

LEGALTECH[®]

Network Security Track

Professional Responsibility Issues

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Ethical Obligations

- ABA-proposed Model Rules
- Each State sets its own ethics rules
- Important considerations
 - Competence (MR 1.1)
 - Confidentiality (MR 1.6)
 - Oversight (MR 5.1 & 5.3)

Competence [M.R. 1.1]

- A lawyer shall provide competent representation to a client.
- Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

Confidentiality [M.R. 1.6(a)]

- A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent.

Oversight [MR 5.1/5.3]

- A managing attorney shall make *reasonable efforts* to ensure that the firm has in effect measures giving *reasonable assurance* that all lawyers/non-lawyers in the firm conform to the Rules of Professional Conduct.
- Does this require firm partners to implement anti-hacking measures?

Arizona Ethics Opinion 05-04

- An attorney or law firm is obligated to take *competent and reasonable steps* to assure that the client's confidences are not *disclosed* to third parties, *lost* or *destroyed* through theft, inadvertence, or unauthorized action.

Arizona Ethics Opinion 05-04 (cont.)

- An attorney must be competent to evaluate the nature of the potential threat to client electronic files and to evaluate and deploy appropriate computer hardware and software to accomplish this end.

Arizona Ethics Opinion 05-04 (cont.)

- An attorney who lacks or cannot reasonably obtain that competence is ethically required to retain an expert consultant who does have such competence.

Suggested Countermeasures

- “Firewalls”
- “Security Software”
- Secure files by passwords

Arizona Ethics Opinion 05-04 (cont.)

- No recommendations on hardware/software given – responsibility of attorney to decide
- “The expectation of the client that the client’s records and communications will be held in confidence is *significant*.”

So what to do?

- Take reasonable measure to protect the integrity of your client's information.
- Hire a security consultant.
- **EXAMPLE (N.Y. Ethics Opinion 782)**
 - Requirement to remove metadata from disclosed client documents if document sent to “technologically savvy” adversary.

Ethics Opinion Links

- N.Y. Bar Ethics Opinion 782 (Dec. 8 2004)
 - http://www.nysba.org/Content/NavigationMenu/Attorney_Resources/Ethics_Opinions/Opinion_782.htm
- Arizona Ethics Opinion 05-04 (July 2005)
 - <http://www.myazbar.org/Ethics/pdf/05-04.pdf>