

Ethics and Technology: In Perfect Harmony



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Ethics and Technology

- Applicable Model Rules
 - Rule 1.1 Competence
 - Rule 1.3 Diligence
 - Rule 1.6 Confidentiality of Information
 - Rule 5.1 Responsibilities of a Partner or Supervisory Lawyer
 - Rule 5.2 Responsibilities of a Subordinate Lawyer
 - Rule 5.3 Responsibilities Regarding Nonlawyer Assistant
 - Rule 7.1: Communication/Advertising Applicable Standards
- The Rules require a minimum standard of conduct; efforts to avoid malpractice or business failure may require greater efforts

Ethics & Technology

- Your Office is Your Castle
 - The value of data stored on your computers grows daily; risks increase accordingly
 - Defenses are layered, not just one dimension
 - Information security is a process not a product
 - Risks also come from inside your castle—employees, building staff, etc

What is Metadata?

- “Data about Data”
- Useful for finding documents, reviewing, and sharing
- Invisible, but not too hard to find
- Reveals information about electronic documents beyond the printable text



Ethics and Metadata

- **Ethics of Viewing and/or Using Metadata**
 - MD Ethics Docket No. 2007-09
- **Review and Use of Metadata**
 - **ABA Formal Opinion 06-442**
 - Withdrawn: Unsolicited Receipt of Privileged or Confidential Materials (ABA Formal Opinion 92-368)
 - **Superceded** by Rule 4.4 and **Withdrawn** by Formal Opinion 05-437
 - Withdrawn: Inadvertent Disclosure of Confidential Materials
 - ABA Formal Opinion 94-382
 - **Withdrawn** by Formal Opinion 06-440
- **Use of Computer Software to Surreptitiously Examine and trace email and other electronic documents**
 - NYSBA Opinion 749 ;NYSBA Opinion 782
- **Florida weighs in – Opinion 06-2**

Metadata: How Do You Get Rid of It?

- MS offers tools and tricks for removal
- Save as PDF
- Third party software tools
- New versions of MS Office and Adobe Acrobat



Microsoft Removal Tools

- Knowledgebase articles for Word, Excel, PowerPoint from Office 97 forward
- Option in MS Word 2002
- Add on for MS Office XP/2003

WordPerfect Removal Tools

- Macro from MentorDocs
- WordPerfect X3 Option
- Instructions for removal in WP 12

The “Save as PDF” Solution

- PDF = Portable Document Format
- Can't edit
- Still saves many document properties
- Use Adobe Acrobat = \$\$
- Free = GoBCL.com, OpenOffice, CutePDF, MS Word 07, WP X3
 - But no bells and whistles

Metadata: Removal Software

- Payne's Metadata Assistant
- Esquire Innovations: iScrub
- Kraft Kennedy & Lesser: ezClean
- Workshare: Workshare Protect
- SoftWise: Out-of-Sight
- Appligent: GetInfo (also Redaction) for PDF

Electronic Discovery and Metadata

- Metadata is a critical component of document
- Metadata as a source of evidence
- Court described printed email as “dismembered”
- Discovery documents? Scrubbing = shredding
- Many grey areas

Email Security

- Encryption: ABA Formal Opinion 99-413
 - Disclaimers
- Chat rooms/e-mail discussion lists/web forums
 - Recorded, searchable conversations
 - With other lawyers
 - Be aware that even closed lists are not completely private
 - With people seeking legal help
 - Be careful, follow state ethics when responding to online message boards to the general public
- Misaddressed e-mails



Document Security

- Consider a document management system or case management system to control access to documents
- Deletion does not remove the document
- Levels of protection
 - Password
 - To open
 - To edit, copy, extract
 - Sharing
 - MS Office 2003 Information Rights Management
 - PDF – Portable Document Format
 - Encryption



Internet Security

- Your website
 - Consider click through assent to disclaimer statement to avoid conflicts or unintentional perception of formation of an attorney-client relationship
 - Disclaimer to protect articles and presentations being construed as legal advice
 - Ethics and advertising rules
 - KY blogger runs afoul of advertising rules
- Internet Use Policies
 - Staff's use of the internet can jeopardize the firm. Create and mandate internet use policy



PC Security

- Beware Spyware/Malware

- How to avoid:

- Change IE Security Settings (ActiveX controls)
 - Firefox – www.mozilla.org
 - Spybot Search & Destroy – www.safernetworking.org
 - Spy Sweeper – www.webroot.com
 - Ad-aware – www.lavasoftusa.com
 - Counterspy – www.sunbeltsoftware.com



- Faux anti-spyware software

- Spyware Warrior - www.spywarewarrior.com

PC Security

- Discarding old computer equipment
- How can I “wipe” it?
 - Laptops:
 - DoD standards
 - Darik’s Boot and Nuke
 - Cell phones and smartphones
 - Check with the manufacturer to reset to factory settings
- Don’t forget storage devices (CDs, thumb drives...)

People Problems

- Outside the firm
 - Social engineering
 - Theft
 - Disposing of computers/devices/storage without wiping (not just deleting) the data
 - Your family (computer)
- Inside the firm
 - Disgruntled employees
 - Employees who are leaving
 - Untrained, unaware employees



Data Backup

- Backup is fundamental
 - What are the essential elements?
- What about on-line back-up of computer data?
 - Is it ethical?
 - New Jersey and Nevada opinions
 - Is it secure?
 - How do I select a vendor?



Mobile Security

- Wifi/Wireless Local Area Networks
- Public PCs
 - Often full of spyware, like keystroke loggers
 - Is someone looking over your shoulder? (this goes for computing in any public place)
 - Do you want to have to remember to:
 - Delete cache, cookies, history, and offline files?
- Laptop computers, PDAs, cell phones, flashdrives must be secured
- Cell Phone Security
 - Talking in public
 - Bluetooth

Understand Electronic Discovery

- Amendments to the Federal Civil Rules of Civil Procedure become effective December 1, 2006
- Understand e-discovery or else
 - UBS Warburg, Zubulake, Metropolitan Opera
 - Native files vs. print
- Retain experts
- Create an e-discovery strategy
- Test on smaller cases

Legal Research

- Fee vs. Free
 - Make sure to check for authority (who is writing this stuff?) and currency (last updated when?)
- Print vs. Digital
 - Some digital materials are more up-to-date and easy to use
 - Eg. Shepards online or Shepards in print
 - Learn when to use print, when to go online
 - JUST ASK® a law librarian



Thanks!

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