

Judges Must Keep Up with Technology: It's Not Just for Lawyers

By Marla N. Greenstein

Many of us still remember the judge who would dictate an e-mail message through an assistant, unable to navigate the uncertain magic of a typed message on a lit screen. Fortunately, that image is now a laughable remnant of an ancient time. But, today, many judges remain equally ignorant about the details of cloud computing or just how one is followed via a Twitter account. While it is tempting to simply assert that the safest road on the technology highway is a narrow bike lane, ignorance of the various means of technological communication will not prove to be a safe path. Both the effectiveness of an individual judge and the imperative to promote confidence in the judiciary require technological literacy.

Not only must judges be aware of how participants in the courtroom may use social media to provide appropriate warnings and jury instructions, but judges increasingly are asked to issue search warrants for electronic data with changing privacy implications. So, too, law clerks are not going to book stacks to research the legal issues but are using databases that include more than traditional legal treatises. And, when a judge uses an iPad to work when traveling or from home, security of the documents on the device is a bit different than that of a leather briefcase.

Lawyers have been under an ethical obligation to keep up with changes in the law and its practice that includes the “benefits and risks associated with relevant technology.”¹ While the Model Code of Judicial Conduct has not yet caught up, Rule 2.5 does include a comment that broadly defines judicial competence to require not only legal knowledge, but also “skill, thoroughness and preparation reasonably necessary to perform a judge’s responsibilities of judicial office.” In our world today, this includes competence to assess the quality of Internet legal

research, the ability to properly determine use of court e-mail systems to communicate with attorneys and parties, and the ability to evaluate possible social media stalking in a domestic violence matter.

So, too, when members of the public find personal empowerment through use and abuse of websites and social media accounts to create alternate personas, judges need the ability and will to address abuses directed to them. Rule 1.2’s requirement that a judge “act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary” now includes the cyber-world, where any individual can appear to be a judge or speak for the court. Major social media sites and other tools allow and encourage reports of false personages, especially those who attempt to appear as other real people. Your court technology staff will be able to assist you should you become an unwitting victim of any of these efforts.

As with anything new, electronic technology is a powerful tool for good. Technology lets us read and share valuable legal opinions in a matter of seconds

and allows distant experts to be identified and vetted easily and at low cost. Individuals are able to find forms for a marriage dissolution, free and easily, avoiding costly divorce proceedings. And forms in various languages help to make our courts even more accessible to those with English language limitations. Judges are highly educated with great responsibility and visibility. The world in which judges now must also exercise that responsibility has merely expanded to include a virtual one. ■

Endnote

1. MODEL RULES OF PROF’L CONDUCT R. 1.1 cmt. 6.



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