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# Trust, Ethics and the Technology Factor



*“If I had wanted to be a CIO,  
I wouldn’t have gone to law school....”*

# Presentation online at:

- [www.LawTechIntersect.com](http://www.LawTechIntersect.com)

and

- [www.EthosInternational.net](http://www.EthosInternational.net)





# I. Overview –

*Ethics, Bankruptcy Practice & Technology*

# Moving Targets: Digital Practice & Ethical Requirements

- **Digital Practice:** The variety of devices, services and technologies designed to enhance the productivity of legal professionals increase daily with options you never dreamed of soon to be released.
  - Examples: PDA's to interface with time and billing systems; GPS related solutions; software as service; social networking sites; voice recognition; portable and virtual keyboards; standard client intake forms; remote access data bases; websites; podcasts, blogs and other tools.
- **Ethical Requirements:** State and Model Rules of Professional Responsibility, Accounting and other Ethical Standards also are changing to accommodate the realities of practice in a digital world but at a considerably slower pace with some surprising conflicts and questions arising along the way.

# Legal ethics and technology:

## ABA model rules

- Applicable ABA Model Rules:
  - 1.1 Competence
  - 1.3 Diligence
  - 1.5 Reasonable Fees
  - 1.6 Confidentiality of Information (DR 4-101)
  - 5.1 Responsibilities of Supervisory Lawyer
  - 5.2 Responsibilities of Subordinate Lawyer
  - 5.3 Responsibilities of Non-Lawyer
  - 7.1 Communication/Advertising Standards
- “Rules provide the minimum standard, not the best practice”
  - Avoiding malpractice and maintaining client trust require higher standards and great care.

# Legal ethics and technology:

## 1.1 Competence

- (a) "A lawyer shall not reveal information relating to the representation of a client..."
- Comment [19] "A lawyer must act competently to safeguard information relating to the representation of a client against inadvertent or unauthorized disclosure ..."

# Legal ethics and technology:

## 1.1 Competence

- Today legal competence requires increasing degrees of jurisdiction-specific knowledge, web savvy and technical expertise. For example:
  - Familiarity with electronic research, document review, competitive intelligence and asset tracking tools
  - Prevention of data loss due to viruses or inadequate back-up
  - Understanding risks associated with online chat, social networking, domain names and blog comments
  - Electronic discovery
    - Not all keyword searches are created equal
    - Accidental waiver of attorney-client privilege
  - Electronic filing risks and requirements and
  - More

# Legal ethics and technology:

## 1.3 Diligence

- ~~Doing it by the old book is not enough~~
- Technology raises the standard of practice and creates new risks
  - PDA use may increase or decrease your diligence
  - Garbage In/Liability Out
  - Conflicts of interest
  - Knowledge Management
  - Business Processes
  - New sources of case information
  - Virtual assets – trade credit, PayPal accounts, Lindens...and more

# Legal ethics and technology:

## 1.5 Reasonable Fees

- Rule 1.5 of the ABA Model Rules of Professional Conduct requires that a lawyer's fees be reasonable
- Doodling on your legal pad is one thing. Using your PDA or cell phone creates an electronic record of your day dreaming or multi-tasking while billing your client for your attendance at a hearing or deposition
- Worse yet if you are doing the work of a different client, you have created an ethical minefield when you bill your time

# Legal ethics and technology:

## 1.6 Confidentiality

- (a) "A lawyer shall not reveal information relating to the representation of a client..."
- Comment [19]"A lawyer must act competently to safeguard information relating to the representation of a client against inadvertent or unauthorized disclosure ..."

# Legal ethics and technology:

## 1.6 Confidentiality

- “When transmitting a communication that includes information relating to the representation of a client, the lawyer must take reasonable precautions to prevent the information from coming into the hands of unintended recipients.” Comment [20]
  - ‘...does not require ...special security measures if ...reasonable expectation of privacy.’
  - “Special circumstances, however, may warrant special precautions.”
  - “Factors to be considered in determining the reasonableness of the lawyer's expectation of confidentiality include
    - sensitivity of the information
    - extent to which the privacy of the communication is protected by law or by a confidentiality agreement.
  - A client may require the lawyer to implement special security measures not required by this Rule or may give informed consent to the use of a means of communication that would otherwise be prohibited by this Rule.

# Legal ethics and technology:

## 1.6 Confidentiality

### ■ Metadata Opinion

AZ Ethics Opinion 07-03 (Nov. 2007)

concluded that, while lawyers must use reasonable care to “scrub” metadata from out-going documents, a recipient must generally avoid looking for inadvertently included metadata, but instead generally must notify the sender of the inclusion of metadata.

# Legal ethics and technology:

## 5.1-5.3 Responsibilities

- 5.1 Responsibilities of Supervisory Lawyer
- 5.2 Responsibilities of Subordinate Lawyer
- 5.3 Responsibilities of Non-Lawyer
- Outsourcing a VIRTUAL Can of Worms:
  - Virtual and Contract Lawyers
  - Virtual Investigators and
  - Virtual Paralegals
  - Document Review Services
  - Issues when your outsourced work product and paralegal reside in Indiana or India....

# Legal ethics and technology:

## 7.1 Advertising and Solicitation

Some states require submission of attorney websites for approval; some offer guidelines for ethical content.

### ■ Arizona Ethics Rules

- No prior approval required for Attorney Websites but copies must be retained in retrievable format.
- Direct e-mail to possible clients may constitute solicitation if lawyer initiated contact and clients are known to have a legal need in a particular matter.
  - Arizona State Bar Opinion 97-04, (4/7/97)

### ■ California Rules

- Treat websites as “communications” under the State rules of Professional Conduct and as “advertisements” under the Business and Professions Code.
- Thus, the words, images, and sounds of the website must conform to both these codes.
  - California State Bar 96-0014, (10/16/98)



## II. Five Myths and a Corollary...

*Myths Make for Malpractice Risks*

## Myth 1: I'll be fine if I just abide by the Arizona and Federal Guidelines

- When it comes to the Internet and emerging technologies and services how existing rules of professional conduct apply just are not clear
- "Early adopter attorneys are clearly at the forefront of a new networking movement. At the same time, these pioneers blazing new ethics trails into previously uncharted territory." -- C.C. Holland in **LAW.COM** 11/6/2007.

## Corollary of Myth 1:

### Interaction in Cyberspace is immune

- It is generally assumed that everything that a lawyer does is intended to generate business.
- What is done on your computer or server or website or in your name is imputed to you.

## Myth 2: Technology is the answer (or you can buy a technical solution for anything)

- Technology is tool that must be wielded with skill
- Technology can be a hindrance when the process it is meant to improve is inherently flawed
- Only after legal/business processes and requirements are understood and documented should lawyers and staff discuss about how creative technology can increase capacity and improve client service
- Just because you CAN use tools-- like blogs, podcasts, widgets, CRM software, wikis, and social networking sites -- because they are easy to access and use, and everyone else is using them, doesn't mean you SHOULD use them in your practice
- Technical solutions for data protection, privacy and security are only as strong as the least compliant user

# Myth 3: Data Protection and Electronic Security is Somebody Else's Job

- Data Protection and Electronic Security is Everyone's Job
- You are your own greatest risk
- Mistakes, deviations from existing processes, and the negligence of employees and contractors result in data leaks. According to [Forrester Research](#), more than 70 percent of all data losses are accidental not malicious.
- With time pressures and e-mail auto-fill for the intended recipient on nearly every computer, it is easy to see how e-mails accidentally get sent to the opposing counsel instead of the client.

## Myth 4: My data is safe

- Firewalls, Intrusion Detection, Anti-virus solutions and Draconian anti-IM-ing policies are not enough
- Do you even know where your data resides?
- What about mobile devices?
- The real risk of data loss is through the back door and windows of the law firm:
  - The backdoors are your unencrypted backup tapes
  - The windows are mobile devices
  - The human factor

# Myth 5: My staff and I understand what can and can't be sent out of firm

- Inquiries to the Executive Office US Trustees (EOUST) frequently involve whether or not negligently transmitted data can or must be used
- Most employees don't understand the risks of their short-cuts or multi-tasking
- A majority of employees and contractors don't know their firm's policies
  - If your paralegal doesn't understand why sending work home through email is dangerous or why password protection is important your license may be at risk
  - In an increasingly mobile work environment, employee training is even more important
- Globalization and International outsourcing issues are growing risks



# III. Scary Things

...you should know about technology

# Every digital action creates new data

## ■ Telephone Call

### ■ Traditional record

- "From" number
- "To" number
- Date and time
- Length of call

### ■ Did you know...

- Location of cell phone
  - Triangulation from the towers
- Serial of phone

# Every digital action creates new data

- Copier
  - Client account number
- Facsimile
  - Client phone number
- Scanner
  - Client email
- Digital?
  - Copy of the document

# Every digital action creates new data

- Use a computer
  - Log files
    - Which files were opened
    - Which files were modified
    - Date/time
  - Substantive files
    - Metadata (“data about data”)
      - What file you used as the form
        - & who created it
      - Who made the change
      - What changes were made

# Every digital action creates new data

## ■ Surf the web

### ■ Data recorded on your pc

- Cookies
- Log files

### ■ Data recorded by your ISP

- [http://www.wired.com/politics/onlinerights/news/2007/05/isp\\_privacy](http://www.wired.com/politics/onlinerights/news/2007/05/isp_privacy)

### ■ Data recorded by sites you visit

- Pages you went to
- Links you clicked

### ■ Others

- Logged into gmail?

# Every digital action creates new data

## ■ Personal Life

- Sleeping - location of your cell phone
- Waking – timed coffee, turn on cable tv
- Leaving the house – set alarm
- Driving - car transponder, cell phone, traffic cam, parking card, EZPass
- Shopping – purchases, phone in the mall
- Groceries
- Recreation – movies, restaurants, etc.
- Travel

## ...And the data travels

- Data is shared
  - With “affiliates” for marketing
    - Real and extrapolated
    - Individual and aggregated
  - To service providers
    - Billing services
    - Customer support
    - In and out of US
  - To/from government
    - Traffic Cam
    - US Visit
    - Treasury
  - Internet
    - Aggregating your userIDs, nicknames, etc.

...more data, more places = more risk

- Risk of
  - Permitted disclosure
  - Errors
  - Loss
  - Compromise



# IV. Security – Man the Battle Stations

# Things to Protect

- Hardware
- Software
- Communications
- Data
  - Personal
  - Proprietary
  - Work Product
  - Attorney-Client Privilege
  - Administrative
- Metadata

# Beware the social hack!

- Major risk
  - People who get passwords or documents from other people
- Train your employees
  - Don't be shy
  - Ask for credentials
  - Verify them

# Employee Training

- Think before you click!
  - Too good to be true
    - “Microsoft is doing a test and will give you \$100 if...”
  - Too bad to be true
    - “Little Suzie has cancer...”
  - Doesn't look right
    - Double underline?
- Backup, backup, backup
- If all else fails, turn it off!

# Beware the happy-go-lucky employee

- Do you know what they're doing with using your company computer?
  - Porn
  - Shopping
  - Social networks/Volunteer work
  - Other paid work
  - Accessing/copying your documents and files?
- Do you know the risks?
  - Spyware
  - Keystroke loggers
  - Trojans

***Ensure employees are advised of "no privacy" policy.  
Then, use it!***

## Beware the neighbor, friend, dog sitter

- You might be surprised who's using your computer
  - At work
    - Neighboring lawyer
    - Night cleaner
  - At home
    - Friends
    - Family
    - Housekeeper, plant tender, dog sitter

# Beware the former employee

- Former employees

- Can they access Voicemail? Email? Files?

- Process to turn off their account?

- Can current employees keep default passwords?

- Are there shared accounts?

- What do you *really* know about your IT support?

# Protecting Data

- Document Retention
  - Back-ups
    - On-site
    - Off-site
  - Retention/Destruction



# ER 1.6.

## Confidentiality of Information

- Comment [20] **“When transmitting a communication that includes information relating to the representation of a client, the lawyer must take reasonable precautions to prevent the information from coming into the hands of unintended recipients.”**
  - ‘...does not require ...special security measures if ...reasonable expectation of privacy.’”
  - “Special circumstances, however, may warrant special precautions.”
  - “Factors to be considered in determining the reasonableness of the lawyer's expectation of confidentiality include
    - sensitivity of the information
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# ER 1.6.

## Confidentiality of Information

### ■ Preparing an email

#### ■ AZ Ethics Opinion 07-03:

- “In the case of a lawyer who is employed by a corporation or by a governmental or other entity, “special instructions given by the client” might include the client’s **informed consent to forego, for financial or other reasons**, the acquisition or use of software that is designed to remove metadata from an electronic document.”
- “If a lawyer is asked to comment on a document prepared by another lawyer in the firm, and the commenting lawyer knows or reasonably should know that the document is ultimately intended for transmission to opposing counsel, he or she should **consider whether the comment is the type that should be included within the draft.**”
- A lawyer who prepares a pleading, contract, or other document should **use a “clean” form** and not a document that was used for another client.
- The lawyer who sends an electronic document should be aware that the electronic document **may be received or distributed to a person who is not a lawyer and who therefore does not have the duties of a recipient lawyer** with respect to such document.
- ‘...the lawyer must take care **not to violate any duty of disclosure** to which the lawyer or the lawyer’s client is subject.’

# Protecting Data

## ■ Email - Passwords

### ■ Lawyer Disciplinary Board v. Markins, No. 33256, W.Va. Sup. Ct. (May 23, 2008)

- Lawyer broke into emails of lawyer wife and other lawyers in her firm over a two year period
  - Passwords were last names
  - Looking for evidence of affair
  - Viewed material in case where both firms had clients
  - His employing firm had to figure out if he had saved other firm's emails on their system
- 2 year suspension
- Victim firm says immeasurable damage
  - Time & expense
  - Press coverage
  - Notification to clients; possible lawsuits

# Protecting Data

- Email – Risks from third parties
  - Risk – Sniffer at the router
  - Risk – Trojan in the email client

Are you using email to send or receive information that could result in identity theft (Social Security Numbers, bank account numbers, credit card numbers, birthdate)?  
Information that you expect to preserve attorney work product or attorney-client privilege?

# Protecting Communications

## ■ Wifi

- Password protect your router
  - Technically possible to intercept data stream
- Turn off the network connections on your pc when you're not using them (planes/trains)

# Protecting Data

- Links/attachments in emails

- April 15, 2008 – Email spam sent, claiming to be from US District Court, claiming to have subpoena attached

- Reported to include harvester to resend to recipient's address book

<http://abovethelaw.com/2008/04/omelveny.php>

- Reported to steal digital certificates or permit installation of keystroke logger

<http://www.scmagazineus.com/CEOs-targeted-by-subpoena-spam/article/109017/>

***CLUES: 1) subpoena service via email; 2) misspellings; 3) wrong case number form; 4) from "uscourts.com"***

# Protecting Data

- Risks from intended recipients
  - Access to metadata
    - Use graphical representations of documents
      - .pdf generally fine
      - In Adobe 7
        - Check metadata by going to File → Document Properties (also → Additional Metadata)
      - In Adobe 8
        - Examine File function
      - Or, save as .tiff

*Change to doc text for mailing – Ok*  
*Change to permanent file record –see eDiscovery*

# Protecting data

- **Multiple cases of submitting .pdf to PACER with redactions that can be revealed!**
  - Caused by using black highlight in MS Word and saving in Adobe as .pdf
  - Underlying text can be revealed by cutting the black areas from the .pdf and pasting into an MS Word document
  - Most recently in *Schaefer v. General Electric Co.*, No: 3:07-cv-00858-PCD (D.Ct.)
    - Story broken by CT Law Tribune 5/26/08
    - Parties filed joint motion to replace documents on 5/22/08; court granted on 5/23/08; documents replaced on 5/28/08 (see, <http://utd-cmecf.blogspot.com/2008/05/another-redaction-that-wasnt-effective.html>)

# Protecting Data

- Outsourced work
  - If it leaves the US
    - Are they an “agent” for purposes of attorney/client privilege?
    - What are the remedies for breach of confidentiality contract?
    - Is it vulnerable to NSA wiretap?
      - *Newman, McIntosh & Hennessey, LLC v. Hon. George W. Bush, et al.*, USDC, Civ #1:08-cv-00787-CKK (5/12/2008)

# Protecting Data

- Disposing of hardware
  - Anything that stores data
  - Phones, Servers, PCs, Backup drives
  - Ensure data cannot be retrieved
    - High risk - "Delete" does not remove
    - Mid risk – Reformat drive
    - Mid risk - "Shred" software may make data nearly unrecoverable (depends on details)
    - Lowest risk - Physical destruction



# V. eDiscovery – Hide & Seek with Data

# Basics

- December 2006 – Federal rules
- January 2008 – Arizona rules
- Explicitly include “ESI” (electronically stored information)
- Created some new procedures/practices to address difficulty of searching vastly larger amounts of material through more complex means
  - Discuss “preservation” of data
  - Agree on formats
  - Agree on procedure for privilege claims
  - Early court rulings on these issues

# eDiscovery – Hide and Seek with Data

- Where to look
- What to preserve
- How to search
- What to produce



# Where to Look

- Ask/understand where the relevant data may be
  - Any and every place described in III:
    - PCs – Office & home
    - Servers
    - Internet
    - Phone
  - Any file type:
    - Documents
    - Emails
    - Voicemails (voice)
    - Spreadsheets
    - QuickBooks
    - Online banking
    - Signals (parking, doors, EZPass)
- If reasonable to believe would lead to relevant information
- Then, determine if not reasonably accessible due to burden or cost

# Preserve

- Make & store a separate copy (“preservation hold”)
  - To ensure no changes
    - In the ordinary course of business
    - To the limited corpus of potentially relevant data
  - Know the difference between a copy and a forensic copy
    - E.g., Does the copy change the file date or keep the original one?

# Pre-processing

- Can occur as part of preservation or part of search
  - “Integrate”
  - “Harmonize”
  - “Cleanse”
  - “De-duplicate”
  - “Disambiguate”

Methods for handling differences between data formats, errors in data entry/transmission, etc.

# Search

- Different tools available for different kinds of data
  - “Structured text” – databases
  - “Unstructured text” – running text
  - Audio
  - Video
  - Signals

# Search

- **Ask & understand the underlying methodology of the search software &/or techniques:**
  - Keyword – searches for the specific word
  - Boolean – searches with “&” “or” “not”
  - Fuzzy – searching for near matches
  - Proximity – searches for word within x of another word
  - Occurrence – searches for frequency of terms
  - Concept – statistically associates words in a document with other words in a document

# Search

- Common Underlying Algorithms
  - Linguistic
  - Semantic
  - Bayes
  - Shannon

*Daubert* hearings may be required to defend and challenge search methodologies. *United States v. O'Keefe*, 537 F. Supp. 2d 14 (D.D.C. 2008) and *Equity Analytics v. Lundin*, 2008 U.S. Dist. LEXIS 17407 (D.D.C. Mar. 7, 2008)

# Produce

## ■ New Rules

- Anticipate the difficulty of accurately selecting and producing the correct documents
- Allow for procedures to identify privileged and work product documents *after* production and to get them excluded (“safe harbor”)
  - Creates a “hold” while issue being resolved

# Document Production

- eDiscovery software tools
  - Treat current tools same as any non-lawyer assistant
    - Expect directions to be followed literally
    - Expect over/under-inclusion
  - *Victor Stanley v. Creative Pipe, Inc.*, (D.Md., May 29, 2008)
    - Party using keyword search produced privileged documents
    - Court found privilege waived

# Produce

- **AZ Ethics Opinion 07-03**
  - Electronic information can be produced without metadata
  - Unless the opposing party can articulate a “particularized need” for the data in its original format (with metadata). *Wyeth v. Impax Laboratories, Inc.*, (D. Del. October 26, 2006)

## Greatest risk?

Failure to understand what your technical service providers are doing or telling you.

If you are looking for more information, eDiscovery tools are derived from pre-existing field of “Knowledge Discovery”



## VI. Bankruptcy Practice in Cyberspace:

*Business Development, Reasonable Fees, Asset Searches, Investigations, Communications, Document Review, and more...*

# Practice in Cyberspace: Business Development

## ■ ~~Internet Business Development Services~~

- Non-profits/no fee and approved referral services only in AZ

### ■ 06-06: Internet; Referral Service (09/2006)

An online service that matches prospective clients with potential lawyers based on the appropriate geographic and practice areas, makes representations about the qualifications of its member lawyers, and provides a monetary satisfaction guarantee, is a “lawyer referral service” within the meaning of ER 7.2(b). Unless the service is a non-profit service or is approved by an appropriate regulatory authority, Arizona attorneys may not pay a fee to participate.

### ■ 05-08: Internet; Referral Service; Advertising (07/2005)

A lawyer may not pay to participate in the for-profit client/attorney internet matching service described in this opinion (referred to hereinafter as “the Service”) because the Service substantially functions as, and holds itself out as, a referral service and because the information presented by the Service on behalf of participating lawyers is materially misleading.

# Practice in Cyberspace: Business Development

- Social networking is exploding as a biz dev tool
  - LinkedIn
  - Facebook
  - My Space

- Calif. Opinion 2004-166 chat room communication with potential fee paying client violated ethics code.
- 02-04: Confidentiality; E-mail; Internet; Initial Consultation; Disclaimers (09/2002)  
Summary: 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. [ERs 1.6, 1.7]  
Also see, dissent.

# Practice in Cyberspace: Business Development

- Websites and Domain Names

- 01-05: Advertising and Solicitation; Name of Firm; Internet (03/2001)

A law firm domain name does not have to be identical to the firm's actual name but it otherwise must comply with the Rules of Professional Conduct including refraining from being false or misleading nor may it imply any special competence or unique affiliations unless factually true. A for-profit law firm domain name should not use the top level domain suffix ".org" nor should it use a domain name that implies that the law firm is affiliated with a particular non-profit organization or governmental entity. [ERs 7.1, 7.4, 7.5]

- 97-04: Computer Technology; Internet; Advertising and Solicitation; Confidentiality (04/1997)

This opinion discusses several ethical issues with respect to lawyers using the Internet to communicate including, for example, confidentiality concerns when sending email to a client, advertising considerations for websites and the applicability of Arizona's Rules of Professional Conduct to communications disseminated from or received in Arizona [ERs 1.6, 1.7, 5.5, 7.1, 7.2, 7.3, 7.4, 7.5]

# Practice in Cyberspace: Business Development

- Websites, Podcasts and Blogging
  - Publication and Advertising Rules
  - How to Contact e-forms create risk of receiving information from the other side of existing client cases
  - Disclaimers are Important but not Dispositive
    - E.g., *"We do not have an attorney client relationship with you until you have spoken to an attorney in the firm and have sent out an engagement letter. Do not send us confidential information until an attorney requests it."*
  - Conflicts Screening Processes are essential
    - Watch out for corporate affiliations revealed by email addresses

# Practice in Cyberspace: Business Development

- Websites, Podcasts and Blogging
- Watch what you say about legal positions online in order to avoid imputed conflicts or undermining your partners' position or strategy
- Know what you do not know before blogging
- Maintain the currency of your website and/or blog (failure to do so can hurt more than it helps your practice )

# Business Development: Answering Legal Questions

■ Answering legal questions on-line  
may constitute practicing law

- Chat rooms,
- Bulletin boards
- Listservs
- Podcasts
- Second Life

See blog and website rules...

# Practice in Cyberspace: Diligence and Reasonable Fees

- Is it reasonable to include a provision in a fee agreement that the client will pay a reasonable per-hour amount for time substantially devoted to the client without deduction for incidental distractions such as e-mails?
- Should you deduct the time it took for you to address emails forwarding the same information to other clients?
- Are you using your laptop or PDA while in a deposition or meeting with a paralegal or attorney from the UST's office?
  - if you miss something -- in fact if the meeting was prolonged to repeat information you missed while distracted by your PDA-- is it reasonable to bill for the full time?
  - And if you bill those other clients for whom you exchanged substantive e-mails
    - You should give a corresponding deduction to your deposition or meeting client

# Practice in Cyberspace: Diligence and Reasonable Fees

- **No Fee Deduction For E-mail Time-- Is That Reasonable?**
  - In *In the Matter of Hall Adams III, Commission, No. 05 CH 30, 2006 Ill. Atty. Reg. Disc. Lexis 74 (2006)*, Adams represented three separate clients whose cases were consolidated. Each time he appeared in court, he billed each of the three clients for the same, full amount of court time. Each client received an hour's worth of value for each hour charged, but the Disciplinary Commission found it unreasonable to bill threefold for the same hour. Adams was suspended from the practice of law for 5 1/2 months.

# Practice in Cyberspace: Technical Tools

- Collaborative Spaces: Sharepoint, Groove, Wikis and more.
- Many computerized case management programs feature scripts and customizable "client intake sheets" that help document, organize and store critical case information.
- Scanned documents to digitize may not obviate need to preserve original client documents in hard copy
  - 07-02: Maintaining Client Files; Client's Papers and Documents; Electronic Storage (06/2007)  
In appropriate cases, a lawyer may keep current and closed client files as electronic images in an attempt to maintain a paperless law practice or to more economically store files. After digitizing paper documents, a lawyer may not, without client consent, destroy *original* paper documents that belong to or were obtained from the client. After digitizing paper documents, a lawyer may destroy *copies* of paper documents that were obtained from the client unless the lawyer has reason to know that the client wants the lawyer to retain them. A lawyer has the discretion to decide whether to maintain the balance of the file solely as electronic images and destroy the paper documents.

# Practice in Cyberspace: Diligence and Asset Searches

Does the Debtor have a Second Life?



# Practice in Cyberspace:

## Diligence & Asset Searches:

### Virtual Property, Real Money Laundering

#### ■ Second Life

- Links to real life credit or debit cards so virtual world purchases and profits may be passed through to real world
- Links to real world IP

#### ■ Will virtual insolvency soon follow?

- *Boggs v. Linden Research, Inc.* 2007 WL 1549013 (E.D. Pa. 2007) shows how virtual world economy can result in real world legal disputes.
- The lawsuit brought against Linden Lab was settled out of court.

## Practice in Cyberspace:

### Diligence, Communications & Asset Searches: Domain Names

- Digital Assets/Digital Hide-and-Seek
- Contract right or something more?
  - *Office Depot, Inc. v. Zuccarini*, 2007 WL 2688460 (N.D. Cal. 2007) appointed a receiver to liquidate domain names holding that domain names are property located in the venue of the registrar and registry.

# Practice in Cyberspace: Bankruptcy Court Communications

## ■ Web Warnings:

- Judge Alan Jarolovsky of the Bankruptcy Court for the Northern District of California, used the Internet to warn of a problematic bankruptcy petition preparer, John Hall Mayton,
  - Mayton was fined, for having charged excessive fees, provided a false address to the court, and failure to appear at a show cause hearing.
  - To make sure pro-se debtor's received fair warning of Mr. Mayton's standing with the court, the order also provided that "[t]he Clerk shall post a copy of this order on the court website in an Internet-searchable manner."



Q&A

*If time allows....*