
LEGAL ETHICS AND PROFESSIONALISM IN THE CLOUD

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- I. Introduction: Cloud computing is Internet-based computing using shared resources, web-app software and data.
- II. Why Use “The Cloud” for Practice?
 - A. Practical Reasons: To save time. To save money. To collaborate. To work anywhere. To work more efficiently. To work more safely.
 - B. Ethical and Legal Reasons: The rules of ethics require that a lawyer to provide competent representation, to reasonably communicate with the lawyer’s client and to cooperate with opposing counsel. Practicing with cloud resources facilitates fulfillment of all of these obligations.
 1. Competence (Rule 1.1): Rule 1.1(a) provides that, “[a] lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.”
 2. Communication (Rule 1.4): Rule 1.4 provides that, “[a] lawyer shall: (1) promptly inform the client of any decision or circumstance with respect to which the client’s informed consent, as defined in Rule 1.0(e), is required by these Rules; (2) reasonably consult with the client about the means by which the client’s objectives are to be accomplished; (3) keep the client reasonably informed about the status of the matter; (4) promptly comply with reasonable requests for information; and (5) consult with the client about any relevant limitation on the lawyer’s conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.”
 3. Fairness to Opposing Counsel (Rule 3.4): Rule 3.4 provides that a lawyer must “make reasonably diligent effort to comply with a legally proper discovery request by an opposing party.”
 4. Returning the Client File (Rule 1.16): Rule 1.16(d) requires a lawyer to promptly return the client’s file upon termination of the representation.

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“Upon written request by the client, the lawyer shall promptly release to the client or the client’s new lawyer the entire file relating to the matter. The lawyer may retain a copy of the file but shall not condition release over issues relating to the expense of copying the file or for any other reason. The responsibility for the cost of copying shall be determined in an appropriate proceeding.”

III. How to Use the Cloud in Law Practice

- A. Research.
 - 1. Legal.
 - 2. Factual.
- B. Correspondence and communication.
 - 1. Written correspondence.
 - a. Email.
 - b. Fax.
 - c. Snail mail.
 - 2. Voice communication.
 - a. Voice mail.
 - b. VoIP.
- C. File sharing.
 - 1. Collaboration with client and co-counsel.
 - 2. Producing documents to opposing counsel.
- D. Document creation and modification.
- E. Time, billing and accounting.
- F. Scheduling.

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- G. Lawyer marketing.
- IV. Professional Responsibility in the Cloud
- A. Complying with “Ethical” Standards
1. Assuring confidentiality of client information. Under Louisiana Rule of Professional Conduct 1.6(a): “A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b).”
 - a. Handling “new” threats to confidentiality.
 - b. Handling “old” threats to confidentiality.
 2. Safeguarding client property.
 - a. Louisiana Rule of Professional Conduct 1.15(a) requires that a client’s property be “appropriately safeguarded” by the lawyer.
 - b. A lawyer should also assure that the client can obtain the lawyer’s information should the lawyer die suddenly or become disabled. ABA Model Rule 1.3, comment 5 provides that “to prevent neglect of client matters in the event of a sole practitioner’s death or disability, the duty of diligence may require that each sole practitioner prepare a plan, in conformity with applicable rules, that designates another competent lawyer to review client files, notify each client of the lawyer’s death or disability, and determine whether there is a need for immediate protective action.”
 3. Learning about cloud-computing service providers. A September 2010 New York State Bar Association advisory opinion suggests that a lawyer using a cloud-computing service provider should:
 - a. ensure 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;
 - b. investigate the online data storage provider’s security measures, policies, recoverability methods, and other procedures to determine if they are adequate under the circumstances;

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- c. employ available technology to guard against reasonably foreseeable attempts to infiltrate the data that is stored; and/or
 - d. investigating the storage provider's ability to purge and wipe any copies of the data, and to move the data to a different host, if the lawyer becomes dissatisfied with the storage provider or for other reasons changes storage providers. *See* NEW YORK STATE BAR ASSOCIATION Op. No. 842 (Sep. 10, 2010).

B. Considering "Professionalism" Principles

- 1. Play well with others.
- 2. Slow down.
- 3. Be diligent.

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