WAYS TO USE TECHNOLOGY TO VIOLATE THE MISSISSIPPI RULES OF PROFESSIONAL CONDUCT

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I. FEES AND BILLING PRACTICES

Some of the more easily realized benefits of technology in the law practice is the ability to efficiently reuse prior work product in subsequent cases. This benefit may be a simple as the use of pleadings in irreconcilable difference was divorces, in which the names of the parties and their children are merely replaced using a word processor's "search and replace" function, to the republishing of the full length briefs and memoranda located through use of a fully implemented "knowledge management" system within the firm. Indeed, the very justification of much of the technology dollars spent and law firms is the time savings to be realized in avoiding recreation of the wheel in every new representation. Computers are extremely well-suited for this purpose. A more advanced application of technology is the implementation of document automation software or systems. Many excellent off the shelf programs exist to automate the production of high quality, customized work product, with a minimum of effort and time. Using programs such as "drafting libraries", " drafting wills and trust agreements on CAPS", or "Trust Plus", a practitioner, or in many cases a clerical staff member, can create thorough, complex, and attractive wills or trust documents with a minimum of effort or time, giving the client a customized estate planning product in a fraction of the time it would have taken using previous drafting methods. For more customized automation, Hot Docs, along with several case management software products like TimeMatters and Amicus, provide the practitioner with the ability to automate document creation. The end product received by the client is no less than he would have otherwise received utilizing older less efficient drafting methods. Indeed, in many cases, the document is more thorough and better than the client would have received using a more manual approach. Nonetheless, the attorney spent as little as 1/10 of the time drafting a document in this manner. Should the attorney's fee for this product be reduced by 90% due to the attorney's newfound eficiency?

Likewise, a firm representing a single client in multiple claims, throughout multiple venues, frequently files motions and briefs which are, by and large,

boilerplate. The initial drafting of these documents, and research incorporated therein, required dozens of hours. Yet, the second time the work product is used often takes only a few minutes to retrieve electronically and customized, and then often mostly by clerical personnel, before refiling the document in a different venue. The service that is provided to the client the second time the document is filed is not worth any less than it was the first time it was filed. Should a lawyer, then, be permitted to re-charge the client for the value of the work received, rather than being limited to charging for the actual minutes spent in its creation? "Write once / Use Many" -- isn't that the promise of technology? The ability to accomplish the same work in less time, thereby giving us more free time for personal and recreational endeavors.

Mississippi rule of professional conduct 1.5 provides:

The a lawyer's fee shall be reasonable. The factors to be considered in determining the reasonableness of a fee include the following:

(1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;

(2) the likelihood, if apparent to the client, that the acceptance of a particular employment will preclude other employment by the lawyer;

(3) the fee customarily charged in the locality for similar legal services;

(4) the amount involved in the results obtained;

(5) the time limitations imposed by the client or by the circumstances;

(6) the nature and length of professional relationship with the client;

(7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and

(8) whether the fee is fixed or contingent.

(b) when the lawyer has not regularly represented the client, the basis or rate of the fee shall be communicated to the client, preferably in writing, before or

within a reasonable time after commencing the representation.

While Mississippi's ethics rules do not address this issue directly, they do provide sufficient guidance to the practitioner as to address this paradox between efficiency and billing. At the outset of representation, the rules are clear that the lawyer should make disclosure of the basis of the fee and any other charges to the client. Rule 1.5(b). In addition to the rule itself, the comment to 1.5 provides "an understanding as to the fee should be promptly established. It is not necessary to recite all the factors to underlie the basis of the fee, but only those that are directly involved in its computation. It is sufficient, for example, to state that the basic rate is an hourly charge or fixed amount or an estimated amount, or to identify the factors that may be taken into account in finally fixing the fee... a written statement concerning the fee reduces the possibility of a misunderstanding. Furnishing the client with a simple memorandum or a copy of the lawyer's customary fee schedule is sufficient if the basis or rate of the fee is set forth."

Rule 1.4 (b) also provides some guidance in the area of fees : "a lawyer shall explain a matter to the extent recently necessary to permit the client to make informed decisions regarding the presentation."

Likewise, rule 7.1 provides: a lawyer shall not make or permit to be made a false, misleading, deceptive or unfair communication about the lawyer or the lawyer's services. A communication violates this rule if it: (a) contains a material misrepresentation of fact or law or omits a fact necessary to make the statement considered as a whole not materially misleading."

While nothing in the rules or its comments requires a lawyer to enter into a time and based fee arrangement, it is clear that once such a basis for fees is entered into, the lawyer cannot divert from that method of billing absent an alternate or amended agreement with the client. ABA/BNA Laws.Man. on Prof. Conduct § 1001:207, 213. ABA Formal Op. 93-379 (Nov. 3, 1993). The relationship between the lawyer and client is one of trust, and a lawyer who is agreed to bill on the basis of hours expended cannot fulfill his ethical duty if the bills for more time than he actually spent on the client's behalf.

In addressing this issue, together with the issues of simultaneous appearances and airplane work, the Alabama general counsel's office has opined as follows:

In addressing the hypotheticals Re: (a) simultaneous appearance on behalf of three clients, (B.) the airplane flight on behalf of one client while working on other client's matters and (C.) recycled work product, it is helpful to consider these questions, not from the perspective of water client could be forced to pay, but rather from the perspective of what the lawyer actually earned. A lawyer who spends for hours of time on behalf of three clients has not earn 12 billable hours. A lawyer who flies for six hours for one client, while working five hours on behalf of another, has not earn the love and billable hours. A lawyer who is able to reuse old work product is not read earned on the hours previously billed and compensated when the work product was first generated. Rather than looking to profit from the fortuity of coincidental scheduling, the desire to get work done rather than watch a movie, or the like of being asked the identical question twice, the lawyer who is agreed to bill solely on the basis of time spent is obliged to pass the benefits of these economics on to the client. The practice of billing several clients for the same, more work product, since a results in the earning of the unreasonable fee, therefore is contrary to the mandate of the rules.

While rule 1.5 clearly contemplates that there are bases for billing clients other than time expended, once a lawyer has undertaken to bill or an hourly basis, is never justified in charging client for hours not actually expended. "In a lawyer has agreed to charge the client on this basis and it turns out that the lawyer's particular efficient in the Congress in a given result, it nonetheless will not be permissible to charge the client for more hours than were actually expended on the matter. When a basis for billing the client has been agreed to, the economies associated with the result must inure to the benefit of the client, not give rise to the opportunity to bill client phantom hours. That is not to say that the lawyer who agreed to hourly compensation is not free, with full disclosure, to reuse prior work product on the client's behalf. The point here is that the fee enhancement cannot be accomplished simply by presenting the client with the statement reflecting more billable hours than were actually expended. On the other hand, if the matter turns out to be more difficult to competent first anticipated a more hours required them originally estimated, the lawyer is fully entitled to bill those hours unless the client agreement turned the original estimate into a capital fees to be charged." Ala. Formal Op. RO-94-02.

Other State bar organizations looking at this issue have reached similar conclusions, but have likewise concluded that such billing is permissible if

expressly agreed upon:
"While precluded from billing phantom hours, a lawyer may nonetheless bill an hourly rate for the time expended tailoring old work product to the needs of a new client, and the lawyer is also free, with full disclosure, to suggest to the client that the additional compensation would be appropriate because the lawyer was able to reuse prior work product for the client's benefit. Moreover, it is not unethical to charge for the value of reuse work product if the original fee agreement with the client or any renegotiated fee agreement includes the express understanding that the client will be charged a reasonable fee, which is not based upon hourly compensation, for the reuse work product." North Carolina RPC 190.

"Where the client has agreed to pay the lawyer on hourly basis, the economies associated with a lawyer's efficient use of time must benefit the client rather than giving the lawyer and opportunity to charge of client for phantom hours." Alaska Ethics Op. No. 96-4. Likewise, an attorney has agreed to bill or an hourly basis, but reserves the ambiguous right in his fee agreement to charge a "premium" without defining in the fee agreement the method of such calculation, or outlining specifically in his bill the method, breakdown, or charges of this "premium" is in violation of rules 1.5 and 7.1.

The bottom-line with respect to billing for recycled work product, automated work product, or other benefits resulting from the implementation of technology in the law practice is that there is no prohibition against setting a flat fee for such products, billing for some portion, or even all, of the time originally expended, or any other mechanism for compensating the attorney for the resulting work, provided that this mechanism for billing is fully disclosed to the client and agreed to by the client. But if the lawyer's agreement is to charge hourly for his services, he cannot charge any more than the actual time expended for that client on that matter.

The right to technology, implemented by a law practice the right away, should allow the practitioner to (a) leverage their time-less time, signed output/less time more output. This improvement activity results in more work capacity for the same., and therefore the ability to handle more matters using the same staff. These productivity gains are most apparent and above is easily recognized in the contingency fee arena, or in the area of flat fees, where the lawyer's ability to

financially right is largely dependent on their ability to minimize the amount of time spent on each matter without a diminution of quality of service provided. In the traditional hourly practice however, the inverse relationship between increased operating efficiency and hourly billing will be devastating. In order to become technologically proficient, affirm us and significant sums of money on hardware improvements, software purchases, and staff training. Technology requires a significant commitment of both money and in lost productive time while lawyers and staff learned how to use the product, often in addition to lower initial productivity in first using the product. All of this investment in time and money, if properly implemented into a firm's workfowl, should ultimately result in certain tasks being performed at a fraction of the time previously taken. In addition to the efficiency gains from technology, the firm in any cases will also achieve an increase in the quality of their documents produced -- no inadvertent other client names littering the document; no gender disagreement; the use of current language and absence of clause is the don't apply to this particular document, etc. in essence, the client ultimately gets a better final product and faster turnaround time through the use of document automation software. Yet, if a firm billing hourly is now in order produces the documents in 25% of the time than previously spent, if the firm or remains on an hourly billing basis, the firm must then increase its client base in this area of newly found efficiency fourfold just to realize the same revenue previously enjoyed before technology. Under this hourly model, all of the benefits of the efficiencies of technology are realized by the clients, rather than lawyers, and firms have no incentive to implement timesaving technologies. Noted legal technologist Ross Kodner calls this the "hourly techno trap". A service that might have generated eight bill hours before, perhaps $1,600 in fees, can now be accomplished in two hours and would only be worth $400 under the hourly model. the answer suggested by Kodner and others is a new approach to the traditional hourly billing. Rather than the firm remaining on hourly billing for those islands in which it is made an investment in technology to become more proficient, the firm should approach the client and explain that, through substantial investment in technology, the firm will now be able to complete task X. for which it previously charged $1600, in less time, with higher quality, and now with greater fee predictability, for the price of $1400. From the clients perspective, is getting the same work product previously enjoyed with faster turnaround and it lower cost. From the lawyers perspective, the lawyer is now able to recognize a substantial return on his technology dollar, and enjoy the benefits inherent in that technology -- getting more work done in less time. This

provides the lawyer with sufficient incentive to automate his practice, rather than the current incentive toward inefficiency. In short, the classic "win-win" scenario. The client gets better work for less money; the lawyer makes more money for less work.

Obviously, the above example works much better in document based practices, such as forming corporations and LLC's, drafting purchase agreements, and estate planning, then in the more unpredictable litigation practice, with all of the unexpected and unpredictable events that may take place through the course of trial preparation and trial. However, even in the litigation arena, while an entire case may not be appropriate for flat fee billing, certain portions of the case clearly are. There's nothing in the rules to prohibit parties from agreeing to flat fee billing on parts of a case, and hourly billing on other parts. For example, a firm and client may agree to a flat fee charge equivalent to 2.5 hours at the firm's hourly rate for propounding discovery, while, through the limitation of document generating software, the firm is able to generate customized discovery documents in each case in an average of only .75 hours. The parties may agree on a flat fee rate for client updates and correspondence, or on certain types of briefs that are anticipated to be filed in the litigation. Again, the client receives the appropriate work product at a fair price and the benefit of predictability in billing. The lawyer gets more done in less time, and is made his life believes he or, without being penalized for investing in the tools that enabled him to do so. With full disclosure, such agreements are completely within the rules of professional responsibility.

Client charges for other band professional fees

In addition to charging client's fees for professional services, orders often charge the clients for additional items and costs incurred throughout the representation. Traditionally, these charges have frequently consisted of items such as copy charges, postage, overnight delivery, long distance phone charges, secretarial overtime, and faxes. However, in the modern law practice implementing currently available technologies, additional cost items deserve some exploration. Lawyers are rapidly adopting a paper-less approach to document management, and incorporating scanners throughout their practices. Should clients be charged an additional scanning charge for documents scanned on their behalf by the firm? Likewise, lawyers may incorporate the use of a portable printer and laptop computer for reaching final settlements or documenting agreements at the

courthouse or mediation. May a lawyer properly charge an additional charge for use of such equipment? Similarly, the techno savey litigator will utilize expensive litigation management software in his practice, as well as presentation software. This presentation software will likewise require the need of a laptop computer, LCD projector, and a screen if one is not provided by the court. Is it proper to charter client an additional fee for the use of this equipment in preparation and presentation of this case, or should all the foregoing equipment merely be incorporated into the lawyers fee as overhead?

While no rule directly addresses separate charges for items other than professional fees, other states that have looked at this issue have implicitly read reasonable this standard of rule 1.5 to apply to these nonprofessional charges as well as professional fees. In Alabama ethics opinion RO-94-02, the General Counsel opined "when a client has engaged in lawyer to provide professional services for a fee the client would be justifiably disturbed the lawyer submitted bill to the client which included, beyond the professional fee, additional charges for general office overhead. In the absence of disclosure to the client in advance of the engagement to the contrary, the client should reasonably expect that the lawyers cost in maintaining a library, securing malpractice insurance, renting office space, purchasing utilities and the like would be subsumed within the charges the lawyer is making for professional services." The opinion goes on a recognized that certain out-of-pocket disbursements are typically handled as additional charges, and are disclosed as such in the initial fee agreement. Therefore, when a lawyer hires the court in Arford to transcribe a deposition, the client should reasonably expect to be billed as a disbursement the amount the lawyer pays for the stenographer services. However, in the absence of a disclosure to the contrary, it would be improper for lawyer to add a markup or surcharge on such disbursements. Likewise, if the lawyer received a discount rate from third-party provider, it would be improper not to pass the discount along to the client, unless otherwise agreed.

The more difficult issue is the method of handling charges, such as those technology items discussed above, which are provided, not by third parties, but in-house. Law office overhead may not be charged to clients. Democratic Cent. Comm. v. Washington Metro Area Transit Comm'n, 12 F.3d 269 (D.C. Cir. 1994); ABA Comm. on Ethincs and Prof. Resp. Formal Op. 93-379 (1993) (lawyer may not charge for overhead and in-house activities, and must, unless client has agreed otherwise, limit bills for disbusements and in-house activities, such as

photocopying, to lawyer's actual cost). To the extent that the foregoing items are not "overhead" most governing authority notes that cost recovery of such items is permissible, provided that the charges are passed on at the lawyers cost, and not marked up to become a separate profit center for the firm. "The question arises what may be charged to the client, in the absence of a specific agreement to the contrary, when the client has simply been told that cost for these items will be charged to the client. We conclude that under those circumstances the lawyer is obliged to charge the client no more than the direct costs associated with the service (i.e. the actual cost of making a copy on the photocopy machine) plus a reasonable allocation of overhead expenses directly associated with the provision of the service (e.g., the salary of the photocopy machine operator). ... any reasonable calculation of direct cost as well as any reasonable allocation of related overhead should pass ethical muster. On the other hand, in the absence of an agreement to the contrary, it is impermissible for a lawyer to create an additional source of profit for the firm beyond that which is contained in the provision of professional services themselves. The lawyers and stock in trade is the sale of legal services, not photocopy paper, to these sandwiches, computer time or messenger services." Ala. Op. RO-94-02.

Charging separately for the use of technology in a firm creates numerous difficulties for the lawyer. In addition to being later construed as overhead and therefore impermissible for separate charge, such separate charges could lead to disputes between counsel and his client over the need for use of such equipment. Why did you print the document at the courthouse and charge me five dollars for it, when you could have printed it at your office? To the extent that the lawyer does desire to charge for such items separately, the prudent course of action would be separately listing such items and to their additional charges in the initial fee agreement.

CLIENT CONFIDENTIALITY - METADATA AND FILE SLACK

Many documents created by more processing software contained hidden or invisible text and data. Document written with Microsoft word contained "metadata", and WordPerfect documents can be "unedited" through the use of the "undue" command. Some of this hidden data is easily exceptional through the night of work processor or simple text reader, while other such data can only be excess through extraordinary means. The following are some examples of metadata which may be stored on documents: Arthur's name; Arthur's initials;

organization name; name of your computer; name of the network server or hard drive were the document is saved; file properties; summary information; nonvisible portions of and that it objects; names of previous document authors; document revisions; document versions; template information; hidden text; comments; time spent editing the document; file numbers and case numbers. http://support.micorsoft.com/default.aspx?scid=kb;en-us;290945. there is no single method of removing all such content from your documents.

Lawyers have duty to avoid disclosure of information which may be harmful to the client. Mississippi rule of professional conduct 1.6 provides:

A lawyer shall not reveal information, which is confidential or privileged by law, or relating to presentation of the client, which a lawyer has reason to believe may be detrimental to the client or which client has requested not to be disclosed."

Obviously, supplying a document to opposing counsel which contains earlier revisions or comments to the document, carry a high risk of a non-permitted disclosure. For example, the word file of a recently filed a lawsuit against DaimlerChrysler and AutoZone by the SCO Group, a holder of some patents in Linix software, revealed that the initial target of that lawsuit was the Bank of America, and that this defendant was removed on February 18 at 11:10 a.m. and replaced with the named defendants. The metadata of the document additionally show that every 27th, the venue of the lawsuit was changed from earlier drafts. Likewise, numerous internal notes and comments previously existed throughout the document before being removed prior to filing. http://news.com/2100-7344 3-5170073.html. The disclosure of that Medi data by CNet was, at a minimum, extremely embarrassing for the plaintiff's counsel, but could have resulted in considerably worse consequences. Imagine a final settlement agreement draft which contains internal comments between attorney and his client concerning the appropriate range of settlement dollars or comments about whether certain provisions were important or not. All lawyers must be cognizant about the danger of transferring such information when transferring documents in Microsoft word or WordPerfect.

There are various ways of removing metadata. Once simple approach is merely reducing the were processing document to a PDF format by printing to the PDF driver. Another approach within word is to go to the change controlling you, and accept all changes until non-or left, and in saving the document. Thereafter,

the document can be saved in rich text format and examined in note that to ensure that no Metadata remains. Thereafter, the document can be reimported into word and in amount to opposing counsel.

Other resources available for removal of Metadata are: a metadata assistant for word, Excel and PowerPoint, sold by Payne consulting group, www.payneconsulting.com; and EZ Clean, www.kklsoftware.com.

In addition to the problem of hidden text with and were processing document, practitioners should also be aware of the danger of "file slack." File slack is a hidden area of information contained on a disc which does not show up in viewing a disc contents through the operating system, but which can be viewed using specialized, and often free, software. Computers must write files to specific sizes. In the event that a specific drafted file is less than the required file size, the computer will make up the size using other file that was previously deleted from the disc. This and data was never actually "deleted" but rather merely hidden from view of the operating system. Therefore, by sending a floppy disk, or even a file, to opposing counsel, specialized software could be used to uncover files, or parts of files, previously thought deleted. This candidate data, or file slack, could contain passwords, web sites recently visited, or other confidential information. There is no exact science as to what will show up in the file slack since it uses random data from memory or disc. There are several programs available on the Internet the will allow the removal or limitation of file slack, which can quickly be located by Googling "file slack." The practitioner, and a minimum, should be aware of the potential dangers inherent in sharing files, resulting from file slack and metadata.

IS THE ADVERSE USE OF METADATA UNETHICAL?

Now armed with the knowledge of the existence of metadata and file slack, is there any ethical constraint against a law firm's systematic review of all documents sent from opposing counsel for such "hidden data". Mississippi has no ethics opinion on this matter, however at least one Bar Association has taken the position that such conduct is unethical. N.Y. St. B. Ass'n. Op. 749 (2001). In that opinion, the Bar Association recognized that, although the transmitting party intended to transmit the "visible" document, "absent an explicit direction to the contrary counsel plainly does not intend the lawyer to receive the "hidden" material or information." Based on this premise, the Bar Association concluded

that the metadata should not be accessed. "It is a deliberate act by the receiving lawyer, not carelessness on the part of the sending lawyer, that would lead to the disclosure of client confidences and secrets."

Similarly, while not directly addressing the issue of metadata, the American Bar Association standing committee on ethics and professional responsibility has opined:

A lawyer who receives on an unauthorized basis materials of an adverse party that she knows to be privileged or confidential should, upon recognizing the privileged or confidential nature of the materials, either refrain from reviewing for such materials or review them only to the extent required to determine how appropriately to proceed; she should notify her adversary's lawyer that she has such materials and should either follow instructions of adversary's lawyer with respect to the disposition of the materials, or refrain from using the materials until a definitive resolution of the proper disposition of the materials is obtained from a court."

In essence, the metadata could be viewed as inadvertent disclosure, and as such not proper for review by the receiving lawyer. However, this view is far from being widely adopted, with the New York decision being the only current opinion directly on this point, and there are many who disagree. Accordingly, prudence would dictate that lawyers remain aware of the possibility that the "hidden data" in their documents may be reviewed, and to take appropriate steps to avoid their disclosure.

CONFIDENTIAL COMMUNICATIONS - EMAIL

Few attorneys could imagine practicing law without the convenience of e-mail, use of the Internet, use of cell phones, and the burgeoning phenomena of legal websites and chatrooms. Although the use of these modern conveniences has become second nature to most attorneys, the ethical considerations that must be addressed when using any of the aforementioned devices must be addressed by the legal profession and by each individual attorney in their day to day practice of law. This article will address the use of e-mail, cell phones, Internet websites by law firms that both advertise and dole out advice. The issue of e-mail confidentiality and maintaining the attorney-client privilege has come to the forefront of debates about using e-mail for confidential communications with

clients.[1] Since neither the Model Code or Model Rules address electronic communications directly, several states have issued ethical opinions concerning confidentiality of both cellular phone and e-mail communications.[2]

Differing stances have been taken by various states on the issue of e-mail communications in various jurisdictions. Alaska,[3] Arizona,[4] Illinois,[5] South Carolina,[1] Colorado,[7] and North Dakota[8] have issued ethical opinions that require reasonable care be employed in the use of e-mail communications with a client.[9] Iowa has taken an extreme view on e-mail communication, requiring written acknowledgment of the risks associated with the use of e-mail as a communication device in a lawyer-client relationship.[10] Although the use of e-mail may be allowed for communication in a lawyer-client relationship without waiving the attorney-client privilege, it must be remembered that an attorney's ethical duty is broader than the obligation to preserve the privilege.[11] While Mississippi has yet to issue an opinion on the use of e-mail as a communication device and the preservation of the attorney client privilege, the ABA has issued a formal ethics opinion that allows the transmission of information relating to the representation of a client by unencrypted e-mail without violating the Model

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[1] Joseph W. Rand, What Would Learned Hand Do?: Adapting to Technological Change and Protecting the Attorney-Client Privilege on the Internet, 66 Brook. L. Rev. 361, 362 (2000).

[2] Karin Mika, Of Cell Phones and Electronic Mail: Disclosure of Confidential Information Under Disciplinary Rule 4-101 and Model Rule 1.6, 13 Notre Dame J.L. Ethics & Pub. Pol'y 121, 126 (1999). .

[3] Alaska Ethics Op., 98-2 (1998).

[4] Ariz. Ethics Op. 97-04 (1997).

[5] Ill. Ethics Op. 96-10 (1996).

[1] S.C. Bar Advisory Op. 97-08 (June 1997).

[7] Colo. Ethics Op. 90 (1992).

[8] N.D. State Bar Assoc. Ethics Comm. Op. 09 (1997).

[9] See Mika, supra note 2 at 127.

[10] See Mika, supra note 2 at 127, Iowa Ethics Op. 96-1 (1996).

[11] N.Y. Eth. Op. 709 (1998).

Rules of Professional Conduct upon which the Mississippi Rules for Professional Conduct are closely based.[12] In the ABA's opinion the use of unencrypted e-mail to send confidential client information does not violate the Model Rule 1.6(a), which prohibits the airing of all information related to representation not just confidential information, because there is a reasonable expectation of privacy associated with the use of e-mail.[13] To comply with Rule 1.6(a) an attorney must have a reasonable expectation of privacy in a communication medium, not an absolute expectation of privacy because the risk of unauthorized interception exists in every form of communication previously allowed, including: land-line telephone, fax machine, and mail.[14]

The duties of an attorney are not lessened by the allowance of e-mail as a acceptable communication device. The attorney must still take into account, after consultation with the client, the sensitivity of the communication, the potential costs of its unauthorized disclosure, and the relative security of the communication medium to be used in transmitting information.[15] In discounting e-mail as a panacea of communication with a client, the ABA cautions against the use of e-mail for highly sensitive matters.[16] The same considerations that accompany the use of telephones, faxes and mail to disseminate information must be analyzed when using e-mail in communications with a client or regarding representation of a client.[17]

Every attorney must be cognizant of the fact that he or she must abide by the client's directives regarding the transmission of client information, regardless of the perceived reasonableness of the communication device, as provided by Model Rule 1.2(a) and specifically in this state, Mississippi Rules for Professional Conduct (MRPC) 1.2(a). The use of e-mail as a standard form of communication has been spurred by the criminalization of unauthorized interception of e-mail by the Electronic Communications Privacy Act of 1986 (ECPA), which provides

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[12] ABA Formal Ethics Opinion 99-413 (1999). (discussing the confidentiality of unencrypted e-mail communications and Model Rule 1.6).

[13] Id.

[14] Id.

[15] Id.

[16] Id.

[17] Id.

criminal and civil penalties for the unauthorized interception or disclosure of any wire, oral or electronic communication.[18] Based on the complexity of intercepting e-mail, the ABA's ethics opinion found that there was a reasonable expectation of privacy in communication by e-mail.[19] A brief synopsis of how e-mail operates is required to understand the reasoning behind the ABA's opinion. There are four basic types of e-mail systems and although each system has a varying degree of security, the ABA has concluded that a lawyer has a reasonable degree of privacy in the use of each type of e-mail system.[20] The systems scrutinized by the ABA are direct e-mail, private system e-mail, on-line service provider e-mail and Internet e-mail.

Direct e-mail

Direct e-mail occurs when an individual programs his or her computer modem to directly dial the recipient's modem.[21] This type of e-mail is virtually identical to transmitting a facsimile and due to the digital nature of the message in transit, intercepting the message would require more technical ability than eavesdropping on a telephone conversation.[22] In two federal court cases, predating the ABA's ethics opinion on e-mail, the attorney-client and work-product privileges were analyzed in connection with e-mail transmissions.[23]

In In re Grand Jury Proceedings, the Fifth Circuit considered whether e-mails produced by an employee of the law firm in connection with the representation of a former client were protected by the work-product doctrine.[24] After analyzing the work-product doctrine, the Court held that the documents requested, including e-mails, were protected by the work-product doctrine.[25] In United States v. Keystone Sanitation Co., the Court analyzed the inadvertent

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[18] 18 U.S.C.A. Sec. 2511

[19] ABA Formal Ethics Opinion 99-413 (1999). (discussing the confidentiality of unencrypted e-mail communications and Model Rule 1.6).

[20] Id.

[21] Id.

[22] Id.

[23] Id.

[24] In re Grand Jury Proceedings, 43 F.3d 966, 968 (5th Cir. 1994).

[25] Id. at 971.

production of printouts of e-mail messages between attorneys that suggested the attorneys advised the client on how to dissipate the assets of the company involved in CERCLA litigation.[26] Although the lower court held the attorney-client privilege did not apply due to the inadvertent exposure of the e-mail printouts and the District Court did not overrule, the analyzation of e-mail in reference to the attorney-client privilege was indicative of the acceptance of e-mail as a communication medium that has a reasonable expectation of privacy.[27]

Private System E-mail

This type of e-mail includes the internal corporate e-mail systems used by many corporations and law firms.[1] The only relevant difference from Direct E-mail is the increased chance of misdirected e-mails but this is tempered by the duty of confidentiality owed by all employees of a firm to the firm's clients and the non-use of a publicly accessible server or network makes this mode of e-mail as confidential as Direct E-mail, regular phone calls and facsimiles.[29]

On-Line Service Providers (OSP)

The main distinctions between this type of e-mail and those previously mentioned are the lack of a duty of confidentiality on the part of an inadvertent user/receiver of an e-mail and the increased risk of a misdirected e-mail due to the presence of other public users.[30] Confidentiality can be compromised by the potential inspection of the system by the OSP administrator, but the disclosure of any information other than that which is allowed by the ECPA is prohibited. [31]

Internet E-mail

Because Internet e-mail uses conventional phone lines for transmission purposes, the only uniquely vulnerable points for interception occur at the third party-owned Internet Service Provider that is capable of copying any message that passes through the network. In addition to the criminalzation of "hacking"

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[26] United States v. Keystone Sanitation Company, Inc., 903 F.Supp. 803, 808 (M.D. Penn. 1995).

[27] Id at 808-16.

[1] ABA Formal Ethics Opinion 99-413 (1999). (discussing the confidentiality of unencrypted e-mail communications and Model Rule 1.6).

[29] Id.

[30] Id.

[31] Id.

or unauthorized interception of e-mail provided by the ECPA, the constraints on the ability of a third party to intercept Internet e-mail lend credence to the determination that there is a reasonable expectation of privacy associated with Internet e-mail.[32]

Clearly it is evident that e-mail communications preserve the privileged nature of information under current law, but what happens to the privileged nature in the case of inadvertent disclosure of information through the use of e-mail, such as when an e-mail is sent to the wrong e-mail address, which can happen with one mistaken stroke on a keyboard. Two instances of receipt of mistaken e-mail will be considered, inadvertent receipt of confidential information by an attorney, and the effect of an inadvertent e-mail on the privileged nature of information mistakenly e-mailed to an errant e-mail address. Since the ABA pronounced its stance in support of a reasonable expectation of privacy in e-mail communiques, the dearth of case law on the whether the use of e-mail maintains the attorney-client privilege has been cured.

As an attorney using e-mail to communicate to both client and adversarial counsel, how wary should one be of the inadvertent disclosure of confidential material through the use of e-mail? The predominate test to determine if the attorney-client privilege has been waived by the inadvertent disclosure of privileged communications, and followed by the Fifth Circuit[33], is to assess (1) the reasonableness of the precautions taken to prevent inadvertent disclosure; (2) the time taken to rectify the error; (3) the scope of discovery; (4) the extent of the disclosure; and (5) the overriding issue of fairness.[34] Under this test the privilege is waived only if the party inadvertently revealing confidential communications failed to take reasonable precautions to maintain the privacy of the communications.[35] State and Federal courts in a growing number of jurisdictions have applied the test cited, or a similar variation of the test, in holding that inadvertent disclosure of confidential communications by e-mail does not waive

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[32] Id.

[33] Alldread v. City of Grenada, 988 F.2d 1425, 1433 (N.D. Miss. 1993).

[34] Patricia M. Worthy, The Impact of New and Emerging Telecommunications Technologies: A Call to the Rescue of the Attorney-Client Privilege, 39 How. L.J. 437, 461 (1999).

[35] Id.

the attorney-client privilege.[36]

An analysis of the available information on e-mail communication leads one to the conclusion that e-mail should be considered both privileged and confidential and accordingly should produce a reasonable belief that the e-mail should remain private.[37] When an attorney receives an unauthorized e-mail or other materials, that upon inspection appear to be privileged, the attorney has an ethical obligation to notify the opposing party's attorney and follow the instructions of the attorney as to the handling of the information, or in the case of a dispute, refraining from using the information until a resolution of the proper handling of the materials is obtained from a court.[38]

LAWYER ADVERTISING AND WEB PAGES

While the Internet has exploded in every area of life from retail to financial services to on-line auctions, to the point where you can get access to almost anything on-line, the legal profession has not been far behind. Just as it is second nature to get someone's e-mail address in personal conversation, it is just as much of a reflex to ask a lawyer for the firm's web address. With legal advice sites flourishing on the Internet and law firm web-pages used as commonly as the old telephone book, two important questions that involve the ethical concerns of the legal profession are presented for analysis. What constitutes advertising on the Internet and when is an attorney client relationship formed in the advice arena of Internet law. Whether or not a firm's web page constitutes advertising and what is allowed on the web page will be discussed first, followed by the Internet advice arena and the corresponding ethical issues of when does a lawyer cross the line from generic advice to the practice of law that brings with it all the rules of professional conduct and ethical considerations.

ADVERTISING ON THE INTERNET

Mississippi lawyers are guided, in advertising, by MRPC 7.1 through MRPC 7.7 which provide parameters to which all lawyers or law firms

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[36] Johnson v. Sea-Land Service Inc., 2001 WL 897185, at *5 (S.D.N.Y. 2001); Chrysler Corp., v. Sheridan, 2001 WL 773099, at *2 (Mich. App. 2001).

[37] Alan N. Greenspan, Ethical Challenges in an Electronic Age, 18-SUM Comm. Law. 17, 18 (2000).

[38] ABA Commission on Ethics and Professional Responsibility, Formal Op. 94-382. (discussing the unsolicited receipt of privileged or confidential material).

advertising or providing information must adhere. The Mississippi Rules of Professional Conduct lists items that must be included in the advertisement, that are allowed in the advertisement and rule 7.4 prohibits any factual statement in any advertisement from being directly, inherently or potentially misleading and also prohibits deceptive advertising.[39] Mississippi Rules do not specifically mention Internet advertising or practice of law on the Internet, though the terms all or any advertisements should be read to include the medium of the Internet. With their being a dearth of case law in Mississippi on the issue of lawyer advertising since the Schwartz v. Welch case in 1995, in which the Court held that the MRPC regarding advertising violated the First Amendment rights to engage in commercial speech, a sampling of cases in other jurisdictions concerning attorney advertising will be conducted.[40] While the advertising issues examined in this section may seem unimportant in relation to the Internet, if an advertisement is seen or heard in another Bar's jurisdiction, and it can be interpreted as practicing law or violating that Bar's advertising regulations, it may subject the attorney to discipline.

In a Maryland case an attorney was found to be in violation of the Maryland Rules of Professional Conduct 7.1 and 7.5, which are identical to Mississippi's, based on the facts that she was a member of a law firm that advertised in print and radio and did not specify that Smith was only admitted to practice Bankruptcy in the Maryland District.[41] In affirming the violations, the Maryland Supreme Court cited the attorney's failure to advise clients upon consultation of her limited practice status, use of a business card listing a Maryland address, and the print and radio advertisements did not state the limited practice status of the attorney.[42]

In Texas, an Accidental Injury Hotline advertisement was deemed to have enough characteristics of an advertisement for legal services, rather than a public service announcement, to warrant reversal of a summary judgement in favor of the attorney.[43] The Commission for Lawyer Discipline asserted the

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[39] Mississippi Rules of Professional Conduct 7.4(d).

[40] Schwartz v. Welch, 890 F.Supp. 565, 575 (S.D. Miss. 1995).

[41] Attorney Grievance Commission of Maryland v. Harris-Smith, 356 Md. 72, 86-87 (Md. 1999).

[42] Id.

[43] Commission for Lawyer Discipline v. C.R., 2001 WL 921476, at *1 (Tex.

advertisement was misleading due to is location in the yellow pages under the Attorney Referral and Information Services section, the recorded information on legal topics available by phone, and the ability to connect directly to an attorney's office.[44] The advertisement also failed to include the attorney's name, disclaimer, location and allowed the attorney to practice under a trade name in violation of the advertising rules for lawyers in Texas.[45] The Texas court looked to a similar decision in Florida to bolster the idea that the "hotline" was an ad for legal services.[46]

In Florida Bar v. Doe, in which a lawyer paid for an article in a newspaper that provided helpful hints for persons stopped for drunk driving, the Court held that the advertisement was one for legal services because the attorney paid a significant fee to the newspaper, a large portion of the attorney's business was derived from defending persons charged with drunk driving and the ad displayed the name, phone number and location of the attorney.[47] In Doe, the Court promulgated a list of criteria in distinguishing an advertisement from a public service announcement which consisted of: 1.) was there a payment made by the attorney to have the announcement published, 2.) Does the information serve the interests of the attorney as much or more than the interest of the public at large, 3.) Does the information contain legal advice, 4.) Does the information contain a legal subject and 5.) Does the information contain information about the attorney relating to areas of practice, legal background, or experience.[48] The parameters set forth here would be a good indicator of what may constitute a advertisement for legal services that would fall under MRPC 7.2, but whether or not information provided by a lawyer or law firm is considered an advertisement, the information is still subject to the other rules contained in MRPC 7.1 - 7.7. As noted previously, if information is provided to the public pertaining to a law firm or lawyer it must adhere to MRPC 7.1 - 7.7, this would include Internet websites.

App.-Fort Worth 2001).

[44] Id. at *3.

[45] Id.

[46] Id. at *7.

[47] Florida Bar v. Doe, 634 So. 2d. 160, 162-63 (Fla. 1994).

[48] Id. at 162.

A New York State Bar Association Ethics Opinion discussed the use of the Internet by a lawyer or law firm to advertise.[1] In its opinion the Commission held that advertising on the Internet is permissible as long as it does not contain false, misleading, or deceptive information and conforms to the requirements that regulate all other forms of legal advertising.[50] In what seems to be a consensus of opinion in states that have issued ethics opinions, the existing rules that relate to dissemination of information to the public, whether advertising or otherwise, provide adequate guidance to a lawyer or law firm in the use of the Internet. Both North Carolina and Illinois have issued ethics opinions that allow the display of information on a webpage if all the Rules of Professional Conduct are followed.[51] The Illinois opinion likened a webpage to a page in the yellow pages in that an Internet user viewing a lawyer's webpage chose that particular page out of all available on the Internet.[52] As a result of this designation, webpages of Illinois lawyers or law firms are not subject to the rule governing direct contact with prospective clients.[53] It is safe to assume that the Mississippi Rules of Professional Conduct will be found to apply in a similar manner to advertising and webpages on the Internet.

ATTORNEY – CLIENT RELATIONSHIP

With the advent of the Internet, there has been a boom in legal advice sites and chatrooms. Two questions come to mind in the use of these types of services; does such activity constitute illegal solicitation and when does an attorney participating in one of these services create an attorney-client relationship?\

There are several options available to an attorney to engage in on-line legal discussions.

One way to engage in discussions is through an on-line newsgroup in which

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[1] NY Eth. Op. 709, 1998 WL 957924, at *4 (N.Y. St. Bar Assn. Comm. Prof. Eth. 1998).

[50] Id.

[51] NC Eth. Op. RPC 239, 1996 WL 875828, at *1 (N.C. St. Bar 1996), IL Adv. Op. 96-10, 1997 WL 317367, at *5 (Ill. St. Bar Assn. 1997).

[52] IL Adv. Op. 96-10, 1997 WL 317367, at *5 (Ill. St. Bar Assn. 1997).

[53] Id.

questions and answers are posted and read at the newsgroup site.[54] Another type of discussion group is called a listserv or mailing list, where messages are sent to a central e-mail address and redistributed to the subscribers.[55] A chatroom consists of persons communicating in real-time or live discussions in which responses are received as soon as they are typed into the computer.[56] Law firms have instituted webpages that can take questions from prospective clients and analyze the legal problem for free in some case and in some cases for a fee.[57] This very brief overview gives a representative sample of how lawyers and the general public are using the Internet as a tool to disseminate legal opinions and advice.

Disclaimers

The most common way an attorney or law firm tries to circumvent the attendant attorney-client relationship noose is through the use of a disclaimer that purportedly absolves the attorney from creating an attorney-relationship.[58] Whether or not an attorney will be able to rely on a disclaimer to deny the existence of an attorney-client relationship will be based on the type of advice that is doled out by the attorney. If the advice given out by an attorney is specifically tailored to a specific set of facts presented for analysis, then it is likely that the conduct will create an attorney-client relationship.[59] The ability to easily ignore disclaimers in cyberspace through the click of a mouse weighs in in opposition to the validity of on-line disclaimers.[60] If the thought of a disclaimer that limits the scope of representation is a considered option, realization that the courts may not treat an attorney with much sympathy in an attempt to avoid a malpractice claim may become a harsh reality.

In Nichols v. Keller, a case evolving from the attorney's representation of a

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[54] Catherine J. Lanctot, Attorney-Client Relationships in Cyberspace: The Peril and the Promise, 49 Duke L.J. 147, 151 (1999).

[55] Id.

[56] Id.

[57] Id. at 155.

[58] Id. at 157.

[59] Id. at 193.

[60] Id.

the client in a worker's compensations suit, the client sued the attorney for malpractice for not advising him of the possibility of a third party claim.[61] In Nichols, the Court held that liability can arise due to the failure of an attorney to give advice beyond that which is requested and that the attorney should volunteer opinions when necessary to protect the client's interest and further the client's objectives.[62] The Court intimated that an attorney has the duty, when giving advice, to include any advice which if not given could have an adverse effect on the client.[63] The Court noted that even when retention is expressly limited, an attorney may have a duty to alert the client to any legal issues which are reasonably forseeable, even though they fall outside the scope of the retention.[64] With the prospect of a disclaimer being very limited in effectiveness at best, the real issue is does advice over the Internet create an attorney client relationship? With a virtual absence of case law on the subject, the ethics opinions of states that have considered the issue must be examined.

The attorney-client relationship arises when an individual manifests to a lawyer that the person's intent that the lawyer provide legal services and either the lawyer manifests consent to provide legal services OR the lawyer fails to manifest a lack of consent to provide legal services, and the lawyer knows or should reasonably know that the individual is relying on the lawyer to provide the services requested.[65] Although a fee gives a strong indication of an attorney-client relationship, it is not a prerequisite to the formation of an attorney-client relationship and there is a long line of case law supporting the formation of an attorney client relationship in the absence of a fee.[66] The apparent ease of creating an attorney client relationship is evidenced by Togstad v. Vesely, Otto,

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[61] Nichols v. Keller, 19 Cal. Rptr. 2d 601, 605 (Cal. Ct. App. 1993).

[62] Id at 608.

[63] Id at 609.

[64] Id.

[65] Catherine J. Lanctot, Attorney-Client Relationships in Cyberspace: The Peril and the Promise, 49 Duke L.J. 147, 168-69 (1999), citing Restatment (Third) of the Law Governing Lawyers § 26 (Proposed Final Draft No. 1, 1996).

[66] Westinghouse Elec. Corp. v. Kerr-McGee Corp., 580 F.2d 1311, 1317 (7th Cir. 1978), In Re Johore Inv. Co., 49 B.R. 710, 713 (Bankr. D. Haw. 1985), Foulke v. Knuck, 784 P2d 723,726 (Ariz. Ct. App. 1989).

Miller & Keefe, in which an attorney was consulted on a possible medical malpractice claim.[67]

In Togstad, the attorney met with the potential client, took notes and made inquiries, and at the end of the meeting informed the potential client that he did not think there was a case but would discuss it with his partner.[68] The attorney never discussed fee arrangements, never called the potential client back, never billed for the interview, did not make known that he had no expertise in medical malpractice, and never mentioned that the statute of limitations on the potential claim was only two years.[69] A year later, when the potential client consulted another attorney, the statute of limitations on the claim had run and a legal malpractice claim was filed upon which the plaintiff was awarded $650,000.[70] On appeal, the Court held that the jury could have found that the potential client sought and acquired legal advice under conditions that made it reasonably foreseeable to an attorney that the potential client may be injured if advice were meted out in a negligent manner.[71]

A more casual exchange has also been deemed to create an attorney client relationship. In Todd v. State of Nevada, while visiting a client in prison, an attorney was handed a note by another prisoner explaining the facts of his incarceration.[1] In Todd, the Court held that an attorney-client relationship was formed because the inmate sought advice on affairs within the attorney's professional competence and the acceptance of the letter constituted an implied agreement to supply the legal advice sought.[73] In applying these scenarios to an Internet advice request that may not be confidential, it must be noted that the desire to obtain legal services or advice is not required to be sought in confidence and confidential information need not be exchanged for an attorney-client

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[67] Togstad v. Vesely, Otto, Miller & Keefe, 291 N.W.2d 686, 690 (Minn. 1980).

[68] Id.

[69] Id. at 691.

[70] Id at 692.

[71] Id. at 693.

[1] Todd v. State, 931 P.2d 721, 723-24 (Nev. 1997)

[73] Id. at 725.

relationship to be formed.[74] The oft-noted axiom that general legal advice given in a purely social setting does not create an attorney client relationship may not apply to Internet exchanges in all cases. To create an attorney-client relationship the attorney must give specific advice tailored to a specific set of facts and the potential client must reasonably rely on the advice given.[75] In cyberspace, a person would be more likely to rely on information received from a website than at a purely social setting because the intent present when logging on and asking a question at a legal advice site is more premeditated than a casual meeting at a purely social gathering. With the growth of Internet websites a few ethics opinions have been issued that give guidance on how an attorney should proceed when dealing with individuals on the Internet.

The North Carolina State Bar issued an ethics opinion with regards to lawyers responding to federal law questions on a message board appearing on the Internet.[76] The message board referred to is analogous to the listserv type of website referenced to previously. The N.C. Bar found that it was not improper to respond to inquiries posted on an Internet message board provided the lawyers clarify the nature of the relationship with the questioner and places limits on the information that the lawyer provides.[77] The N.C. Bar found that responses to a question on a message board did not constitute improper solicitation due to the lack of direct communication.[78] By negative implication, one could assume that improper solicitation may occur in a "real time" chatroom or question an answer session. The lack of initial contact by the attorney was held to preclude the necessity of an advertising disclaimer such as the one required for direct mail solicitation under North Carolina's advertising rules.[79] The rules applied by the North Carolina Bar are nearly verbatim to the Mississippi Rules of Professional Conduct.

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[74] Catherine J. Lanctot, Attorney-Client Relationships in Cyberspace: The Peril and the Promise, 49 Duke L.J. 147, 176 (1999).

[75] Id. at 182-83.

[76] 2000 NC Eth. Op. 3, 2000 WL 33300702, at *1 (N.C.St. Bar 2000).

[77] Id.

[78] Id.

[79] Id.

The N.C. Bar recommended that to remain in abidance with Rule 7.1(a), an attorney responding to an inquiry on an Internet message board include the jurisdictions where he or she is licensed to practice law. The N.C. Bar opinion holds that if an attorney-client relationship is formed, all the rules of professional conduct will apply to the particular lawyer responding and all other members of the firm.[80] The N.C. Bar intimates that a disclaimer should be used if no attorney-client relationship is desired, but follows by maintaining that substantive law will determine if a relationship exists, calling into question the validity of disclaimers.[81]

Illinois has issued an ethics opinion concerning the use of websites by lawyers and law firms.[82] The Committee found that simply posting general comments in a bulletin board or chat group format does not constitute solicitation.[83] The Committee did find, similar to North Carolina's holding, that if an attorney initiates unrequested contact with a person or group, all correspondences should be properly labeled as advertising.[84] Illinois specifically confronts the possibility of an attorney offering personalized legal service to anyone who happens to be connected to the service.[85] The Committee found that the recipients of personalized legal advice are the lawyer's clients, with all the rights and responsibilities that emanate from such a relationship.[86] The Committee also expressed concern for the possible violation of rules concerning conflict of interests and giving legal advice to persons whose interests are materially adverse to those of former clients.[87] The Committee found that the Internet could be used by lawyers, subject to all the rules governing confidentiality, advertising and solicitation.[88]

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[80] Id. at *2.

[81] Id.

[82] IL Adv. Op. 96-10, 1997 WL 317367, at *1, *4 (Ill. St. Bar Assn. 1997).

[83] Id. at *5.

[84] Id.

[85] Id.

[86] Id.

[87] Id.

[88] Id. at *6.

The Florida State Bar Committee on Professional Ethics issued an opinion in line with the evolving paradigm for analyzing lawyer activities on the Internet.[89] Citing opinions from Michigan, West Virginia, Utah, and Virginia as guiding forces the Committee held that bulletin board or listserv responses are not advertising, unrequested e-mails are advertising, and real time conversations are advertising and may be more easily construed as creating an attorney-client relationship.[90]

In the ever changing world of technology, often a person can inadvertently violate a rule or confidence due to simple lack of understanding or unawareness of the changes in the interpretation of the rules governing his or her profession. In one of the most recent rulings by a State Bar Commission on Ethics, the Maryland Bar held that a venture that would match lawyers clients through an Internet site was unethical.[91] The Committee found that the proposed business would involve prohibited referral fees and/or improper fee sharing with nonlawyers, risk conflicts of interests among clients, and jeopardize prospective clients' attorney-client privilege.[92] While noting that the arrangement may fit within future ethic rules as they change to adapt to the use of the Internet in the legal profession, as the rules are currently written, the program is prohibited.[93]

In response to the growing use of the Internet, the Ohio Supreme Court Ethics Panel provided some suggestions for avoiding ethical problems when providing online legal advice:[94]

- If online forms are used for intake of information, provide a way for the law firm to provide for a conflicts check before analyzing the legal question
- Protect the confidences and secrets of all e-mail clients
- Competent advice must be given to e-mail clients

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[89] FL Eth. Op. 00-01, 2000 WL 1897342 (Fla. St. Bar Assn. 2000).

[90] Id. at *2.

[91] The United States Law Week, Vol. 70 No. 2, 2022, 2023 (July 10, 2001), citing Maryland State Bar Ass'n Comm. On Ethics, Op. 01-03, (05/19/01).

[92] Id.

[93] Id.

[94] Joan C. Rogers, Cyberlawyers Must Chart Uncertain Course in World of Online Advice, ABA/BNA Lawyers Manual on Professional Conduct, (March 15, 2000).

- Advertisements must adhere to jurisdictional ethics rules
- Trade names cannot be used for an online service
- The business cannot be a joint venture between a lawyer and a nonlawyer
- Fees charged cannot be excessive
- Advise the client if the attorney cannot or will not answer a question
- The lawyer should not suggest further employment beyond the question asked and unless asked by the client.
- An attorney should not offer online legal advice to a person in a jurisdiction which he is not licensed to practice unless permitted to do so by the foreign jurisdiction.