

TECHNOLOGY COMPETENCE: CLIENT CONFIDENCES



Model Rules of Professional Conduct

1983: Promulgated by the ABA House of Delegates.



2017: Adopted by 49 states (all but California) and all territories other than Puerto Rico



Nebraska Model Rules of Professional Responsibility

§ 3-501.1, Comment [6]

§ 3-501.6, Comment [15] & [16]

Nebraska Rules of Professional Responsibility, § 3-501.1, Comment [6]

To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, ***including the benefits and risks associated with relevant technology***, engage in continuing study and education and comply with all continuing legal education requirements to which the lawyer is subject.

§ 3-501.1 Comment 6 amended June 28, 2017.

Nebraska Rules of Professional Responsibility, § 3-501.6, Comment [15] & [16]

A lawyer must act **competently** to safeguard information relating to the representation of a client against inadvertent or unauthorized disclosure by the lawyer or other persons who are participating in the representation of the client or who are subject to the lawyer's supervision. See Rules 1.1, 5.1 and 5.3.

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.

MAINTAINING CONFIDENTIALITY

- Communications with clients;
- Performing work outside the office;
- Storing client files; and
- Discarding client files.

Maintaining Confidentiality Before Technology



Maintaining Confidentiality

The Age of Technology



Client Communications

Neb. Ethics Adv. Op. No. 06-5; 02-2



Fax machines: Access to fax machines should be restricted or it should be made clear to potential users that fax communications are not private.

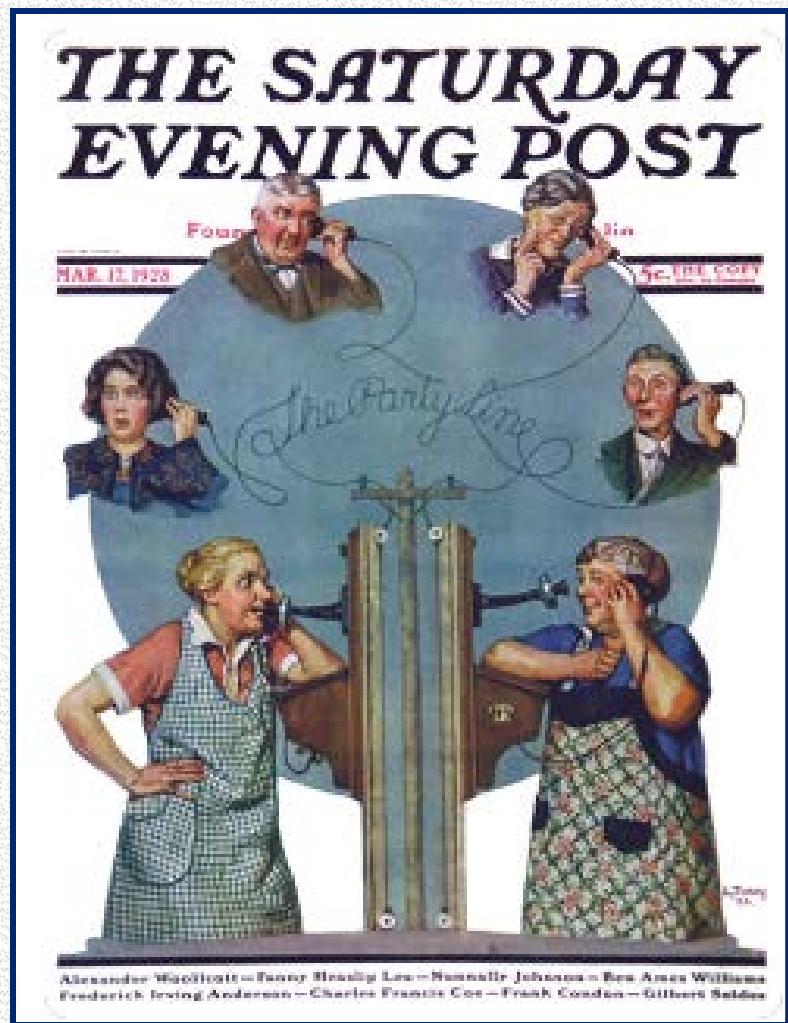


Phone systems: Set up so a lawyer and his/her employees cannot access messages or listen to another lawyer's telephone conversations.



Email: Client Communications

CCs, BCCs and
“Reply to All”





Email: Client Communications

Email servers:

- Public (e.g., gmail, yahoo, etc)
- Private
- Organization--Private



Email: Client Communications

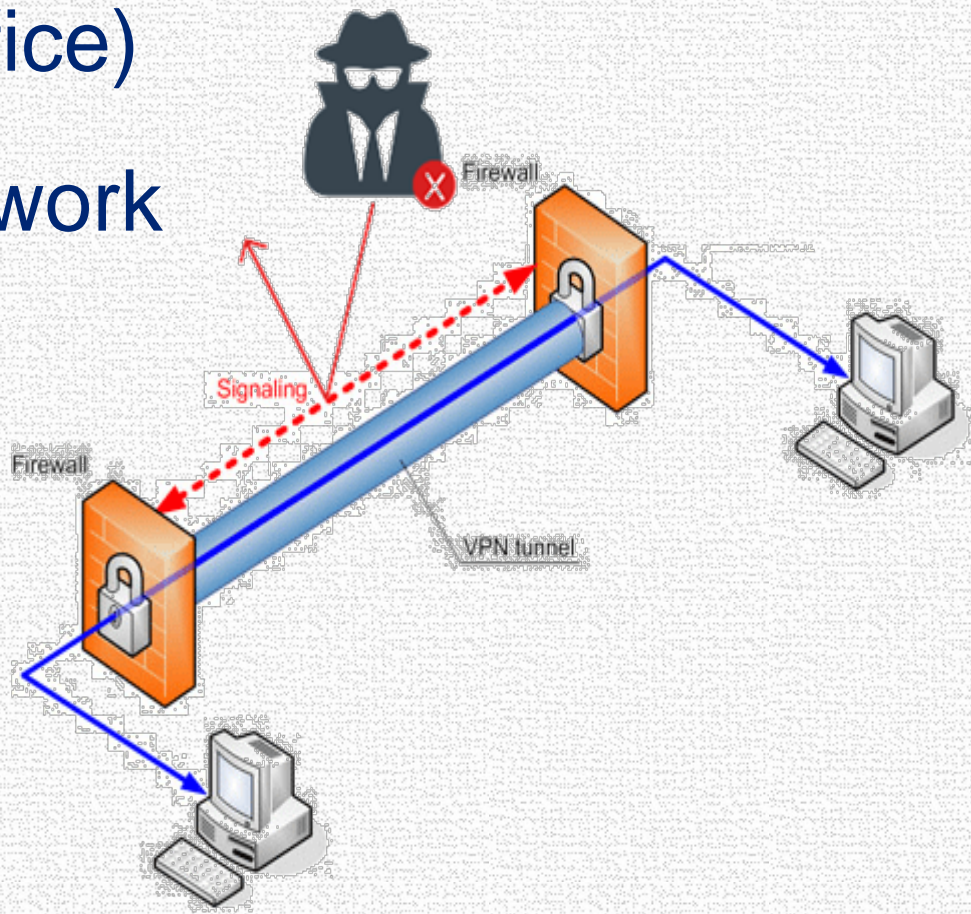
Highly sensitive:
encrypt text; and
send password-protected
documents.





Network Security

- Private Network (Office)
- Virtually Private Network (VPN)





Mobile Access: Device and Data Security

Device security:

- Keep your screen to yourself.
- Password lock the device.
- Secure the device; i.e. hang onto it!
- Enable mobile wiping.

Data security:

- Download only trusted mobile apps.
- Keep them up to date.
- Limit the use of “access to GPS location.”
- Turn off Wi-Fi auto-connect.
- Limit file sharing to when you are logged into your VPN.

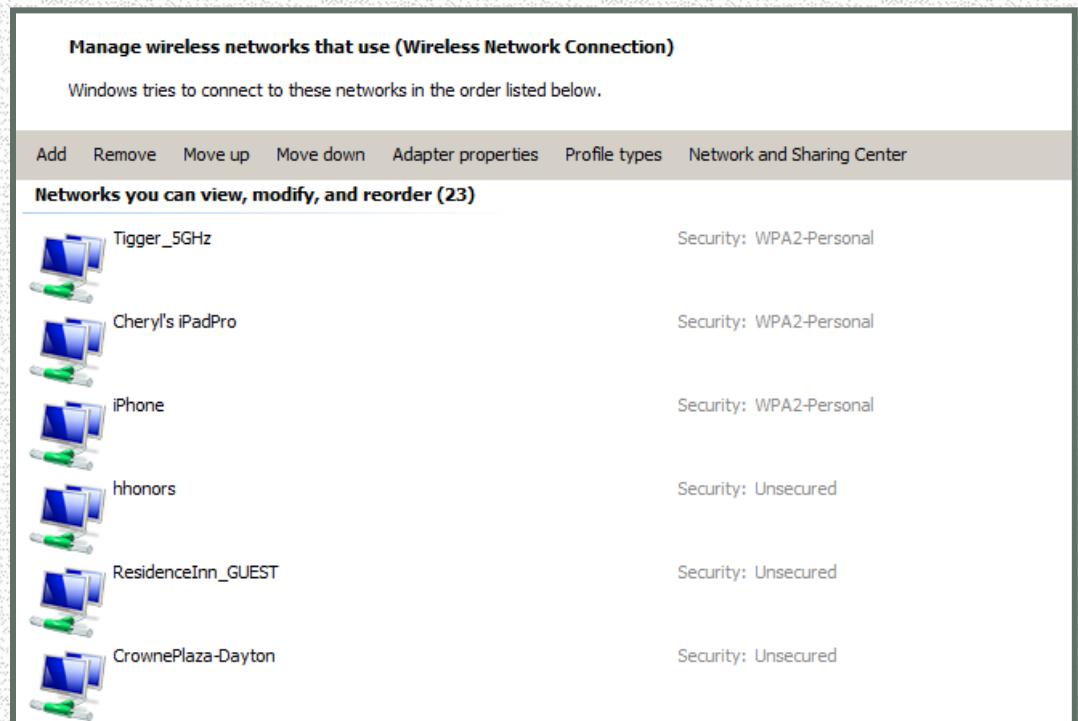


Mobile Access: Internet Security

Use the correct network—not a hacker decoy.

Check the Wi-Fi security protocol for the site: Confirm WPA-2.

Instead of a public Wi-Fi, use a portable Mi-Fi or personal hotspot.



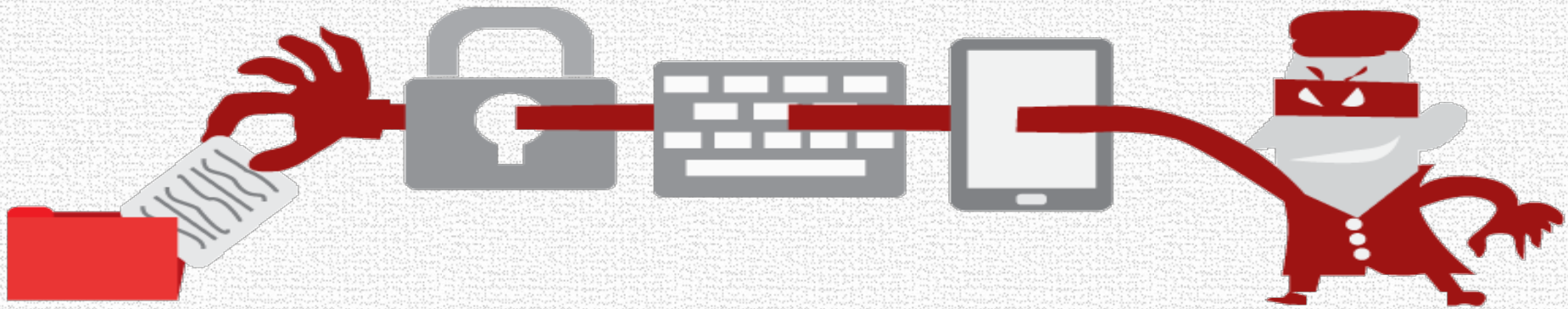


Mobile Access: Internet Security

- Use encrypted connections: Do not provide personal information on any website that does not have “https” in the URL.

<https://www.facebook.com>

- Access your VPN.



Email:

Doorway for Hacking

Hacking is primarily accomplished by:

- 1) phishing;
- 2) keystroke capturing; and
- 3) password guessing.



Doorway for Hacking: Password Guessing

wikiHow to Guess a Password

[Edit Article](#)

Two Methods: ■ Common Tricks ■ Reading Clues ⓘ Community Q&A

Though there's no guaranteed way to guess a password, there are several methods that can lead you in the right direction. If you want to know how to guess a password, just follow these steps and you'll be on your way.

- Create a strong one;
- Save it in a safe place;
- Change it every 3-6 months;
- Use dual authentication; and
- For password remind/reset, do not answer security questions truthfully.



Doorway for Hacking: Phishing & Keystroke Capturing

Never:

- open email links or attachments from unknown persons;
- install a software patch unless you download it from a legitimate website;
- respond to emails that request a password change or ask for personal information.

Always:

- ensure antivirus, anti-spy and anti-malware software is updated—both at home and at work.



File Storage



or





File Storage

Nebraska Ethics Advisory Opinion for
Lawyers No. 06-5

Take “reasonable and necessary precautions” to ensure that client information cannot be accessed by others.

No common access to:

- case files;
- computerized data relating to the case;
- computers and any sensitive information often located in the computer system.

Use security devices to restrict access to computers.

Inform clients of any space sharing arrangement and measures taken to avoid any compromise of confidentiality.



File Storage: The Cloud

“Reasonable and necessary precautions”

Consider the:

information being stored;

attorney storing it;

cloud services provider;

lawyer’s ability to **access, control, and monitor;** and

client’s instructions and circumstances.



File Storage: The Cloud

“Reasonable and necessary precautions”

The **information**:

- Is it highly sensitive?
- Will an inadvertent disclosure or unauthorized disclosure pose a risk of harm to the client or a third party?



File Storage: The Cloud

“Reasonable and necessary precautions”

The **attorney**:

- ability to assess the technology’s level of security;
- cost and difficulty of employing additional safeguards;
- extent to which the safeguards may adversely affect the lawyer’s ability to represent clients; and
- need for increased access during urgent situations.



File Storage: The Cloud

“Reasonable and necessary precautions”

The **cloud services provider**:

- experience and reputation;
- terms of the agreement;
- lawyer’s ability to retain or monitor control access to the information.



File Storage: The Cloud

The service agreement:

- What assurances of confidentiality?
- What happens if the service provider is bought or goes out of business?
- Is there a file backup or recovery plan?



File Storage: The Cloud

Access, control, and monitoring:

- Set an automatic notification of any password change.
- Use strong passwords.
- Do not select “Remember Me” when accessing the secure cloud.



File Storage: The Cloud

Access, control, and monitoring:

- Control file transfer.
 - Check permissions to make sure automatic file transfer to the cloud is limited to the files you **want** to transfer.
 - Remove authorized devices or users when they no longer need access.
- Use encryption for sensitive files.



File Storage: The Cloud

Access, control, and monitoring:

Review security settings (account permissions; backup and restore options; and activity login notifications);

- At least quarterly; and
- When upgrading to a new version (to assure it was not re-set to the default settings).



File Storage: The Cloud

The client:

Consider:

- Jurisdiction of the services rendered.
- Client instructions?
- Inform the client regarding:
 - Storage in the cloud;
 - Breach of server.



File Destruction

Nebraska Ethics Advisory Opinion for
Lawyers No. 17-01

Consider:

- A written procedure for file retention and ultimate destruction of physical and digital copies of files, and
- Revise as needed.



File Destruction

Nebraska Ethics Advisory Opinion for
Lawyers No. 17-01

It is permissible to make an electronic copy of the file and then destroy the physical file immediately, but

Consider:

- The client's reasonable expectations and possible future needs;
- The client's ability to open and access the files;
- Assuring the digitized file is complete and accurate;
- Receiving client consent to digitize the file; and
- Returning hard copies to the client after digitizing it.

File Destruction Digital files



Thoroughly **erase** or wipe all devices and computers before discard or sale, including but not limited to:

- computers,
- phones,
- mobile devices,
- copiers, and
- fax machines

Copiers

Nebraska Ethics Advisory Opinion for Lawyers No. 06-5

Lawyers must either restrict access to copiers or take care not to leave sensitive materials in the machine.



All-new **copy maker
saves time for attorneys**

you get dry copies
in 4 seconds!

The new "Thermo-Fax" Copying **Machine**
...if it's speed you need... try this

The advertisement features a black and white photograph of a man and a woman in professional attire standing behind a large, boxy, light-colored copier. The man is holding a document. The copier has a large paper tray on the left and a control panel on the right. The text is arranged in a clean, sans-serif font, with key words like 'copy' and 'Machine' in bold.



Questions?