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LEGAL BRIEFS

Technology is Not a Panacea

Technology is an amazing tool in the world of business today, and the legal profession is no exception. But, as is the case with any set of tools, it is best used with caution and requires a thorough understanding of its capabilities, as well as its drawbacks.

The Internet, for example, has revolutionized legal research and the sharing of documents amongst attorneys, and their clients and colleagues. It yields speedier business deals, allows electronic discovery, and smoothes interstate and international transactions. But there is a cost for all this convenience, including possible breaches of confidentiality, higher error rates, and the inadvertent disclosure of privileged information to opposing parties.

Metadata

Metadata is information that is embedded in an electronic file, such as in a Word document, but is not always visible while reading the document. This partially hidden information may include comments made during earlier drafts, including strategy points and other details, often best kept from opposing counsel. The reader can retrieve this metadata through a variety of means, some of which are very simple.

Lawyers are obligated to take reasonable precautions to ensure that sensitive client information is not revealed through these means, and lawyers who come into possession of such information knowing it was not intentionally shared are ethically obligated to disregard it.

Many lawyers use software that “scrubs” documents for metadata, or they have adopted a policy of sending final documents in PDF format, which cannot be altered or mined by the recipient. While use of the PDF format helps ensure that sensitive data is not inadvertently shared with third parties, it does, however, stifle some of the editing benefits of e-mailing Word files.

Confidentiality

Correspondence transmitted electronically may be more or less secure than that which is sent by U.S. mail. Lawyers must take every precaution to ensure that confidential correspondence remains so, even when transmitted over the Internet.

E-mail and client files can be encrypted to protect their contents, including, through the use of encryption software. Shredding of discarded documents has become commonplace and is a no-brainer, and hard drives should be wiped clean before computers are disposed of.

Carelessness

The ability to communicate instantly only fuels the human tendency to want quick answers to our questions and speedy resolutions to our problems. But in our haste to keep up with the rapid pace of correspondence, sometimes errors are made. E-mail correspondence has become as common-place as phones and faxes, but it must be utilized with care and forethought. We sometimes don't think a query through completely before responding, or we react emotionally without taking time to measure our words. Some individuals, caught up in the accelerating pace of an impending transaction, will act without seeking the advice of counsel – a big mistake.

Because of the ease and convenience with which e-mail is sent, individuals tend to be more casual in tone, leading to sloppiness by the parties involved. Such sloppiness is often what leads to expensive and protracted litigation – something which should be avoided, at all cost.

The importance of reading, and re-reading, an e-mail before hitting the “Send” button cannot be overemphasized.

Glitches

In 2004, a plaintiffs' attorney in South Bend, Indiana, narrowly avoided sanctions after failing to appear for a status conference in a wrongful death suit. The reason?



His firm's spam-blocking software had filtered out the court's e-mail notice informing him of the conference date. While none of us enjoy filtering through dozens of spam-ridden e-mails each day looking for the ones that really "matter," this example is a brutal reminder that otherwise effective and useful tools are not always infallible.

Personal Touch

With videoconferencing, virtual courtrooms and electronic data exchange, lawyers could almost function without seeing each other – or their clients. But would that be a good thing? Just as doctors need to touch their patients to provide good care, there is much to be said for the personal touch in delivering legal services. Let's not get so caught up in gadgets and efficiency that we forget that lawyering is fundamentally about helping people with problems and issues that are often extremely significant to them.