with the third party offshoring company an American attorney can

provide the client with even greater protection than is currently called for where temporary attorneys are used in the U.S.

As with anything new there will be automatic resistance to change, but in today's global legal market to stay the same is to die. Just compare the firm of Steptoe & Johnson to Baker & McKenzie and the future is clear. When Motorola began demanding its legal counsel to provide cheaper services or face being replaced Steptoe was either unwilling or unable to comply and Motorola, one of Steptoe's flagship clients, terminated the relationship with the firm.[175] On the other hand you have Baker & McKenzie, a law firm that already is offshoring legal work, continues to do the bulk of Motorola's legal work in Europe.[176] Barring protective legislation the legal offshoring trend will continue to grow precipitously. The good news is that young American law students graduating this May should not be distraught. Instead, they can take great encouragement from the fact that on this new and growing wave of offshoring they can be the first to learn to tame the wave and use it to their benefit. They are not hindered by old notions of the legal profession that might reject the practice out of hand. The prospects for legal offshoring make it an exciting time to be a lawyer, whether you are from India or Indiana.

[175] "Motorola slashes legal spend."
[176] "World's largest law firm,"; see also "Motorola slashes legal spend."

APPENDIX -A-

The following is an example of a memorandum prepared by legal offshoring company Lexadigm for an American lawyer-client.

MEMORANDUM

TO: Lawyer
FROM: Lexadigm Solutions LLC
DATE: April 11, 2005

RE: **Defenses for Adverse Possession, Prescriptive Easement and Acquiescence**

I. ISSUES

A. What defenses does a property owner ("client") have to a claim of adverse possession or prescriptive easement?

B. What are the requirements for "acquiescence" and does the client have a valid defense?

II. BRIEF ANSWERS

A. The client does not appear to have a strong defense if a claim for the portion of land is made by way of adverse possession or prescriptive easement, unless the client can show that use of the property was permissive.

B. With the standard of proof being less stringent for "acquiescence," the client does not appear to have a strong defense to such a claim.

III. FACTS

Owner of Lot 22 has for more than fifteen years used a 6.5 foot wedge shaped piece of property, which is a part of Lot 23. Lot 23 is owned by the client, X. Predecessor owner of Lot 23 allegedly agreed with the then-owner of Lot 22 that he could use the path that encroaches on Lot 23 and plant a hedge on his property. The owners of Lot 22 have since refused to sign an acknowledgement sent to them in 1995.

IV. ANALYSIS

A. Adverse Possession/Prescriptive Easement

To establish adverse possession, a person must show that its possession is actual, visible, open, notorious, exclusive, hostile, under cover of claim or right, and continuous and uninterrupted for a statutory period of fifteen years. *Thomas v. Rex A. Wilcox Trust*, 463 N.W.2d 190, 192 (Mich. Ct. App. 1990); *see also, Kipka v. Fountain*, 499 N.W.2d 363, 365 (Mich. Ct. App. 1993). The possession must be hostile to the title of the true owner. *Burns v.*

Foster, 81 N.W.2d 386, 389 (Mich. 1957). It is not necessary that adverse possession for more than fifteen years should be based upon a claim of title and claim of right; either is sufficient. *Sanscrainte v. Torongo,* 49 N.W. 497, 501 (Mich. 1891). It is sufficient if the acts of ownership are of such a character as to openly and publicly indicate an assumed control or use, such as are consistent with the character of the premises in question. *Whitaker v. Erie Shooting Club*, 60 N.W. 983, 984 (Mich. 1894). The use should be such as to notify and warn the owner that a person is in possession under a hostile claim. *Id.* at 984.

A party may "tack" on the possessory periods of predecessors in interest to achieve this fifteen year period by showing privity of estate. *Dubois v. Karazin*, 24 N.W.2d 414, 417 (Mich. 1946). This privity may be shown in one of the two ways, by (1) including a description of the disputed acreage in the deed, *Arduino v. City of Detroit*, 228 N.W. 694 (Mich. 1930), or (2) an actual transfer or conveyance of possession of the disputed acreage by parol statements made at the time of the conveyance. *Sheldon v. Mich. Central R. Co.*, 126 N.W. 1056, 1058-59 (Mich. 1910).

In the case at hand, if the owner of Lot 22 asserts a claim by adverse possession it would be difficult for the client to raise an adequate defense. The only ground on which the client can apparently refute such a claim is by showing that there was never a claim hostile to it and that the use of such land was permissive.

An easement is a right to use the land of another for a specific purpose. *Bowen v. Buck & Fur Hunting Club,* 550 N.W.2d 850, 851 (Mich. Ct. App. 1996). An easement by prescription requires similar elements as adverse possession, except exclusivity. *W. Mich. Dock & Mkt Corp. v. Lakeland Inv.*, 534 N.W.2d 212, 215 (Mich. Ct. App. 1995), *citing, St. Cecelia Soc'y v. Universal Car & Serv. Co.*, 182 N.W.161 (Mich. 1921). Permissive use of property, regardless of the length of the use will not result in an easement by prescription. *Banach v. Lawera,* 47 N.W.2d 679, 680 (1951).

Again, if the client is able to show that use of the land was permissive, he will have a valid defense to an easement by prescription since "[p]ermissive use of property, regardless of the length of the use will not result in an easement by prescription." *Banach,* 47 N.W.2d at 680.

B. Doctrine of Acquiescence

There are three theories of acquiescence: they include (1) acquiescence for statutory period; (2) acquiescence following a dispute and agreement; and (3) acquiescence arising from intention to deed to a marked boundary. *Pyne v. Elliot,* 220 N.W.2d 54, 58-59 (Mich. Ct. App. 1974). The doctrine of acquiescence provides that, where the adjoining property owner acquiesces to a boundary line for a period of at least fifteen years, that line becomes the actual boundary line. *McQueen v. Black,* 425 N.W.2d 203, 204 (Mich. Ct. App. 1988), *see also, W. Mich. Dock & Mkt Corp. v. Lakeland Inv.*, 534 N.W.2d 212 (Mich. Ct. App. 1995). The underlying reason for the rule of acquiescence is the promotion of peaceful resolution of boundary disputes. *Shields v. Collins*, 268 N.W.2d 371, 373 (Mich. Ct. App. 1978). The proper standard applicable to a claim of acquiescence is proof by preponderance of the evidence. *Walters v. Snyder,* 608 N.W.2d 97, 99-100 (Mich. Ct. App. 2000). This is less stringent than the clear and cogent evidence standard used in adverse possession and prescriptive easement cases. *Id., McQueen*, 425 N.W.2d at 205. Unlike a claim based on

adverse possession, an assertion of acquiescence does not require that the possession be hostile or without permission. *Id.* at 204-05; *Walters*, 608 N.W.2d at 99. The acquiescence of predecessors in title can be tacked onto that of the parties in order to establish the mandated period of fifteen years. *Jackson v. Deemar,* 127 N.W.2d 856, 857 (Mich. 1964). No proof of parol transfer is required to establish tacking. *Siegel v. Renkiewicz Estate,* 129 N.W.2d 876, 879 (Mich. 1964).

In *Killips v. Mannisto,* 624 N.W.2d 224 (Mich. Ct. App. 2001), the Court of Appeals while affirming the trial court's finding that the plaintiffs had acquired property by acquiescence, held:

> Here, plaintiffs and their predecessors actively used the driveway since approximately 1975. During that time the defendant did nothing to stop usage…. In fact, defendant approached her neighbor in 1982 about moving the driveway and the neighbor asserted that the right to use the driveway was permanent. From 1982 forward, defendant did nothing to stop plaintiffs or their predecessors from using the driveway. While defendant marked the boundary with markers, these survey stakes did not block the driveway or otherwise interfere with plaintiffs' use. Plaintiffs and their predecessors used and apparently maintained the driveway during this entire … period. The trial court did not err in finding that plaintiffs had acquired the property by acquiescence.

Id. at 226-227. Similarly, in *Sackett v. Atyeo*, 552 N.W.2d 536 (Mich. Ct. App. 1996), the owners of adjoining property shared a driveway and mistakenly treated the center of the driveway as their common boundary when it was not the recorded property line. The Court of Appeals held that although there was no hostile act or dispute giving rise to title under the theory of adverse possession, plaintiffs satisfied the requirements for obtaining title as a result of acquiescence in a boundary line for the 15-year statutory period. *Id*. at 539. The court reached its holding despite that fact that a survey showed that the driveway was actually located solely on the property of defendant's predecessor in title and that the center of the driveway was not the actual property line.

It is evident from the cases cited above that the standard of proof for proving acquiescence is less stringent for a claim based on this doctrine. It will be difficult for the client to raise a valid defense to a claim of acquiescence for the statutory period since not only does the doctrine allow tacking of a predecessor's acquiescence, it also allows permissive possession. The fact that the owner of Lot 22 planted shrubbery on Lot 23 in line with the path that also encroaches on Lot 23 gives rise to the inference (arguably by a preponderance of the evidence) that the client's predecessors in title acquiesced to the boundary line at issue.

V. CONCLUSION

The client does not have a strong defense to a claim by way of adverse possession or prescriptive easement, unless the client can proffer evidence that use of the portion of Lot 23 was permissive. The client does not appear to have a valid defense to a claim by acquiescence for the statutory period since such a claim does not require hostile possession.

APPENDIX -B-

The following is an example of a motion prepared by legal offshoring company Lexadigm for an American lawyer.

B, Esq., SBN 199528
LAW OFFICES OF B
00000 WWW Blvd.
Suite 100
Los Angeles, CA 90001
Attorney for Plaintiff
SD, INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES — CENTRAL DISTRICT

SD, INC.	) CASE NO.: BC00000
	)
Plaintiff,	)
	) **PLAINTIFF'S RESPONSE**
vs.	) **IN OPPOSITION TO**
	) **DEFENDANT'S MOTION FOR**
DFL, INC.,	) **ORDER QUASHING SERVICE**
D,	) **OF SUMMONS AND FOR**
LWDP, INC.	) **ORDER SETTING ASIDE**
	) **DEFAULT OF DEFENDANT;**
Defendants.	) **AFFIDAVITS AND DECLARATION**
	) **IN SUPPORT THEREOF**
	)
	)
	)

SUMMARY OF ARGUMENT

This Court should not entertain Defendant D's motion to quash the service of summons because the service of summons was properly affected in accordance with the statutory requirements of Section 415.20 of the California Code of Civil Procedure. The proof of service filed with this Court and the surrounding evidence clearly show that the summons and complaint were properly served at the Defendant's "usual place of business" with Ms. G, a co-worker of the Defendant who had represented at the time of the service that she was the managing agent of Defendant's office. Furthermore, the Court must deny Defendant D's motion to set aside the default judgment because the Defendant had adequate notice of the service of process and failed to timely file a responsive pleading.

ARGUMENT

I. SERVICE OF SUMMONS WAS VALID UNDER CAL. C.C.P. § 415.20(b) BECAUSE THE SUMMONS WAS SERVED AT DEFENDANT'S USUAL PLACE OF BUSINESS IN THE PRESENCE OF A PERSON CLAIMING TO BE A MANAGING AGENT OF THE BUSINESS.

Cal. C.C.P. § 415.20(b) authorizes substitute service upon an individual in lieu of personal service. Statutes governing substitute service are to be liberally construed to effectuate service. *Bein v. Brechtel-Jochim Group Inc.*, 6 Cal.App.4th 1387, 1391-1393 (1992). The Supreme Court's admonition to construe the process statutes liberally extends to substituted service. *Id.* To be constitutionally adequate, the form of the substituted service must be "reasonably calculated to give an interested party actual notice of the proceedings and an opportunity to be heard." *Zibres v. Stratton*, 187 Cal.App.3d 1407, 1417 (1986).

Section 415.20(b), which governs substitute service on individuals, provides in pertinent part:

> If a copy of the summons and of the complaint cannot with reasonable diligence be personally delivered to the person to be served …a summons may be served by leaving a copy of the summons and of the complaint at such person's dwelling house, usual place of abode, usual place of business, or usual mailing address…in the presence of a competent member of the household or a person apparently in charge of his or her office…at least 18 years of age, who shall be informed of the contents thereof, and by thereafter mailing a copy of the summons and of the complaint by first-class mail, postage prepaid to the person to be served at the place where a copy of the summons and complaint were left. Service of a summons in this manner is deemed complete on the 10th day after the mailing.

Cal C.C.P. § 415.20(b) (emphasis added). Thus, for example, the court in *Bein* held that a service of summons to a gate guard was proper and within the purview of the statute governing substituted service. *Bein,* 6 Cal.App.4th at 1393.

In the instant case, Plaintiff's process server, Mr. J, made reasonable and diligent efforts to personally serve Defendant D at his last known residence at 000 BBBB Avenue, TTTTT, New York 11000. (*See* Affidavit of Attempted Service of Mr. J, attached as Exhibit A.) After Plaintiff's reasonable efforts to serve the Defendant in person failed, substitute service was made at Defendant's "usual place of business," at DFL, Inc., 00 ZZZZ Drive, TTTT, New York 11000. *Id.* The service of summons was made to Ms. G, who was at least 18 years of age and who claimed to be a co-worker of the Defendant and a managing agent of DFL, Inc. (*See* Proof of Service, attached as Exhibit B, and Affidavit of Attempted Service of Ms. VV, attached as Exhibit C.) As such, Ms. G was "apparently in charge of [the Defendant's] office" and competent to receive such service under § 415.20(b). Thereafter, a copy of summons and complaint was mailed first class to the Defendant D at 00 SSSSS Drive, TTTTT, New York 11735. Based on these facts, the service of summons was clearly compliant with Section 415.20(b), and the Defendant's motion to quash service of summons should be denied.

II. THE COURT SHOULD DENY DEFENDANT'S MOTION TO SET ASIDE THE DEFAULT JUDGMENT BECAUSE THE DEFENDANT FAILED TO TIMELY FILE A RESPONSIVE PLEADING DESPITE HAVING ACTUAL NOTICE OF THE SUMMONS AND COMPLAINT.

California Code of Civil Procedure § 473(b) authorizes a court to set aside a default judgment taken against "him or her through his or her mistake, inadvertence, surprise or excusable neglect." *Khourie, Crew & Jaeger v. Sabek, Inc.,* 220 Cal.App.3d 1009, 1013 (1990). Defendant D argues that the default judgment against him should be set aside because of surprise and excusable neglect. Specifically, the Defendant argues that since he did not have actual notice of proof of service, he was "surprised that a proof of service materialized for the purposes of default." (*See* Defendant's Motion to Quash, p. 10.) The court should, however, reject this argument because the Defendant clearly had sufficient notice of proof of service, which, as established above, was effectively served and which clearly negates any inference of surprise to the Defendant. *See Khourie,* 220 Cal.App.3d at 1014 (while denying the motion to set aside a default judgment, the court held that a process server provided actual notice of the documents to the person apparently in charge of defendant's office where on being prevented by that person from leaving them inside the office, the process server left them on the other side of the office door); *see also Ludka v. Memory Magnetics Int'l,* 25 Cal.App.3d 316, 323 (1972) (default judgment upheld against the argument that it should have been set aside because the service of process was faulty).

The court must also deny Defendant's excusable neglect argument. The Defendant argues that it was excusable neglect on his part not to file responsive pleading in light that his counsel made multiple requests for proof of service to the Plaintiff in the two months preceding the entrance of a default judgment. (*See* Defendant's Motion to Quash, p. 10.) This argument should fail because the evidence shows to the contrary that the Defendant's

negligence in filing a responsive pleading was not excusable, but was because of Defendant's carelessness. *Ludka*, 25 Cal.App.3d at 321-22 ("Diligence is an essential ingredient of a motion for relief under section 473. Courts do not relieve litigants from the effects of mere carelessness.") (internal citations omitted). As is evident from a communication between Defendant's counsel, E, and the Plaintiff's counsel, B, on January 15, 2004, Mr. E was made aware of effective proof of service on the Defendant and the February 7, 2004 deadline to file a responsive pleading. (*See* Defendant's Motion to Quash, p. 3; *see also* January 15, 2004 letter from Mr. E to Mr. B, attached as Exhibit D.) A proof of service was in fact faxed by Mr. B to Mr. E in the first week of February 2004, and a unilateral extension for filing a responsive pleading until February 13, 2004 was granted to the Defendant. (*See* February 18, 2004 letter from Mr. B to Mr.E, attached as Exhibit E.) Far from filing a responsive pleading and despite being granted a unilateral extension to file a responsive pleading until February 13, 2004, Mr. E denied receipt of proof of service that was faxed by Mr. B to him. (*See* February 18, 2004 letter from Mr. E to Mr.B, attached as Exhibit F.)

Even assuming that Mr. E did not receive the proof of service as of February 18, 2004, as alleged by Defendant's counsel, the fact that he waited for over two weeks, until February 18, 2004, to contact Mr. B for a copy of proof of service, in light of the fact that Mr. E was aware of the February 13 deadline to file proof of service, further leads to only one inference – that the Defendant's counsel acted carelessly. Frustrated by Mr. E's carelessness, the Plaintiff's counsel filed for a default judgment on February 19, 2004. These facts suggest that Defendant's reluctance to file a responsive pleading was not due to excusable neglect, but was due to his and/or his counsel's carelessness. *See Khourie*, 220 Cal.App.3d at 1015 (court declined to find excusable neglect where the defendant requested for an extension to file responsive pleading on the eve of the due date and still failed to file a responsive

pleading after an extension was granted). Thus, this Court should deny Defendant's motion to set aside the default judgment.

III. THIS COURT HAS PERSONAL JURISDICTION OVER THE DEFENDANT BECAUSE THE DEFENDANT WAS EFFECTIVELY SERVED UNDER CAL. C.C.P. § 415.20.

The Defendant argues that California does not have personal jurisdiction over him because the substitute service asserted over him was defective. (*See* Defendant's Motion to Quash, pp. 10-11.) This argument is without merit because, as established above, the Plaintiff's substitute service of summons and complaint upon the Defendant was proper and effective. *See* Section I, *supra.*

CONCLUSION

Pursuant to the express provisions of Cal. C.C.P. § 415.20, the Plaintiff served Defendant G at the Defendant's "usual place of business." Furthermore, the process was served upon a person who claimed to be Defendant's co-worker and manager of the office and who could reasonably be believed to inform the Defendant about the process. Not only were the statutory requirements complied with, the Defendant even had actual notice of the process. As such, Defendant's motion to quash service of summons must be denied. Similarly, since the Defendant was properly served and the Defendant failed to timely file a responsive pleading, Defendant's motion to set aside the default must also be denied.

Dated: May , 2004.

Law Offices of B

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B, Esq.
Attorney for Plaintiff
SD, INC

APPENDIX -C-

The following is a copy of a letter sent to Mary B. Guthrie. It was attached to the article, Mary B. Guthrie, "Executive Director's Report," Wyoming Lawyer (December 2005).

Good Morning!

Please excuse me for making this heavy call on your busy time.
By way of introduction, I am an Indian attorney with 31 years experience in all branches of law, presently heading this full service law firm CONSULTA JURIS, headquartered at Mumbai (Bombay), India, and having offices in all the important Indian cities including Bangalore.

We have about thirty attorneys (some of them qualified from US) and fifteen paralegals with us, which is, by Indian standards, remarkable. Quality services at competitive costs is our hallmark.

India, as you know, has now become one of the most important locations for Business Process Outsourcing. I learn that, some of the U.S. attorneys/law firms, have already started, or are on the look out for, outsourcing their non-core processes to India. We are seriously considering branching out into legal support services to the US attorneys/law firms interested in outsourcing such services, as permissible under the relevant laws, to India.

I shall be grateful, if you will kindly arrange for making our availability known to your members so that those interested can contact us directly.

Yours sincerely,

M. Prabhakaran

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