

INTERNATIONAL PRACTICE: A GLOBAL OPPORTUNITY

BY RYAN COBB, ESQ.

Although a cliché, the world indeed continues to become smaller, and the legal community is no exception. Disputes increasingly involve international aspects, requiring guidance from legal counsel located around the world. As a result, maintaining awareness of the issues that can arise when legal disputes or inquiries extend beyond the borders of the United States has become even more important. I was fortunate enough to experience this firsthand after completing a master's degree in intellectual property law at the University of Alicante in Spain. There, the perspectives of my classmates provided a broader, more comprehensive outlook on the legal field. My experiences, both through the master's program and then later, working in Spain's legal field, taught me firsthand the value and importance of understanding international practice. While there are countless unique situations that may arise while dealing with international matters, I will focus here on a few key areas of concern that I dealt with frequently during my experience abroad.

Selecting and Working with Foreign Counsel

When working on matters with international implications, nothing is more important than procuring advice from a licensed practitioner in the foreign jurisdiction. Unfortunately, forging relationships abroad is not always an easy task. As with selecting co-counsel in other states in the U.S., when retaining foreign counsel, personal connections and references are great places to start. However, initial introductions can easily be made through contacts and relationships made in various

attorney organizations, including the International Academy of Trial Lawyers and the American Intellectual Property Association, as well as at firms with international practices. The attorney associations provide the face-to-face relationships, whereas international law firms often have the capability to quickly contact a foreign colleague at a moment's notice. Utilizing contacts within both organizations and firms can be surprisingly easy and yield excellent results.

When contacting foreign counsel, consider the foreign attorney's experience with United States legal customs and culture. Because potential cross-cultural differences exist in almost every area, from legal systems to lunch hours, a foreign attorney with some experience living or working in the United States will better understand not only your client's interests and needs but also, more importantly, client requests, which may seem routine to American attorneys but very unusual to a foreign associate unused to working with Americans. To many foreign practitioners, the legal system in the United States is not easily understood, so working with attorneys who are familiar with American legal culture (and American culture in general) can better ensure that foreign counsel's and your client's expectations are reasonably aligned.



Additionally, when working with practitioners abroad, everything from time changes and holidays to the intricacies of the foreign legal systems will affect the matter at hand. Because of these compounding layers of complication that come with international practice, ample planning and preparation for the many contingencies that may arise is invaluable. A basic understanding of the foreign culture, including everything from holidays to normal business hours, will prevent future frustration when dealing with issues arising abroad. Accordingly, when working with your foreign counterpart, it is important to keep in mind both the legal and cultural issues that may arise. It is surprising how often seemingly minor issues can cause major roadblocks in achieving your client's ultimate goals.

Familiarize Yourself with Foreign Procedures

While advice and insight from foreign practitioners cannot be replaced, obtaining a basic understanding of the legal systems and issues presented – through even minimal research – goes a long way. Not only will it enhance your understanding of the relevant legal matters, it will also arm you with better capabilities to represent your client's interests. International attorney and legal organizations provide a wealth of knowledge and resources for obtaining at least a cursory knowledge of the various issues involved. For example, the World Intellectual Property Organization's website (www.wipo.int), offers a resource library that allows the user to research numerous aspects of international, intellectual property-related matters in a number of countries worldwide. Resources such as these, coupled with a basic search on Google®, can afford counsel the opportunity to gain a rudimentary understanding of foreign practices and procedures. An initial investment of time spent researching these issues, even before any involvement with foreign practitioners, can deliver substantial benefits when navigating the difficult waters of overseas practice.

Litigation Discovery Abroad

Perhaps one of the most critical and problematic areas of international legal practice involves discovery and document collection. Particularly in the European Union, privacy laws will deter, if not outright preclude, the collection of documents and

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materials relevant to litigation. While these strict privacy laws reflect the customs and perceptions of the residents of foreign jurisdictions, they often impede the progress of gathering information necessary for the case. Primarily governed by the Hague Convention, international discovery is nothing short of daunting, and obtaining agreements with co-counsel and opposing counsel to minimize the hurdles of international discovery regulations are invaluable. While these agreements among counsel are extremely helpful, many pitfalls still exist; for example, some countries' individual laws can preclude the simple act of swearing in witnesses before taking their deposition. Because of this type of situation, it is imperative to keep foreign counsel abreast of any such potential arrangements in order to avoid contravening foreign laws on discovery and privacy.

It is also important that the practitioner front any potential issues in international discovery with independent research in order to obtain an understanding of the foreign jurisdiction's standings on discovery-related matters. Fortunately, as international discovery is a significant issue, there are many resources providing detailed information on how to best approach international discovery matters. A practitioner would be wise to get ahead of any potential issues in international

discovery with thorough research and an understanding of the foreign jurisdiction's standings on discovery related matters.

Self-Promotion Abroad

Just as your clients are increasingly confronting international issues that require the assistance of foreign counsel, so are potential clients in other countries encountering problems that require the attention of a U.S. attorney. Nevada's connections to legal issues relating to mining, alternative energy, and the gaming industry, for example, leave Nevada practitioners poised to serve as excellent advisors in these unique areas of law to practitioners abroad. When working with foreign counsel, you should always be mindful of opportunities to promote your capabilities to assist them and their clients, if and when they become involved in legal issues in the United States. Though international practice has its difficulties, working with counsel abroad also affords you the opportunity to expand your business through the foreign counsel and their clients.

Working Abroad

Although the very nature of our profession often imposes jurisdictional boundaries, many opportunities for practicing abroad exist. If you are able to do so, working abroad in the legal profession provides invaluable experience and insight that will assist your practice throughout your career. During my six-month tenure in Madrid, Spain, I had the good fortune to work with Elzaburu, S.A., a leading intellectual property boutique law firm. I was able to take on a variety of roles working with Spanish counsel, including service as an intermediary with American attorneys working in Spain. During this time, I learned firsthand the importance of appreciating another country's business culture and building relationships with competent counsel who understands not only the intricacies of their country's legal system, but also demands that are often unique to American practitioners. I feel that this experience has enabled me to better advise current and future clients when dealing with cross-border issues, and I highly recommend that others take advantage of opportunities to work abroad.

Foreign practice can be a seemingly formidable task. However, when approached with sufficient care and foresight, it can be an extremely rewarding experience. ■



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