

CONVERSATION WITH A COLLEAGUE: DEVIKA KEWALRAMANI

This article is part of a continuing series of interviews between Rajiv S. Khanna and leading practitioners across the country, designed to provide personal and professional insights into various areas of the law.



RAJIV S. KHANNA, US immigration attorney, is the principal of the Law Offices of Rajiv S. Khanna, PC. Since 1993, Rajiv has focused his and the firm's practice on employment and business-based immigration and related administrative and federal audits, investigations, and litigation. The firm represents individuals and businesses from every major city in the US and internationally. Rajiv's immigration practice includes transactional work (immigration/visa petitions, etc.), compliance consultations, defending government audits, and related litigation as well as providing assistance to criminal defense teams against allegations of immigration violations. Rajiv has been providing educational seminars for more than ten years with an emphasis on practical approaches for compliance with immigration laws. The firm's website (<http://www.immigration.com>) is the oldest portal and compendium of immigration law.



DEVIKA KEWALRAMANI is a partner and leader of Moses Singer's Law Firm Industry practice which advises law firms, lawyers, and legal departments on ethical and legal aspects of law practice. She represents and counsels law firms and attorneys in legal ethics, professional responsibility, law firm risk management, lawyer licensing, and admissions matters and conducts ethics audits for law firm clients. Devika currently serves as a member of the Grievance Committee of the First Judicial Department, New York State Supreme Court, Appellate Division. She also serves as a Vice-President of the New York City Bar Association, and she previously chaired the Board of Directors of the New York City Bar Association from 2022 to 2023. She was appointed to the New York Commission on State-wide Attorney Discipline in 2015 and served as a co-chair of its Subcommittee on Transparency and Access. A frequent lecturer, panelist, and author on legal ethics, Devika speaks to law firms, corporate legal departments, bar associations, and professional groups on a variety of legal ethics matters. From 2014 to 2023, Devika achieved Super Lawyer status in the Metro Edition of New York Super Lawyers.

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Rajiv S. Khanna: Good morning, Devika. Let's begin with a brief introduction.

Devika Kewalramani: Good morning, and thank you, Rajiv, for this opportunity. I'm what you might call a "lawyer's lawyer." As an ethics lawyer at a mid-size law firm in New York City, my practice is focused on serving as outside ethics counsel to law firm and lawyer clients who need advice on ethical or professional responsibility matters. As law is a highly regulated profession, law firms and lawyers often seek counsel on ethical troubles before they turn into disciplinary problems. Ethical issues for a firm or a lawyer could arise in their law practices or private lives and can stem from their professional or personal conduct involving clients, adversaries, opposing counsel, colleagues, the court system, regulators, or

even the public. My ethics practice focuses on ethics in the legal profession, but its subject matter reach is well beyond the profession itself, for example, how use of technology impacts a lawyer's ethical duties. As a partner and leader of Moses Singer's Law Firm Industry practice, I have practiced in this somewhat unusual yet dynamic field for almost two decades and it has been an extremely interesting and rewarding experience.

What are the typical situations in which other law firms need an outside ethics advisor?

Generally, law firms either have their own in-house general counsel or they do not. Most larger US and international law firms have internal ethics counsel who may also act in a dual capacity as their general

counsel. While each firm does things differently, there are situations where firms will look outside their firms to obtain independent and objective advice on highly sensitive or serious ethics or professional responsibility matters that need to be resolved effectively and expeditiously. Some firms and practitioners may establish ongoing relationships with outside ethics counsel with the expectation that they can literally “pick up the phone” to seek ethics advice on issues they are grappling with.

The kinds of scenarios where firms may involve outside ethics counsel can vary in scope, scale and depth—it may depend on the firm’s practice setting, fields of work, size, structure, or culture. Legal ethics is an expansive and evolving practice area that raises a multitude of nuanced issues surrounding a lawyer’s obligations, especially in today’s changing legal landscape. Common and recurring examples of ethical issues include competence, conflicts of interest, client confidentiality, attorney-client privilege, unauthorized practice of law, client communication, engagement letters, and escrow account management. Firms often seek advice on how to address mistakes, client disclosure obligations, structuring arrangements with other law firms or non-lawyers, lawyer departures, use of new forms of technology, licensing and admissions, reporting obligations, mergers and acquisitions, and much more. In fact, a firm’s or lawyer’s use of social media, cloud computing, cyber-security, and artificial intelligence can raise difficult and complex legal ethics issues that can easily keep lawyers up at night.

These are just some of the types of situations that can implicate ethical or professional responsibility concerns. Some scenarios could involve clients, opposing parties, adverse counsel, the courts or third parties. Other situations could involve firm lawyers or other non-legal employees. The ethics issues that come up are rarely alike or easy, and firms or lawyers who seek outside ethics advice do so to be able to comply with the rules of professional conduct that govern their professional conduct.

Do you ever get called in for similar advice from corporate in-house counsel or legal departments?

Yes, I do. In many jurisdictions, in-house lawyers are regulated and are subject to the rules of professional conduct much the same way in which private practitioners are governed in their jurisdictions of practice. There is no typical ethical issue that comes to mind, but what I have seen are issues involving conflicts of interest in the organizational client context, confidentiality, attorney-client privilege, and unauthorized practice of law.

One interesting aspect of in-house counsel practice that perhaps over the last decade or so has become a larger concern for in-house counsel is how the in-state practice rules and attorney registration and admissions requirements impact their ability to act for and advise their corporate employers and organizational affiliates. The advent of multi-jurisdictional practice rules in many jurisdictions around the country have provided greater flexibility for in-house counsel to practice law beyond the boundaries of where they are licensed, while also raising some questions about how to identify where specifically their client-employer is located or headquartered or doing business. In the age of virtual client offices and digital law practice, this could raise issues involving unauthorized practice of law. And, to add to this complexity, each jurisdiction has its own body of ethics rules, laws, and regulations on in-house counsel practice. Staying on top of these requirements and keeping up with changes becomes vitally important.

Do you ever get called in to testify as an expert, for example, in standard of care issues?

I have been asked, and I came close to working on some matters which settled. I largely act in an ethics advisory capacity and in defending professional discipline matters for law firms and lawyers.

How did you choose this area of practice or how did this area of practice choose you?

It is a little bit of both, actually. I chose it and it chose me. It is a very niche practice—quite novel and different. I came from a legal background in commercial transactional practice. I was instantly fascinated by this area focused on the legal profession itself. The client is the lawyer or law firm, the lawyer or law firm is the client. The practice involves working with a broad range of clients: large, small, medium-sized law firms, legal departments of companies, and lawyers practicing in a wide spectrum of practice areas and settings, whether highly experienced in their fields or just starting up their practices.

I saw both a need and a gap for a legal ethics practice—a need because every lawyer at some point in their professional career has an ethical question or dilemma they want to deal with to avoid an ethical violation. I also saw a gap because there are not that many of us who do this. My practice is based in New York for New York law firms and lawyers, although I do advise other lawyers and firms seeking advice on the New York ethics rules to the extent they are considering entry or expansion into, or exit from, New York or advice on various professional conduct problems involving the New York ethics rules.

Another feature that was very intriguing about this field of practice is that it is focused on the legal profession that is also business. Our legal profession is highly conservative. It is self-governing and is regulated by the law, regulations, and by the applicable rules of professional conduct. At the same time, the profession is evolving and adapting to emerging practices and businesses in an increasingly complex global environment. And, all these developments are geared towards serving the interests and meeting the objectives of clients. This is what makes my practice so unique and appealing.

What was your path to this area of practice? How did you develop the experience and the recognition to be called a lawyer's lawyer?

It has been somewhat of a long and winding journey! As I was interested in this practice area, I had

to gain knowledge and develop experience to stay in it for the long haul. I knew that before I could build a viable practice, I really had to lay a strong foundation. I spent a substantial amount of time studying and learning the intricacies of this area. In many ways, it is like growing any other practice area, except that this area is extremely nuanced, complex, and dynamic.

To practice in this area, there is no substitute for knowing the ethics rules front to back, cover to cover, and to stay up-to-date on current developments in ethics and professional responsibility. Some of the intentional steps I took at different stages of my legal career involved attending ethics conferences, serving on bar association committees on ethics, professional responsibility and professional discipline, speaking on ethics at CLE programs, and writing ethics articles.

What are some of the challenges in your area of practice?

I think that every lawyer recognizes that whether they are starting out in a practice or are deep into their careers, that the trust and confidence of their clients and colleagues is essential. That is equally true in an ethics practice because lawyers are advising other lawyers like themselves often in delicate and sensitive matters, only in a different practice area. Lawyers are acutely aware that a potential ethics violation could lead to professional discipline and other problems like disqualification and malpractice. Lawyer licenses could be on the line. And, reputational harm is a serious concern. So, for ethics counsel to become a trusted advisor, it takes building strong and lasting relationships of trust and confidence at the outset that continue through their careers.

I think there are lessons and learnings here, and some of this may be true for other practice areas as well, but the practice of law is and will likely remain very risky - there are many gray areas and unknowns for even the most careful lawyer. Unpacking and navigating the ethics rules and complying with the

ethical obligations can be daunting and difficult for any practitioner.

The other big issue is the regulatory scrutiny of lawyers and law firms that is rapidly increasing, not only in the US, but globally. This makes it important for lawyers and firms to constantly stay on top of their areas of practice while remaining equally vigilant in avoiding ethical troubles.

Tell us a little bit about your hobbies and pursuits.

Well, I have many hobbies that I enjoy! I love solving puzzles. I like mind-bending puzzles, optical illusions, and brain teasers. I love to read fiction and to cook (I tend to not follow recipes too closely!). I also enjoy traveling to places where I can explore the history and culture and hike in the forests and mountains.

What is an interesting fact about you that even your colleagues do not know?

I am a problem solver. Problems motivate me. I try to look at them from every possible angle and corner until they are solved. 🪓