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Cyber security for law firms in the digital age
By: Michael Spillane

In 2012, former FBI Director Robert Mueller stated there are two types of companies in the United States: those that have been hacked and those who are going to get hacked. With the release of the Panama Papers our industry was put on notice that enterprising hackers see lawyers and law firms as high value targets because of the volume of confidential information that flows through our servers.

Having electronic access to your client’s information 24/7 anywhere in the world is a wonderful convenience that greatly increases your productivity and profits. It also means that a thief no longer needs to physically enter your office to access that same information. As we become increasingly dependent on technology, a focus on cyber security needs to be at the forefront of all attorneys’ practices, from the solo practitioner to the multinational law firm. It is of the utmost important that attorneys understand their system, its vulnerabilities, and their ethical responsibility to protect their client’s information from hackers.

In evaluating your practice’s risk, the single greatest vulnerability to any security system is the user. This includes not only the attorneys in your group but any other individual that has access to your sensitive information. Improper training and vetting of your employees could lead to a compromise of your client’s confidential information. In order to ensure you are not leaving the door to your electronic safe unlocked, you should review of the following common pitfalls.

**Password Protect All Electronics.** Any company or individual cell phone, laptop, tablet, or other device could act as a master key to your most sensitive information, especially if those items are left unsecured. While it sounds obvious enough, you need to remember your employees may not just use company property to access your files. Any employee that has access to your files or email on their personal or company device should be required to have it password protected. This includes a personal computer or phone that may have cloud storage or remote access user names and passwords saved in their browsers. Further, a notification policy should be in place so that an employee knows who to contact as soon as the device is lost. This will allow you to quickly change their login information and mitigate your potential risk.

**Never Connect to Public Wi-Fi.** We’ve all been there. We are bored in an airport or lobby, we are low on data, and we need to get some work down (or download a podcast). We open our settings to see if there is a free wifi connection nearby. Unfortunately hackers have discovered that they can take advantage of your desperation by providing you a free unsecured Wi-Fi connection. The good news is that the Wi-Fi will likely work and save your data. The bad news is that once you are connected the hacker can access your device. This includes installing key loggers or other malware to give them a foothold into your system.

**Be Careful Recycling Electronics.** Updating and replacing electronics is necessary to keep your law practice up to speed. However, your old machines will likely still have client data, stored passwords, and other valuable information tucked away in its hard drive. Therefore, before disposing of any electronic, whether it is donating, recycling, or throwing it out, your firm should have a process in place to destroy or wipe the hard drive completely clean and ensure
that nothing is left behind. This policy should also extend to any employee that uses their personal devices to access confidential information.

**Do Not Open Unsolicited Attachments.** Phishing emails are used by hackers to gain entry to your system by disguising their dangerous payload in email attachments. Most people know not to open an attachment from an email address that they do not recognize, but hackers have begun spoofing email addresses to make you think you know the sender. This could be as simple as change an “m” to an “rn” in an email address. Further, many times the email will come from a victim of the hacker. It is safest to never open an unsolicited attachment from any source without first confirming it with the sender.

**Know Your Cloud Storage Provider.** Twenty states have released ethical opinions on the use of cloud storage in your practice. While the specific requirements differ slightly, the constant is that each state permits the use of cloud storage so long as the attorney uses reasonable care in selecting the provider.¹ The Legal Cloud Computing Association has released a set of standards to assist the practitioner in evaluating their cloud storage options.² Each attorney should pay close attention to the following details when shopping for a cloud provider:

- Location of the storage: Where are the servers that store your information located? Are they in the US or offshore? Are the offshore servers in locations with trustworthy governments?
- Redundancy: How many locations are your backups stored? Are the locations varied to protect against natural and man-made disasters?
- Testing: How are the security and reliability standards tested?
- Third party access: Which employees at the provider have access to your information? Is there a log or record created when an employee accesses your information?
- Data retention: When you delete a file, do they retain a copy of it? If so for how long? Are you able to permanently delete information from their servers?
- Ownership of data: Who owns the data? Does the cloud storage provider gain an ownership interest in your client’s confidential information upon upload?

There is no program, service, or policy that is 100% full proof against all electronic threats. With every advancement in cybersecurity there will always be someone working to find a way to defeat it. The only way to reduce your exposure and minimize the fallout from any breach is to be proactive in monitoring and evaluating your cybersecurity protocols.

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The Young Lawyer’s Guide to Looking Good to the Underwriter
By: Christina Lewis Abate

Legal malpractice insurance is a necessary tool for protecting the interests and assets of both the client and the firm. Given the current legal malpractice climate and the potential for expensive claims, it is understandable that many professional liability carriers use the underwriting process to assess whether a law firm applicant fits their risk profile before agreeing to provide coverage.

The underwriter is responsible for determining whether to accept a risk and for ensuring that the rate charged reflects the risk presented on the law firm’s application. By taking a few steps prior to submitting their application, law firms can go a long way toward ensuring they receive the best possible consideration by the carrier.

- **Review the application and seek clarification, where necessary.** The underwriter’s assessment is based upon the information submitted on the application. Unless the applicant is well-versed in professional liability policies, terms such as “claims-made and reported”; “retro-active date”; “predecessor firm” may be unfamiliar to the applicant. These terms are essential to setting the boundaries of coverage and a failure to understand these terms may impact your firm’s coverage or delay the underwriting process. If a lawyer is unfamiliar with an application term, the best approach is to seek clarification from the carrier or agent. This ensures that the applicant understands the coverage he or she is purchasing and the underwriter fully understands the firm’s risk profile.

- **Fully Complete the Application.** Regarding the application itself, the lawyer should complete all questions. Although it may not be apparent to the lawyer why the question is relevant to the underwriter’s task, unanswered questions slow down the process, and often require follow-up inquiries to the lawyer. At worst, unanswered questions may leave an underwriter little discretion in how to rate the application. It is also important to be as specific as possible concerning date ranges. For example, when requested to provide information regarding prior coverage, the lawyer should be as specific as possible responding with “month/day/year” when possible, not simply “month/year.” This enables the underwriter to eliminate concerns over possible lapses or gaps in coverage from her evaluation.

- **Highlight your Risk Management Procedures-** Many malpractice claims can be prevented through good risk management practices such as calendaring and docket control procedures, the use of engagement, non-engagement and closing letters, client fee dispute avoidance, and conflicts of interest procedures. For new lawyers setting up their practice, it may be helpful to seek guidance from the carrier’s Risk Management Department. These departments are often staffed by attorneys who are well-trained in establishing law firm best practices. The application should convey a clear picture of the firm’s procedures so that the underwriter can evaluate the firm in the most favorable light. From a malpractice risk perspective, the more frequently and consistently risk management tools are used by the firm, the better the firm looks to the underwriter.

- **Addressing Past Issues-** Although most of the information requested on the application is general in nature, some questions do address issues very personal to the lawyer, including...
prior malpractice claims or disciplinary complaints. Although this portion of the application may be a reminder of an unpleasant period in the lawyer’s career, it is important to address such matters forthrightly. In this situation, the lawyer should show the steps taken to address and resolve the cause of the claim or complaint so the underwriter can feel assured it will not reoccur.

Malpractice carriers realize that few lawyers look forward to completing an application for insurance. However, by approaching this necessary task in a way that treats the process, questions and underwriter in a professional manner, a lawyer can go a long way toward obtaining the insurance carrier’s best possible evaluation.

Christina Lewis Abate is the Director of Underwriting at The Bar Plan Mutual Insurance Co.

NEWS AND ANNOUNCEMENTS

Ethics & Professionalism Committee Update
By: Whittney Dunn, Chair

Happy New Year to all Ethics & Professionalism Committee Members! Your committee leadership is excited about all the committee has accomplished this bar year, and we look forward to more great events and opportunities in the coming months.

On December 19, our committee presented a teleconference informing attorneys about the Fair Debt Collections Practices Act and how it can impact any attorney’s practice. We hope all of you who participated found the teleconference informative and engaging. We are also excited to be cosponsoring the upcoming “What Business Lawyers Should Know About Criminal Law” teleconference with the Business Law Committee. This teleconference will take place Monday, January 22, 2018 at 1:00 p.m. ET.

In less than a month, the ABA will gather in Vancouver for the Mid-Year meeting, and leadership is thrilled about what this year’s mid-year has in store! As many of you may already know, our committee will be presenting a Resolution to the YLD Assembly encouraging the ABA to promote better regulation of attorney conduct through proactive management based regulatory schemes. If you plan to attend the conference in Vancouver and you would like to speak on behalf of this resolution, please contact Emil J. Ali at eali@carrbutterfield.com or Whittney Dunn at wadunn@thebarplan.com.

Mid-Year Meeting will also include a public forum on the Working Draft of amendments to the ABA Model Rules of Professional Conduct on lawyer advertising. These proposed amendments have been prepared by the Standing Committee on Ethics and Professional Responsibility. The public forum will take place on Friday, February 2, 2018, at 2:00 p.m. at the Vancouver Convention Center. The Ethics Committee is accepting written comments regarding the proposal until March 1, 2018. Comments should be emailed to modelruleamend@americanbar.org. All comments will be posted on the website of the ABA Standing Committee on Ethics and Professional Responsibility. After reviewing comments generated both at the public forum and online, the Ethics Committee will submit the proposed

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amendments to the House of Delegates at the Annual Meeting in August 2018. Our committee will be meeting in person to network and socialize immediately following this public forum, so stay tuned to future listserv communications for more details!

We also would like to encourage our committee members to consider submitting nominations for some upcoming awards. We know that our committee contains a high caliber of talent, and we would love to see that excellence recognized!

The Rosner & Rosner Young Lawyers Professionalism Award recognizes a young attorney who has exhibited an outstanding dedication to lawyer professionalism. The deadline for nominations for this award has been extended to January 31, 2018. Please visit the Center for Professional Responsibility’s website for more information.

Also, in celebration of its 50th Anniversary, the Council on Legal Education Opportunity, Inc. (CLEO) will recognize 150 individuals, law schools, and legal organizations that have made significant accomplishments or demonstrated commitments to Education, Diversity, and Greater Equality in the legal profession. More information and an online application can be found at www.cleoinc.org/50/50-for-50. The nomination deadline is March 16, 2018.

CALL FOR ETHICS & PROFESSIONALISM CONTENT

Want to get even more from your committee membership? Being published in one of our newsletters or on our website is a fantastic way to build your professional reputation. We are accepting articles on an on-going basis relating to legal ethics, malpractice avoidance, mental wellness, and any other topic dealing with the professionalism of attorneys. We are especially interested in publishing content from voices that properly reflect the diversity of our committee and young lawyers in general. Submissions should be made to Karuna Davé at kdave@deutschkerrigan.com and Whittney Dunn at wadunn@thebarplan.com. The Center for Professional Responsibility is also seeking content for its newsletters, so please reach out to us for these fantastic publishing opportunities!

We are also interested in your thoughts regarding our committee's programming. If you would like to be a named presenter for an ABA webinar or future ABA conference, please send us your proposals. Also, if there is a particular topic you would like to see covered in an upcoming presentation, webinar, or publication, please let us know. Submissions and programming suggestions should be made to Rick Anderson at randerson@rmwbhlaw.com and Whittney Dunn at wadunn@thebarplan.com.

Finally, even if you are not interested in contributing to our publications or programming, we would love to hear from you! Please let us know what we’re doing well and also what we could be doing better. Committee feedback and comments should be sent to Whittney Dunn at wadunn@thebarplan.com.

Have a warm and safe winter!

Sincerely,

Your ABA YLD Ethics & Professionalism Committee Leadership