PROGRAM MATERIALS
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Technology Ethics for Lawyers

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Technology Ethics for Lawyers

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Technology and digital social media ethics topics

- Technology Competence
- Technology and Ethics: E-Portal Filing
- Electronic File Storage
- Cloud Computing
- Outsourcing and Protection of Client Confidentiality
- Digital Storage Devices
- Metadata
- Social Media Ethics Issues
- E-mails and Reply All
- Expert and Specialist
- Receipt of unsolicited e-mail information on website
- Practice over the internet
- Use of "expert" and "specialist" in lawyer advertising
- Use of "expert" in firm's domain name

Technology competence CLE

- Comment to Rule 1.1, Model Rules of Professional Conduct
- Maintaining Competence
- To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, **including the benefits and risks associated with relevant technology**, engage in continuing study and education and comply with all continuing legal education requirements to which the lawyer is subject.
- Revised Florida Bar Rules 4-1.1 and 6-10.3 (effective January 1, 2017)
- Revised Rule 6-10.3 increases CLE for Florida lawyers from 30 to 33 hours every three years and **mandatory three hours must be in technology related areas/courses**. First state/jurisdiction to mandate technology CLE.
- Comment to Rule 4-1.1 (competence) revised to state "Competent representation may also involve the association or retention of a non-lawyer advisor of established technological competence in the field in question. Competent representation also involves safeguarding confidential information relating to the representation, including, but not limited to, electronic transmissions and communications.

Technology and ethics: e-portal filing

- Florida Bar Ethics Opinion 12-2 (June 22, 2012)
- A lawyer may provide their log-in credentials to the E-Portal to trusted nonlawyer employees for the employees to file court documents that have been reviewed and approved by the lawyer, who remains responsible for the filing. The lawyer must properly supervise the nonlawyer, should monitor the nonlawyer's use of the E-Portal, and should immediately change the lawyer's password if the nonlawyer employee leaves the lawyer's employ or shows untrustworthiness in use of the E-Portal.

- Florida Bar Ethics Opinion 87-11 (Reconsideration) (June 27, 2014)
- A lawyer may permit a nonlawyer to place the lawyer's signature on solely electronic documents as permitted by Florida Rule of Judicial Administration 2.515 and only after reviewing and approving the document to be signed and filed. The lawyer remains responsible for the document.

Technology and ethics: e-portal filing

- *In the Matter of: John A. Goudge*, No. 1024426, Commission No. 2012PR00085.
- Associate at Chicago law firm was responsible for contract cases from USDOJ to represent U.S. in debt collection cases involving student loans.
- Under lawyer's supervision and direction, non-lawyer assistant prepared complaints and exhibits and non-lawyer assistants filed complaints and exhibits with the Ill. N. U.S. District Court for the Northern District of Illinois' CM/ECF (e-filing) system.
- CM/ECF requires box be checked stating that filings are in compliance Fed. Civil Proc. Rules and personal identifying information was redacted; however, confidential information was not redacted and became available to public and viewable on court's website.
- Lawyer admitted failure to make reasonable efforts to supervise non-lawyer, expressed remorse, and received reprimand.

Remote access to electronic client files

- New York State Bar Ethics Opinion 1019 (8/6/2014)
- Confidentiality; Remote Access to Firm's Electronic Files
- A law firm may give its lawyers remote access to client files, so that lawyers may work from home, as long as the firm determines that the particular technology used provides reasonable protection to client confidential information, or, in the absence of such reasonable protection, if the law firm obtains informed consent from the client, after informing the client of the risks.

Electronic file storage

- Florida Bar Ethics Opinion 06-1 (April 10, 2006)
- Lawyers may, but are not required to, store files electronically unless: a statute or rule requires retention of an original document, the original document is the property of the client, or destruction of a paper document adversely affects the client's interests. Files stored electronically must be readily reproducible and protected from inadvertent modification, degradation or destruction.

Cloud computing

- Florida Bar Ethics Opinion 12-3 (January 25, 2013)
- Lawyers may use cloud computing if they take reasonable precautions to ensure that confidentiality of client information is maintained, that the service provider maintains adequate security, and that the lawyer has adequate access to the information stored remotely. The lawyer should research the service provider to be used.
- New York State Bar Ethics Opinion 842 suggests the following steps involve the appropriate due diligence:
- Ensuring that the online data storage provider has an enforceable obligation to preserve confidentiality and security, and that the provider will notify the lawyer if served with process requiring the production of client information;
- Investigating the online data storage provider's security measures, policies, recoverability methods, and other procedures to determine if they are adequate under the circumstances;
- Employing available technology to guard against reasonably foreseeable attempts to infiltrate the data that is stored.

Cloud computing

- Iowa Ethics Opinion 11-01 recommends considering the reputation of the service provider to be used, its location, its user agreement and whether it chooses the law or forum in which any dispute will be decided, whether it limits the service provider's liability, whether the service provider retains the information in the event the lawyer terminates the relationship with the service provider, what access the lawyer has to the data on termination of the relationship with the service provider, and whether the agreement creates "any proprietary or user rights" over the data the lawyer stores with the service provider.
- It also suggests that the lawyer determine whether the information is password protected, whether the information is encrypted, and whether the lawyer will have the ability to further encrypt the information if additional security measures are required because of the special nature of a particular matter or piece of information. It further suggests that the lawyer consider whether the information stored via cloud computing is also stored elsewhere by the lawyer in the event the lawyer cannot access the information via "the cloud."

Outsourcing and protection of confidentiality in document transmission

- Florida Bar Op. 07-02 (January 18, 2008).
- A lawyer is not prohibited from engaging the services of an overseas provider to provide paralegal assistance as long as the lawyer adequately addresses ethical obligations relating to assisting the unlicensed practice of law, supervision of nonlawyers, conflicts of interest, confidentiality, and billing. The lawyer should be mindful of any obligations under law regarding disclosure of sensitive information of opposing parties and third parties.
- Of particular concern is the ethical obligation of confidentiality. The inquirer states that the foreign attorneys will have remote access to the firm's computer files. The committee believes that the law firm should instead limit the overseas provider's access to only the information necessary to complete the work for the particular client. The law firm should include "contractual provisions addressing confidentiality and remedies in the event of breach, and periodic reminders regarding confidentiality."

Digital storage devices

- Florida Bar Ethics Opinion 10-2 (September 24, 2010)
- "A lawyer who chooses to use Devices that contain Storage Media such as printers, copiers, scanners, and facsimile machines must take reasonable steps to ensure that client confidentiality is maintained and that the Device is sanitized before disposition, including:
- (1) identification of the potential threat to confidentiality along with the development and implementation of policies to address the potential threat to confidentiality;
- (2) inventory of the Devices that contain Hard Drives or other Storage Media;
- (3) supervision of nonlawyers to obtain adequate assurances that confidentiality will be maintained; and
- (4) responsibility for sanitization of the Device by requiring meaningful assurances from the vendor at the intake of the Device and confirmation or certification of the sanitization at the disposition of the Device."

Metadata

- Florida Bar Ethics Opinion 06-2 (September 15, 2006)
- A lawyer who is sending an electronic document should take care to ensure the confidentiality of all information contained in the document, including metadata.
- A lawyer receiving an electronic document **should not try to obtain information from metadata** that the lawyer knows or should know is not intended for the receiving lawyer.
- A lawyer who inadvertently receives information via metadata in an electronic document should notify the sender of the information's receipt. The opinion is not intended to address metadata in the context of discovery documents.

Metadata

- ABA Formal Opinion 06-442 and Formal Opinion 05-437
- No explicit duty regarding metadata is imposed, but a number of methods for eliminating metadata (including "scrubbing," negotiating a confidentiality agreement, or sending the file in a different format) are suggested for attorneys who are "concerned about the possibility of sending, producing, or providing to opposing counsel a document that contains or might contain metadata." [06-442]
- **"Mining" of metadata is not prohibited**. [06-442]
- ABA Model Rule 4.4(b) "obligates the receiving lawyer to notify the sender of the inadvertent transmission promptly" but "does not require the receiving lawyer either to refrain from examining the materials or to abide by the instructions of the sending lawyer." [05-437]

Disclaimers on lawyer websites

- ABA Formal Opinion 10-457 - Lawyer Websites (August 5, 2010).
- "Warnings or cautionary statements on a lawyer's website can be designed to and may effectively limit, condition, or disclaim a lawyer's obligation to a website reader. Such warnings or statements may be written so as to avoid a misunderstanding by the website visitor that (1) a client-lawyer relationship has been created; (2) the visitor's information will be kept confidential; (3) legal advice has been given; or (4) the lawyer will be prevented from representing an adverse party.
- Limitations, conditions, or disclaimers of lawyer obligations will be effective only if reasonably understandable, properly placed, and not misleading. This requires a clear warning in a readable format whose meaning can be understood by a reasonable person. If the website uses a particular language, any waiver, disclaimer, limitation, or condition must be in the same language. The appropriate information should be conspicuously placed to assure that the reader is likely to see it before proceeding.
- Finally, a limitation, condition, waiver, or disclaimer may be undercut if the lawyer acts or communicates contrary to its warning."

Social media ethics issues: Facebook etc.

- A lawyer cannot attempt to gain access to non-public social media content by using subterfuge, dishonesty, deception, pretext, false pretenses, or an alias.
- In the recent case of *John J. Robertelli v. The New Jersey Office of Attorney Ethics (A-62-14) (075584)* (New Jersey Supreme Court 4/19/16), the NJ Supreme Court ruled that attorneys could be prosecuted for disciplinary rule violations for improperly accessing an opposing party's Facebook page.
- Ethics opinions in Oregon (Op. 2013-189), Kentucky (Op. KBA E-434), New York State (Op. 843), and New York City (Op. 2010-2) conclude that lawyers are not permitted (either themselves or through agents) to engage in false or deceptive tactics to get around a social media users' privacy settings to reach non-public information.
- Ethics opinions by the Philadelphia Bar Association (Op. 2009-02) and the San Diego County Bar Association (Op. 2011-2), among others, conclude that lawyers must affirmatively disclose their reasons for communicating with the third party.

Social media ethics issues: Changing client privacy settings

- Florida Bar Advisory Opinion 14-1 (approved June 25, 2015)
- Advising client to change privacy settings
- "A personal injury lawyer may advise a client pre-litigation to change privacy settings on the client's social media pages so that they are not publicly accessible. Provided that there is no violation of the rules or substantive law pertaining to the preservation and/or spoliation of evidence, the lawyer also may advise that a client remove information relevant to the foreseeable proceeding from social media pages as long as the social media information or data is preserved."
- This advisory opinion is consistent with NYC Lawyers Association Ethics Opinion 745 (2013) which states that a lawyer may advise client to use highest level of privacy setting on the client's social media pages and may advise client to remove information from social media page prior to litigation, regardless of its relevance to a reasonably foreseeable proceeding, as long as removal does not violate substantive law regarding preservation and/or spoliation of evidence.

Social media ethics issues

- Florida comprehensive revised advertising rules effective May 1, 2013
- all lawyer advertising is subject to the Bar rules, including lawyer and law firm websites, social networking and video sharing sites, and other digital media.
- lawyer and law firm websites are now subject to advertising rules.
- Bar Rule 4-7.11(a) explicitly includes "social networking and video sharing media" in the types of "media" covered by subchapter 4-7.
- Social media profiles, posts, and blogs can be advertising
- Lawyer blogs will be advertisements if primary purpose is to obtain employment/clients
- blog must be informational and educational.
- Check your jurisdiction's rules

Social media ethics issues: prohibited and misleading statements

- Do not make false or misleading statements
- Can happen when a lawyer creates a social media account and completes a profile without realizing that the social media platform will promote the lawyer to the public as an "expert" or a "specialist" or as having legal "expertise" or "specialties."
- Lawyers are prohibited from holding themselves out as an expert or a specialist unless certified in that specific area of practice.

Social media ethics issues: Confidentiality and privilege

- Do not disclose privileged/confidential information in blogs and responding to internet "complaints"
- Illinois Supreme Court suspended assistant public defender for 60 days for, inter alia, disparaging judges and blogging about clients and implying in a post that a client committed perjury. *In re Peshek*, M.R. 23794 (Ill. SC May 18, 2010).
- NYSBA Ethics Opinion 1032 (October 30, 2014) states that lawyers cannot reveal client confidences solely to respond to former client's criticism on lawyer-rating website.

Social media ethics issues: confidentiality in response to internet complaints

- Georgia Supreme Court imposes reprimand on lawyer who violated attorney/client confidentiality in response to negative reviews that client had made on the internet "consumer Internet pages". *In the Matter of Margrett A. Skinner*, Case No. S14Y0661 (Ga. Supreme Court 5/19/14) .

Social Media Ethics Issues: lawyer blogs

- *The Florida Bar v. Conway*, 996 So.2d 213 (Fla. 2008)
- Lawyer posted derogatory comments about a judge on an internet blog.
- He referred to (the judge) throughout the internet posting as an 'EVIL UNFAIR WITCH' or 'EUW.' He improperly questioned her qualifications by stating that the judge was 'seemingly mentally ill.' He said that (the judge)had an 'ugly, condescending attitude.'
- He impugned (the judge's) integrity by stating "she is clearly unfit for her position and knows not what it means to be a neutral arbiter." He also stated that "there's nothing honorable about that malcontent."
- Statements "not only unfairly undermined public confidence in the administration of justice, but … were prejudicial to the proper administration of justice." The lawyer admitted the allegations and received public reprimand.

Social media ethics issues: Facebook "friends"

- Becoming "friends" with judges (and/or mediators) on Facebook etc.
- Florida Judicial Ethics Opinion 2009-20 concluded that judge cannot friend lawyers on Facebook who may appear before the judge because this may suggest that the lawyer is in a special position to influence the judge.
- Florida Ethics Opinion 2012-12 extended the same rationale to judges using LinkedIn and the more recent
- Florida Judicial Ethics Opinion 2013-14 cautions judges about risks of using Twitter.
- *Domville v. State*, 103 So. 3d 184 (Fla. 4th DCA 2012) held that trial judge presiding over a criminal case was required to recuse himself because the judge was Facebook friends with the prosecutor.
- In a divided opinion, Florida Supreme Court held in 2018 that social media friendship with a lawyer, standing alone, is not sufficient to disqualify a judge. *Law Offices of Herssein and Herssein, P.A. v. United Services Automobile Association*, No. SC17-1848 (Fla. November 15, 2018.)

Social media ethics issues: Facebook "friends"

- Becoming "friends" with judges (and/or mediators) on Facebook etc.
- Florida Mediator Ethics Advisory Opinion 2010-001 (June 1, 2010) concluded that mediators can friend lawyers and mediation parties, but must consider disclosure if relationship presents a potential conflict of interest or would otherwise impair mediator's impartiality.

Social media ethics issues: social media "connections"

- Be careful with invitations to connect or to "connect"
- invitations sent directly from a social media site via IM to third party to view or link to the lawyer's page on an unsolicited basis for the purpose of obtaining, or attempting to obtain, legal business may be solicitations and violate Rule 4-7.4(a), unless the recipient is:
- the lawyer's current client, former client, relative, has a prior professional relationship with the lawyer, or is another lawyer.

Social media ethics tips

- Do not communicate directly with represented persons without permission
- Lawyers are prohibited from sending Facebook friend requests or LinkedIn invitations to opposing parties known to be represented by counsel in order to gain access to those parties' private social media content.
- San Diego County Bar Association Opinion 2011-2 concluded that high-ranking employees of a corporation should be treated as represented parties and, therefore, a lawyer could not send a Facebook friend request to those employees to gain access to their Facebook content.
- Viewing publicly accessible social media content that does not involve communication with a represented party (e.g., viewing public blog posts or Tweets) is generally considered fair game.
- Oregon Ethics Opinions 2013-189 and 2005-164 reached this conclusion and analogized viewing public social media content to reading a magazine article or a published book.

Social media ethics tips

- Be careful if you choose to communicate with unrepresented third parties
- A lawyer may not attempt to gain access to non-public social media content by using subterfuge, dishonesty, deception, pretext, false pretenses, or an alias.
- Ethics opinions in Oregon (Op. 2013-189), Kentucky (Op. KBA E-434), New York State (Op. 843), and New York City (Op. 2010-2) concluded that lawyers are not permitted (either themselves or through agents) to engage in false or deceptive tactics to get around a social media users' privacy settings to reach non-public information.
- Ethics opinions by the Philadelphia Bar Association (Op. 2009-02) and the San Diego County Bar Association (Op. 2011-2), among others, concluded that lawyers must affirmatively disclose their reasons for communicating with the third party.

Social media ethics tips

- Do not unintentionally create an attorney-client relationship
- ABA Formal Opinion 10-457 stated that by enabling communications between prospective clients and lawyers, websites may give rise to inadvertent lawyer-client relationships and trigger ethical obligations to prospective clients under the rules.
- Use of disclaimers in a lawyer's or a law firm's social media profile or in connection with specific posts may help avoid inadvertently creating attorney-client relationships (of course the lawyer's or law firm's online conduct and communications must be consistent with the disclaimer).
- South Carolina Ethics Opinion 12-03 concluded that "[a]ttempting to disclaim (through buried language) an attorney-client relationship in advance of providing specific legal advice in a specific matter, and using similarly buried language to advise against reliance on the advice is patently unfair and misleading to laypersons."

Social media ethics tips

- Do not engage in the unlicensed practice of law
- Public social media post (such as a public Tweet) does not have any geographic boundaries and public social media is accessible to everyone who has an Internet connection.
- Lawyers who interact with non-lawyer social media users outside of their jurisdiction must be aware that their activities may be subject not only to the ethics rules where they are licensed, but potentially UPL rules in jurisdiction where the recipients are located.
- South Carolina Supreme Court permanently barred a Florida lawyer who was not admitted in that state from admission to practice for **soliciting over the internet and representing clients**, making false statements, and failing to respond to the allegations. In the Matter of Alma C. Defillo, SC Case No. 27431 (8/13/14). Second Florida lawyer to be barred from practicing in South Carolina in 2014.

Social media ethics tips

- Be careful with testimonials, endorsements, and ratings
- LinkedIn and Avvo heavily promote the use of testimonials, endorsements, and ratings (either by peers or consumers).
- **Florida prohibits testimonials unless certain specific requirements are met.**
- Testimonials:
  (A) must be regarding matters on which the person making the testimonial is qualified to evaluate;
- (B) must be the actual experience of the person making the testimonial;
- (C) must be representative of what clients of that lawyer or law firm generally experience;
- (D) cannot be written or drafted by the lawyer;
- (E) cannot be in exchange for which the person making the testimonial has been given something of value; or
- (F) must include the disclaimer that the prospective client may not obtain the same or similar results.
- Check your jurisdiction's Bar Rules

Social media ethics tips

- use available social media platforms
- consider positive client reviews/endorsements and testimonials
- consider endorsements by other lawyers
- handle negative posts professionally-not online unless anonymous
- if you blog, do not advertise! Provide relevant information/education
- develop appropriate social media strategy and policy
- actively monitor/manage your professional social media presence and online reputation
- be aware of lawyer advertising rules which now apply to all media
- keep things private
- modify privacy and search settings on your Facebook, Twitter, LinkedIn, or other social network accounts.
- take advantage of the privacy features on your blog or personal website.
- no expectation of privacy

Using unencrypted e-mail to communicate with clients

- Florida Bar Ethics Opinion 00-4 (July 15, 2000)
- "While the Professional Ethics Committee has yet to issue an opinion on the confidentiality implications of using e-mail to communicate with clients, almost all of the jurisdictions that have considered the issue have decided that an attorney does not violate the duty of confidentiality by sending unencrypted e-mail. However, these opinions also generally conclude that an attorney should consult with the client and follow the client's instructions before transmitting highly sensitive information by e-mail. See, e.g., ABA Formal Opinion 99-413, Alaska Ethics Opinion 98-2, Vermont Ethics Opinion 97-5, Illinois Ethics Opinion 96-10, South Carolina Ethics Opinion 97-08, and Ohio Ethics Opinion 99-2 . **Thus, sending the e-mail unencrypted would not be an ethical violation under normal circumstances."**

When to use encryption of e-mail, storage system, and backup

- Email encryption obscures the content of the email in order to prevent people other than the sender and the receptor from reading it.
- System encryption makes the data of a desktop or laptop computer inaccessible or illegible without a passkey regardless of the application with which the file was created.
- Backup system should be encrypted/secure as well. Many portable storage drives will allow encryption of backup data.
- See: ABA article - FYI: Playing it Safe With Encryption http://www.americanbar.org/groups/departments_offices/legal_technology_resources/resources/charts_fyis/FYI_Playing_it_safe.html

E-mail ethics and reply all

- NYSBA Ethics Op. 1076 (Dec. 2015). Quote from the opinion:
- "Reasons Not to Use Either "cc:" or "bcc:" When Copying e-mails to the Client
- Although it is not deceptive for a lawyer to send the client blind copies of communications with opposing counsel, there are other reasons why use of the either "cc:" or "bcc:" when e-mailing the client is not a best practice.
- Copying the client would disclose the client's e-mail address and could be deemed by opposing counsel to be an invitation to send communications to the inquirer's client. But see Rule 4.2, Cmt. [3] (Rule 4.2(a) applies even though the represented party initiates or consents to the communication).
- Sending the client a "bcc:" may initially avoid the problem of disclosing the client's email address,; however it raises other problems if the client mistakenly responds to the e-mail by hitting "reply all." For example, if the inquirer and opposing counsel are communicating about a possible settlement of litigation, the inquirer bccs his or her client, and the client hits "reply all" when commenting on the proposal, the client may inadvertently disclose to opposing counsel confidential information otherwise protected by Rule 1.6. See Charm v. Kohn, 27 Mass L. Rep. 421, 2010 (Mass. Super. Sept. 30, 2010) (stating that blind copying a client on lawyer's email to adversary "gave rise to the foreseeable risk" that client would respond without "tak[ing] careful note of the list of addressees to which he directed his reply")."

Inadvertent disclosure of confidential information

- RULE 4-4.4 RESPECT FOR RIGHTS OF THIRD PERSONS
- (b) A lawyer who receives a document relating to the representation of the lawyer's client and knows or reasonably should know that the document was inadvertently sent **shall promptly notify the sender**.
- Substantially the same as ABA Model Rule 4.4.
- Check your jurisdiction's rules
- Federal Rules are substantially different

Employer's lawyer receipt of employee's e-mail communications with counsel

- ABA Formal Opinion 11-460 - Duty when Lawyer Receives Copies of a Third Party's E-mail Communications with Counsel (August 4, 2011)
- When an employer's lawyer receives copies of an employee's private communications with counsel, which the employer located in the employee's business e-mail file or on the employee's workplace computer or other device, **neither Rule 4.4(b) nor any other Rule requires the employer's lawyer to notify opposing counsel of the receipt of the communications**. However, court decisions, civil procedure rules, or other law may impose such a notification duty, which a lawyer may then be subject to discipline for violating. If the law governing potential disclosure is unclear, Rule 1.6(b)(6) allows the employer's lawyer to disclose that the employer has retrieved the employee's attorney-client e-mail communications to the extent the lawyer reasonably believes it is necessary to do so to comply with the relevant law. If no law can reasonably be read as establishing a notification obligation, however, then the decision whether to give notice must be made by the employer-client, and the employer's lawyer must explain the implications of disclosure, and the available alternatives, as necessary to enable the employer to make an informed decision.

Unsolicited information from website

- Florida Bar Ethics Opinion 07-3
- A person seeking legal services who sends information unilaterally to a lawyer has no reasonable expectation of confidentiality regarding that information. A lawyer who receives information unilaterally from a person seeking legal services who is not a prospective client within Rule 4-1.18, has no conflict of interest if already representing or is later asked to represent an adversary, and may use or disclose the information. If the lawyer agrees to consider representing the person or discussed the possibility of representation with the person, the person is a prospective client under Rule 4-1.18, and the lawyer does owe a duty of confidentiality which may create a conflict of interest for the lawyer. Lawyers should post a statement on their websites that the lawyer does not intend to treat as confidential information sent to the lawyer via the website, and that such information could be used against the person by the lawyer in the future.

Unsolicited information from website

- Arizona Bar Ethics Opinion 02-04
- An attorney does not owe a duty of confidentiality to individuals who unilaterally e-mail inquiries to the attorney when the e-mail is unsolicited. The sender does not have a reasonable expectation of confidentiality in such situations. Law firm websites, with attorney e-mail addresses, however, should include disclaimers regarding whether or not e-mail communications from prospective clients will be treated as confidential.
- Massachusetts Bar Ethics Opinion 07-01
- In the absence of an effective disclaimer, a lawyer who receives unsolicited information from a prospective client through an e-mail link on a law firm web site must hold the information in confidence even if the lawyer declines the representation. Whether the lawyer's firm can represent a party adverse to the prospective client depends on whether the lawyer's obligation to preserve the prospective client's confidences will materially limit the firm's ability to represent the adverse party.

Practicing law over the internet

- Florida Bar Ethics Opinion 00-4 (July 15, 2000)
- An attorney may provide legal services over the Internet, through the attorney's law firm, on matters not requiring in-person consultation or court appearances. All rules of professional conduct apply, including competence, communication, conflicts of interest, and confidentiality. An attorney may communicate with the client using unencrypted e-mail under most circumstances. If a matter cannot be handled over the Internet because of its complexity, the matter must be declined.
- New York State Bar Association Committee on Professional Ethics Opinion 709 states that it is permissible to practice over the Internet as long as the attorney complies with the ethics rules. See also Ohio Ethics Opinion 99-9 and South Carolina Ethics Opinion 94-27.

Use of "expert" and "specialist"

- U.S. District Judge in Southern District of Florida found that the Florida Bar rule prohibiting lawyers from advertising that they are experts or specialists unless certified by the Bar was unconstitutional.
- The Florida Bar will file petition with advertising rule amendment regarding lawyer's use of "expert" and "specialist" on October 15, 2016.
- New subsection to Rule 4-7.14(5)(a)(D) states that a lawyer is prohibited from stating that he or she is "a specialist, an expert, or other variations of those terms" unless "the lawyer's experience and training demonstrate specialized competence in the advertised area of practice that is reasonably comparable to that demonstrated by the standards of the Florida Certification Plan." In addition, if the lawyer's area of expertise is an area in which the Bar approves certifications, the lawyer would be required to include "a reasonably prominent disclaimer that the lawyer is not board certified in that area of practice by The Florida Bar or another certification program."

Use of "expert" in law firm's domain name

- NYSBA Ethics Op. 1021 (9/12/2014)
- Law firm practiced exclusively in one area of law and says it "has a very successful track record." The firm wished to use as its internet website domain name a combination of the name of its sole practice area and the word "expert," for example, "realestatelawexpert" or bankruptcylawexpert," or the like. The website would contain a disclaimer that the firm does not guarantee any favorable outcomes, and that past success does not assure future results. The law firm says that the firm will not use the word "expert" except in its domain name.
- N.Y. Rule of Professional Conduct 7.5(e)(3) : lawyer or law firm may use a "domain name for an internet web site that does not include the name of the lawyer or law firm provided if it "does not imply an ability to obtain results in a matter." N.Y. Rule of Professional Conduct 7.4 prohibits "expert" or "specialist unless certified.
- Conclusion: **law firm may not use a domain name that has the word "expert" with the law firm's area of concentration.**

Digital ethics tips

- should you use text messages with clients or to discuss client matters? Beware
- be sure you have permission to text the person
- texts are accessible and not permanent
- expectation of privacy v. e-mails?
- use of electronic devices in public- confidentiality issues
- don't use public wi-fi in public place for confidential communications-use VPN
- keep your laptop/tablet secure
- use built-in security features
- turn off sharing
- be aware of surroundings
- consider using privacy screen

The End

- Thanks for your attention and be careful out there!