Tannenbaum Helpern Syracuse & Hirschtritt LLP

Hot Topics in Legal Ethics for the Modern Lawyer

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Providing Solutions®

Overview

- Ethics of Virtual Lawyering
- Inadvertent Disclosure
- Civility

THE VIRTUAL LAWYER

- Most days, I work from my home office using my laptop and cell phone. I have a private, password protected WIFI connection. However, occasionally I like to get a change of scenery and will go sit outside at a local coffee shop and use the shop's public WIFI or at a park and use the hotspot on my phone to do work. Is that an issue? Am I required to do anything differently while practicing from home as opposed to the office? Are there any obligations that are heightened in a remote environment or do my obligations remain the same as if I was physically in the office?

- Also, what is the protocol for dress when appearing on Zoom, or Microsoft Teams for a work meeting? Should I be wearing a suit or am I permitted to dress down?

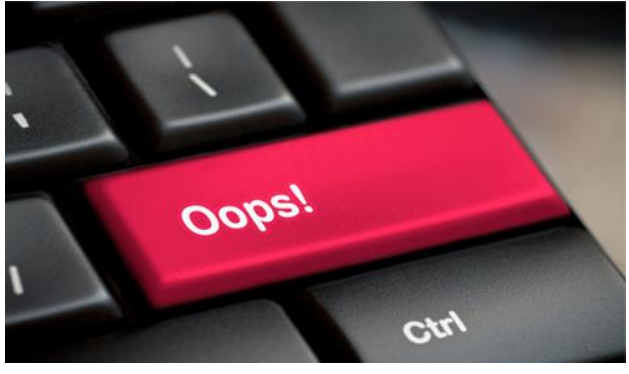
The Living Room Lawyer

- I live in a small apartment with my wife and toddler. Because we have limited space, my “home office” is in the living room. This does not pose a problem for most of the day, however, when my wife and toddler get home around 5pm I have to work in their presence. In addition, I keep all my client files in my desk in the living room, but it doesn’t have a lock. My family knows to leave my work papers alone, but is there something else I am required to do? How else can I make my “home office” ethically compliant?

The Personal Email Problem

- My client recently sent me a zip file containing highly sensitive financial information to review. I really prefer to review documents in hard copy form so I decided to print them all. However, I have been working from home and my printer doesn't have the capacity to print large files. I decided to forward the zip file to my personal email address and go to staples to use their industrial printer. Staples is a large company so I am sure their networks are protected. Should I be aware of any ethical concerns in printing the client's documents at Staples?

Inadvertent Disclosure



Inadvertent Privileged Disclosure: Is the Cat Out of the Bag?

- We recently received a large document production in a hotly contested business divorce matter. As my associate was reviewing Defendant's production, she noticed that three (3) privileged communications were produced with the production. What is the associate's obligation with respect to the privileged communications?

A. Stop reading, alert opposing counsel of the inadvertent disclosure and delete the documents.

B. Read the document to clarify whether it is privileged and alert opposing counsel of the inadvertent disclosure.

C. Send the documents to your client and let them decide.

D. Nothing, it's not your fault opposing counsel made the mistake.

REVIEW BEFORE YOU REGRET

- As you are packing up to leave the office after another long day jam-packed with calls and meetings, you realize that you forgot to provide your client with an update regarding a deposition you recently took which the client has been requesting for some time. The client, Hollie Walsh, has an easy e-mail address Hwalsh@yahoo.com, which your Microsoft Outlook program recognizes and anticipates with every keystroke you make in the “To” line. This “autopopulation” feature pops up Hwalsh@bradfordlaw.com. In a hurry, you fail to double check the email and hit the “send” key to check your final task of the day off your to-do list. After hitting “send” you get the fleeting sense that perhaps the email is going to the wrong person. You check the “Sent Box” and your heart sinks.

REVIEW BEFORE YOU REGRET

- What do you do? Is the cat out of the bag? What options are available to you?
- What is the duty of the recipient? Does it matter if the recipient is a lawyer?
- How can you avoid repeating this mistake?

Civility, Professionalism & Decorum



DEPOSITION CIVILITY

I was defending my client at a deposition last week where I felt that the attorney taking the deposition was intentionally trying to trick my client by asking confusing questions. In an effort to zealously advocate for my client, I objected to every question that I thought was confusing and made sure to state on the record why I thought the question was improper. For example, the attorney asked my client how many times my client had personally met her client in the month of May. I knew that was a trick question because I believed her client to be traveling abroad for that entire month.

Before my client could answer that question, I made sure to let the record reflect that her client was abroad during that period so there were no meetings. When the attorney taking the deposition stated my objections were improper, I further let the record reflect that she had no idea what she was talking about and she needed to stop asking my client silly questions. When she continued to make an issue out of my objections and my instructions to the client not to answer her ridiculous questions, I told her she was being obnoxious. She later made a motion for sanctions against me, which I also believe was improper. Was I wrong?

DEALING WITH AN ADVERSARY WHO CAN'T TELL THE TRUTH

I have always tried to be civil and to a certain extent friendly with opposing counsel. Since lawyers are hired to achieve a positive result for their clients, I have always found that working together with an adversary is far more effective than harmful.

I recently got involved in a few very contentious litigations where my adversaries have been keen on bending or fabricating the facts and misstating the law. Whether it be on the record at a deposition, during oral argument or even in briefs submitted to the Court, I have recently experienced attorneys who blatantly lie to the Court concerning the facts of the case and make misrepresentations about relevant documents. Some of these lawyers are from large "big law" firms. My guess is that are counting on their adversaries being poorly prepared to recognize and raise their misrepresentations to the Court?

DEALING WITH AN ADVERSARY WHO CAN'T TELL THE TRUTH (cont'd)

How should I handle adversaries who just can't tell the truth?

Do I run the risk of annoying the Court by raising the numerous misrepresentations made by counsel?

I'm concerned that some courts might turn on me and find my conduct to be unprofessional or uncivil for essentially calling my adversary out as a liar.

My client is outraged and wants to move for sanctions against the lawyer and his client. I'm at a point where I believe something must be done.

Disclaimer

The information presented in this presentation does not represent legal advice, which should come from a legal adviser with knowledge of specific facts and circumstances.

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