

Dangerous Curves Ahead: The Crossroads of Ethics and Technology



Catherine Sanders Reach, MLIS

Director, Legal Technology Resource Center American Bar Association

Arkansas Bar Mid-year Meeting – January 2008

Ethics and Technology

- Applicable Model Rules
 - Rule 1.1 Competence
 - Rule 1.3 Diligence
 - Rule 1.6 Confidentiality of Information
 - Rule 5.1 Responsibilities of a Partner or Supervisory Lawyer
 - Rule 5.2 Responsibilities of a Subordinate Lawyer
 - Rule 5.3 Responsibilities Regarding Nonlawyer Assistant
 - Rule 7.1 Communication/Advertising Applicable Standards
- The Rules require a minimum standard of conduct; efforts to avoid malpractice or business failure may require greater efforts

Malpractice & Technology

- Malpractice traps that can be avoided using technology
 - Missed deadlines
 - Poor communication/unresponsiveness
 - Conflict of interest
 - Substantive legal errors
 - Fee disputes
 - Inadequate documentation of work

Potential Technology Pitfalls

- Exposure of confidential Information
 - Metadata
 - Email
 - Electronic documents
- Marketing rules violations
 - Blogging
 - Websites
 - Online directories
- Security Breaches
 - PC/Mac
 - Network
 - Mobile technologies



So – What IS Metadata?

- “Data about Data”
- Useful for finding documents, reviewing, and sharing
- Invisible, but not too hard to find
- Reveals information about electronic documents beyond the printable text



Metadata and Ethics Opinions

- Ethics Opinions
 - NYSBA Opinion 749; NYSBA Opinion 782
 - **ABA Formal Opinion 06-442**
 - Florida Opinion 06-2
 - **MD Ethics Docket No. 2007-09**
 - Alabama Formal Opinion 2007-02
 - DC Opinion 341
 - More to come...
- At issue: Can you look and must you notify?

Metadata: Examples in the News

- March 2004 – SCO Group, seller of Linux and Unix, files suit against DaimlerChrysler and Autozone. Metadata reveals the attorneys had originally identified Bank of America, but they were later removed from the pleading.
- December 2005 – Justice Department reveals social security numbers
- March 2006 – Google inadvertently reveals financial projections and info about projects in the works

MS Word – What Can Be Viewed

- Author name/ initials
- Company/organization name
- Subject, file type, location
- Date created/modified/last accessed
- Number of revisions/versions
- Previous document authors
- Total editing time
- Template information
- Hidden text (formatting)
- Comments
- OLE objects
- Macros
- Hyperlinks
- Redlining/changes

Metadata: How Do I See It?



- Enable “Track Changes”
- View Comments
- File – Properties and look behind the tabs
- Text editors
- Save as HTML and view source
- Third party software

More Ways to View Metadata

- Computer Forensics experts
- Binary files
- Unix/Linux users can use Antiword or Catdoc to view text file

Metadata: How Do You Get Rid of It?

- MS offers tools and tricks for removal
- Save as PDF
- Third party software tools
- New versions of MS Office and Adobe Acrobat



Metadata: Removal Software

- Payne's Metadata Assistant
- Esquire Innovations: iScrub
- Workshare: Workshare Protect
- SoftWise: Out-of-Sight

What to Look For in Metadata Removal Software

- Analysis of all products (MS Office Outlook, Word, PowerPoint, Excel)
- Individual or batch
- Automatic or user intervention
- Integration with document management software
- Cost/licensing

Metadata: Don't Forget Email



- MS Outlook using MS Word as editor
- Header information reveals author, route, IP address
- Attachments

Metadata: Establish Best Practices

- Get the facts
- Understand the implications
- Establish firm policies to protect yourself and your clients



Electronic Discovery and Metadata

- Metadata is a critical component of document
- Metadata as a source of evidence
- Court described printed email as “dismembered”
- Discovery documents? Scrubbing = shredding
- Many grey areas

Email

- Encryption: [ABA Formal Opinion 99-413](#)
 - Disclaimers
- Chat rooms/e-mail discussion lists/web forums
 - Recorded, searchable conversations
 - With other lawyers
 - Be aware that even closed lists are not completely private
 - With people seeking legal help
 - Be careful, follow state ethics when responding to online message boards to the general public
- Misaddressed e-mails
- Spam and Phishing

Documents

- Consider a document management system or practice management system to control access to documents
- Deletion does not remove the document
- Levels of protection
 - Password
 - To open
 - To edit, copy, extract
 - Sharing
 - MS Office 2003 Information Rights Management
 - PDF – Portable Document Format
 - Encryption



Redaction

- Information hidden or covered in a computer document can almost always be recovered.
- Unless you do it the right way:
 - [Adobe Acrobat 8 Professional Redaction Tool](#)
 - [Appligent Redax](#)
 - Print, black magic marker, scan to PDF

Redaction

00_Global New Employee Record.pdf - Adobe Acrobat Professional


File Edit View Document Comments Forms Tools Advanced Window Help

Create PDF Combine Files Export Secure Sign Forms Review & Comment Typewriter

1 / 4 302%

Redaction: Mark for Redaction Apply Redactions Redaction Properties Search and Redact

16799000

 GLOBAL ELECTRONICS

NEW EMPLOYEE RECORD

Member: Complete Sections A through D, attach copy of Social Security card and proof-of-age document in Section E, and return form to your payroll/personnel representative.

Payroll/Personnel: Complete Section E and return the completed 4-page form to Human Resources.

SECTION A - PERSONAL INFORMATION

Social Security Number: [REDACTED]	Name: (Last) Boslough	(First) Dave	(MI) R
Mailing Address: 1141 Elm Street	(City) Ybor city	(State) FL	(Zip Code) 33605
Work Phone: (Mr) (609) 239- [REDACTED]	Home Phone: (315) [REDACTED]	E-mail Address: boslough@aol.com	
Marital Status: <input type="checkbox"/> Single <input checked="" type="checkbox"/> Married	Gender: <input checked="" type="checkbox"/> Male <input type="checkbox"/> Female	Date of Birth: mm/dd/yy [REDACTED]	

Do you have any of the following prior service credit? Please check all that apply:

<input checked="" type="checkbox"/> Active duty military	<input type="checkbox"/> Juvenile Court	<input type="checkbox"/> Circuit Clerk	<input type="checkbox"/> MoDOT/Parrot
<input type="checkbox"/> PSRS	<input checked="" type="checkbox"/> LAGERS	<input type="checkbox"/> Other Public Employment	

SECTION B - OPTIONAL LIFE INSURANCE COVERAGE ELECTION

Additional life insurance coverage is available to you and your family. The premium(s) will be deducted from your pay check. You will have 31 days from your date of hire to elect optional life insurance coverage.

No Additional Coverage: I do not wish to participate in the optional life insurance plan at this time.
■ As a state employee, I automatically receive basic life insurance coverage equal to one times my annual salary (minimum \$15,000) at

Example of improper redaction

Arkansas Bar Mid-year Meeting – January 2008

PC Security

- Develop a security attitude
- Restrictions and rules are for the safety of the firm and the firm's clients
- Stress security practices the same way you would with a child – “Stranger, Danger!”
- Your firm is your castle – lock the doors, bar the windows, and dig a moat

Security: Five to Remember

- **Think passphrases, not passwords**
 - Strong passwords are over 8 characters long and contain a combination of symbols and alphanumerics
 - Example: “Mydoghasfl3as!”
- **Get security software bundles**
 - Combine antispyware, antivirus, firewall, privacy, intrusion detection etc. in one
 - McAfee, Symantec, Panda, Zone Alarm, etc.
- **Automate updates**
 - Antispyware and antivirus software that needs to be manually updated to be effective isn't worth the free pricetag
- **Security is up to you – not your IT staff or consultant**
 - Security is a process, not technology
 - Change your default settings
- **Do Not Get Gotten**
 - Read the End User License Agreement, be wary of offers that are too good to be true, don't click on pop-ups or blinking ads, realize companies do not ask for you to update your account information online (anymore at least), don't open attachments unless you know the sender and are expecting the attachment, be alert and wary

People Problems

- Inside the firm
 - Disgruntled employees
 - Employees who are leaving
 - Untrained, unaware employees
- Internet Use Policies
 - Staff's use of the internet can jeopardize the firm
 - Create and mandate internet use policy

Wireless/Wifi Security

- WiFi
 - Unsecured wireless Internet access opens the door to hackers/crackers, look-alike wifi networks
 - Protections:
 - Resist using unsecured wifi networks
 - Use a VPN to get into your network
 - Use hotel/airport ethernet ports instead of wifi
- Unsecured Wireless Networks
 - Unsecured wireless networks invite wardriving, nosy neighbors, hackers
 - Protections:
 - Enable Encryption
 - Use hardware and software firewalls
 - Change all default settings
 - Limit the number of connections to the number of computers

Mobile Devices

- Greater freedom of movement = greater risk of loss or theft
- Laptop computers, PDAs, cell phones, flashdrives must be secured
- Protection is available
 - Passwords
 - [Metapass Digital Key](#)
 - [Roboform](#)
 - Encryption
 - [LoJack for Laptops](#)
- Be wary of public PCs

Understand Electronic Discovery

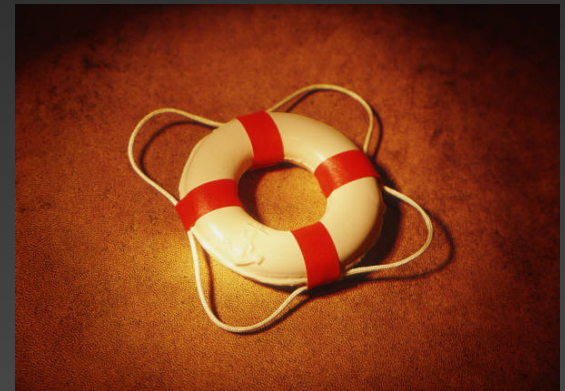
- Amendments to the Federal Civil Rules of Civil Procedure became effective December 1, 2006
- Understand e-discovery or else
 - Zubulake, Metropolitan Opera
 - Native files vs. print
- Retain experts
- Create an e-discovery strategy
- Test on smaller cases

Legal Research

- Fee vs. Free
 - Make sure to check for authority (who is writing this stuff?) and currency (last updated when?)
- Print vs. Digital
 - Some digital materials are more up-to-date and easy to use
 - Eg. Shepards online or Shepards in print
 - Learn when to use print, when to go online
 - JUST ASK® a law librarian

Data Backup

- Backup is fundamental
 - What are the essential elements?
- What about on-line back-up of computer data?
 - Is it ethical?
 - Is it secure?
 - How do I select a vendor?



The Cost of Free

- Mission critical applications for free?
 - No/limited tech support
 - Privacy concerns
 - Free becomes fee (is your data hostage?)
 - Poof – and its gone
 - Spyware/Adware
- The Sad Story of [Red Gorilla](#)
- Ask:
 - What happens if they get a subpoena?
 - Who owns them?
 - Who owns my data?
 - Confidentiality agreement?

Thanks!



Arkansas Bar Mid-year Meeting – January 2008