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New ABA Email Guidelines: How Can Lawyers Comply?

The path to secure client communications isn't as complex as you might think.

By NICOLE BLACK

Jun 1, 2017 at 7:32 PM

In my last post, I covered the recent ABA ethics opinion, Opinion 477, which I believe established a new standard for secure client communication. As I explained in my post, using unencrypted email may be appropriate for routine or low sensitivity communications, due to "cyber-threats and (the fact that) the proliferation of electronic unications devices have changed the landscape…it is not always reasonable to rely use of unencrypted email."

ts release, much has been writ the Law columnists. Bob Amb is wherein he described in great d continue using unencrypted email wi basis, how to best secure client comm

After reading our posts on the impac s of others in the legal tech space, my c e inherent complexity and amorphous d of a performing a case-by-case secur

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lists and online tutorials and readily accessible manuals so that they quickly and at r no cost put in place a security system that works for their firm."

I couldn't agree more! The case-by-case analysis laid out by the ethics committee is indeed burdensome and time consuming, especially for solo and small firm lawyers who are struggling to keep up with the day-to-day obligations of running their law firms while providing the very best client representation possible.

But, I would suggest that there is an easy way to avoid wasting the precious time required to create a tailored client communication security plan for each matter. Instead, lawyers should establish a standardized communication process that is used for all but the most extreme cases — one that provides a secure, encrypted channel for all case-related interaction. And for those cases where the information is too sensitive for any type of electronic communication, the firm should revert to the time-tested and arguably inconvenient old-school methods of communication: face-to-face meetings and snail mail letters.

But for all other communications with clients a case-by-case determination can be avoided by putting in place a single, encrypted, secure system for the electronic sharing of all case-related information. The good news is that there are a number of different options available, one of which is sure to meet your firm's needs.

ectronic Frontier Foundation (EFF) offers a great guide to secure communications. ains the different types of end-to-end encryption, including OTR and PGP, and then es advice on encrypting differe mendations.

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Encrypted Voice Calls

According to the EFF, the key to ensu (Voice Over Internet Protocol). But i transport encryption (such as that us eavesdroppers — but not the provide which prevents all types of eavesdrop

d-to-end encryption for voice calls, both parties must be using the software. Here tools EFF recommends:

- WhatsApp
- Signal
- Jitsi
- Silent Phone
- Zphone

Encrypted Text Messaging

If you send or receive text messages from clients on your smartphone, it's important to use apps that provide end-to-end encryption for the messages. As is the case with encrypted voice software, both parties must be using these apps in order to communicate securely since the apps work by using their own communications protocols. Many of these apps have been used by protestors in recent months to avoid law enforcement interception during political protests.

Two of the more popular encrypted text messaging apps that can be used on both Android and iOs devices that are recommended by EFF are Signal and ChatSecure.

pted Email

are varying degrees of encryption available for web-based email messages. The most evel of encryption offered by m tion. Gmail and Yahoo provid gh HTTPS will prevent others explained by EFF, there are many th HTTPS, your email provider still gets Governments and law enforcement n

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That's why using PGP encryption is c communications. However, it can be f a technology consultant is needed. But provides detailed guides for Mac users, Windows-users, and Linux-users.

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options to consider that tend to be better suited for larger firms and will likely e the services of a legal technology consultant to set up include AppRiver, DataMotion, HP SecureMail, and Mimecast.

Another problem with encrypted email is that it still leaves some information exposed to prying eyes. EFF describes the loopholes as follows: "End-to-end encryption only protects the content of your communication, not the fact of the communication itself. It does not protect your metadata —which is everything else, including the subject line of your email, or who you are communicating with and when."

I discussed this concern in a recent post here on Above the Law, which was prompted by the Trump administration's repeal of Internet privacy laws and pre-dated the ABA's issuance of Opinion 477. In that post, I suggested that secure client portals were a solution to this particular issue.

Secure Client Portals

Encrypted online portals, which are often built into other software programs such as legal practice management software, solve this problem. All communications occur within the portal, so once you log into the portal, your activities occurring therein, along with your communications, are encrypted from prying eyes.

rse, as is the case with any encrypted communications solution, client portals e a buy in from your clients. However, in light of the new ABA email guidelines, the aved by avoiding the case-by-c d ng client portals will likely outw n gives new teeth to requireme ı to explain to clients why such

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In this post at Lawyerist, which outli er offers this advice for getting clients o with your communication portal is t l them to expect a notification to sign check a box). Once you set them up a default, they will go along with it."

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late 1990s, acclimating to email seemed strange to both lawyers and their clients, now commonplace. Encrypted communication will follow that same path. You may feel overwhelmed in the wake of issuance of the new email guidelines, but rest assured, the path to secure client communications isn't as complex as you might think. Once you choose a methodology and implement it, using it will become second nature.

Nicole Black is a Rochester, New York attorney and the Legal Technology Evangelist at MyCase, web-based law practice management software. She's been blogging since 2005, has written a weekly column for the Daily Record since 2007, is the author of Cloud Computing for Lawyers, co-authors Social Media for Lawyers: the Next Frontier, and co-authors Criminal Law in New York. She's easily distracted by the potential of bright and shiny tech gadgets, along with good food and wine. You can follow her on Twitter @nikiblack and she can be reached at niki.black@mycase.com.

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