



Ghost-Lawyering: When Being a Friend Becomes Your Foe

BY NEHA KALRA, ESQ.

Attorneys are often approached by friends and acquaintances seeking legal help. We have all been there. Despite an attorney's good intentions, doing too much to help a non-attorney friend may lead to violation of ethical and procedural rules—often referred to as “ghost lawyering.” This is where the line between maintaining your social identity by helping your friend and balancing your ethical responsibility begins to blur.

At a certain point, an attorney may begin to wonder whether they will need to risk a friendship or risk a blow to their career. Most attorneys do

not want to sacrifice either aspect of their life—and that is the moment where being a friend can become your greatest foe. For purposes of this article, I will call this friend or acquaintance the “ghost-client.”

What is Ghost-Lawyering?

Ghost-lawyering occurs in two distinct contexts: in litigation and non-litigation settings, which may include purely transactional work. In Nevada, ghost-lawyering in the litigation context is defined as: the practice of a member of the bar assisting a pro se litigant (without entering a formal appearance in the case as an attorney of record) by drafting, or guiding the drafting of, a substantial portion of the pleadings, motions, and briefs for the pro se litigant without signing them, and thus escaping the professional, ethical, and substantive obligations imposed on licensed attorneys. *See* State Bar of Nevada Standing Comm. on Ethics and Professional Responsibility, Formal Op. 34, p. 1 (2006) (rev. 2009) at 3, *citing In re Mungo*, 305 B.R. 762 (DC SC 2003); *Letter of Private Reprimand* No. 05-111-1865 issued by the Southern Nevada Disciplinary Board, *Nevada*

Lawyer, August 2006 at p. 40.

In non-litigation matters, the attorney's actual or constructive knowledge that the preparation of documents and/or the rendering of substantial legal assistance to an individual will be presented to another attorney, even though the individual appears unrepresented, constitutes improper ghost-lawyering. *See* State Bar of Nevada Standing Comm. on Ethics and Professional Responsibility, Formal Op. 34, p. 1 (2006) (rev. 2009) at 11. Ghost-lawyering is unethical in Nevada in both the litigation and non-litigation settings. *See* State Bar of Nevada Standing Comm. on Ethics and Professional Responsibility, Formal Op. 34, p. 1 (2006) (rev. 2009) at 1-2. Not only will ghost-lawyering land you in front of the ethics committee, but you may also be subjecting yourself to a malpractice action. How, might you ask?

Nevada Rule of Civil Procedure §11(a) requires every pleading, written motion, and other paper to be signed by at least one attorney of record in the attorney's name—or by a party personally if the party is unrepresented. *See* Nevada Rules of Civil Procedure (NRCP) §11(a). A ghost-written document, submitted



to the court without the signature of the attorney who wrote the document, constitutes a violation of NRCP 11(a), in addition to violating his or her professional responsibility. NRCP §11 further states, the court *must* strike an unsigned paper unless the omission is promptly corrected after being called to the attorney's or party's attention. *See* NRCP §11(a).

Don't believe that the conduct arises to a level where the court is mandatorily required to strike the ghost-written document pursuant to NRCP §11? Rest assured, local court rules may also reinforce your state's policy on ghost-lawyering. For example, §8.03 of the Rules of Practice for the Eighth Judicial District Court of the State of Nevada empowers courts of the district to strike non-conforming documents as defined under §7.20. *See* EDCR §7.20 and §8.03. Likewise, §10 of the Rules of Practice for the Second Judicial District Court of the State of Nevada, subsection 10(b) empowers the court to strike non-conforming documents; and §1.12(b)(7) and (8) of the Rules of Practice for the First Judicial District Court of the State of Nevada grants courts of its district wide discretion to impose sanctions on parties and/or attorneys for his or her neglect to comply with any applicable law, rule, or order of the court. *See* WDCR §10 and FJDCR §1.12.

When these rules are read in conjunction with the prohibition of ghost-lawyering and NRCP §11, clever counsel may reasonably argue that an apparently ghost-written document must be stricken

from the record. Next thing you know, the document you prepared or substantially assisted in preparing has been stricken, the ghost-client is deemed to have admitted the allegations contained in the now-unopposed motion, the court is seeking the ghost-client's divulgence of the ghost-lawyer's information, subjecting you to sanctions for your violation of professional responsibility, and the ghost-client now wants to sue you for malpractice.

At this point, you are likely wondering why Nevada takes such a hardline approach while other states permit ghost-lawyering. Policies of other states reason that the affordability of legal assistance is the driving force behind an attorney licensed in the state's ability to ghost-advocate. *See* State Bar of Nevada Standing Comm. on Ethics and Professional Responsibility, Formal Op. 34, p. 1 (2006) (rev. 2009) at 1-2, *citing* ABA Standing Committee on Ethics and Professional Responsibility, Formal Op. 07-446 (2007). The heart of the quandary lies in the public policy of availability and accessibility of legal services to the public and the governance of the profession.

In reviewing what the State Bar of Nevada does *not* constitute as ghost-lawyering and its reasoning for imposing sanctions for violation of ethical responsibility, its intent to protect both officers of the court and its residents is illuminated. *See Id.* at 4. Knowledge of what is permissible and what is considered unethical can save both your friendship and your career.

What can you do?

- Provide limited, informal legal advice and assistance to family and friends;
- Provide assistance in completing a preprinted form;

- Answer brief telephone inquiries, apprising persons of potential legal issues and rights;
- Suggest that a person seek legal assistance;
- Provide a referral to counsel;
- Participate in baseline bar or government efforts to support pro se litigants and their self-help efforts (in other words, involvement in government pro bono service programs); and
- Properly appear as counsel in a case, whether bundled or unbundled.

What is impermissible?

Without making an appearance in the matter in the litigation setting and/or failure to divulge his or her engagement in non-litigation matters, an attorney cannot:

- Draft in whole and/or guide the drafting of a substantial portion of pleadings, motions, and briefs for the ghost-client, without signing them; and
- Provide substantial legal assistance beyond the drafting of papers to be submitted to the court.

In addition to the broad range of assistance not rising to the level of substantial legal assistance in the performance of ghost-lawyering, Nevada houses a variety of not-for-profit organizations aimed toward making affordable legal advocacy accessible to the public. By way of example, organizations include those such as the Legal Aid Center of Southern Nevada, American Civil Liberties Union of Nevada, and programs such as the Nevada Disability Advocacy & Law Center, the "Family Ask

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a Lawyer Program," the "Estate Planning Ask a Lawyer Program," and the "Employment Ask a Lawyer Program."

Further, in the criminal setting, an indigent defendant may be appointed counsel pursuant to the Nevada Revised Statutes, and attorneys may appear in an unbundled capacity (limited-scope representation) for a potential client. Plainly stated, there are a vast number of avenues available to members of the bar where they can offer limited and/or affordable representation without compromising the standards of the profession. The existence of these vast not-for-profit organizations help fill the public's need for legal services and provide an avenue for the giving attorney's desire to dedicate time and resources to pro-bono projects, eliminating the need to engage in ghost-lawyering.

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