

Cloud Considerations

Rules of Professional Conduct Tackle Tech Issues

Last year, the Supreme Court of Pennsylvania amended the Pennsylvania Rules of Professional Conduct in a few respects, a number of which relate to technology matters. Hence, more and more technology issues raise questions of ethics and duties under the Rules.

R. 1.1 adds a section (8) that requires lawyers to keep abreast of changes in relevant technology in their practice. What does that mean for us in daily practice?

Certainly, with more courts going to electronic filing, usually mandatory, a lawyer has to know how to file electronically, how to retrieve items from other cases not received electronically, how to correct rejections, and how to deal with court personnel in aid of such filing. Or, in the alternative, a lawyer must assure that the lawyer's staff is so trained, and the lawyer must continue to supervise all staff with responsibilities and access to the lawyer's electronic accounts.

A lawyer should know how to scan, email, email with attachments, download and respond. This is more than just a marketing tool to communicate with clients or prospective clients, because adversaries will expect to communicate in this fashion. Further, most professional organizations now communicate by email with their members, and some send their newsletters that way as well.

Cases are reported on the Internet. The day of waiting for circulation of "advance sheets" within the office is long over. Lawyers are citing cases in memos and in court that were decided within days, and an effort should be made to keep up with the case law relevant to the lawyer's practice on a regular, even daily, basis.

Needless to say, most research is now done over the Internet. Lawyers have choices to make as to which of several services to use, which means studying and trying them out. Use of key words, "shepardizing" and the like all are done online.



Much of the foregoing may seem obvious, but many lawyers have not kept up sufficiently, and therefore our Supreme Court saw the need to include the technology reference in the Rules.

Should a lawyer have to use a smart phone, a pad, laptop or tablet? Should a lawyer need to know how to make a presentation by PowerPoint or its equivalent, in a meeting or in a courtroom? Should documents be stored electronically? Maintained in a "cloud" for security reasons? All that must be considered.

R. 4.4 tells us a lawyer what to do when material is "inadvertently" received. It originally was drafted to refer to documents received by fax and intended for another. Now it specifically includes "electronically stored information."

Finally, R. 7.3, which deals with solicitation of clients, expressly allows electronic communications similar to targeted direct mail letters, but prohibits real time solicitation or targeted follow-ups.

The pace of change continues to accelerate in the area of technology, and lawyers have an ethical duty to stay informed. ■

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