

Cybersecurity & Your Law Practice

Cybersecurity & the Legal Field (a little background)

1999, A lawyer may transmit information relating to the representation of a client by unencrypted e-mail... because the mode of transmission affords a reasonable expectation of privacy from a technological and legal standpoint. (ABA Formal Op. 99-413)

2010, Encrypting email may be a reasonable step for an attorney to take ... when the circumstance calls for it, particularly if the information at issue is highly sensitive and the use of encryption is not onerous. (Cal. Op. 2010-179)

2012, There was a shift in the legal profession: The American Bar Association formally approved a change to the Model Rules of Professional Conduct to make clear that lawyers have a duty to be competent not only in the law and its practice, but also in technology. Also, the ABA created the Cybersecurity Legal Task Force to help lawyers grapple with the legal challenges created by cyberspace.

2013, The Task Force published *The ABA Cybersecurity Handbook: A Resource For Attorneys, Law Firms, and Business Professionals*. (updated version coming out in Nov 2017)

2015, In California, a formal ethics opinion of the State Bar of California (Formal Opinion No. 2015-193) requires attorneys who represent clients in litigation either to be competent in e-discovery or associate with others who are competent.

Maintaining learning and skill consistent with an attorney's duty of competence includes "keeping abreast of changes in the law and its practice, including the benefits and risks associated with technology."

- quote from Formal Opinion No. 2015-193, comment 8

May 2017, ABA Formal Opinion 477 submitted by the Cybersecurity Task Force. An 11 pg. document.

The Committee does not specify the reasonable efforts required in such matters, but does say that "unencrypted routine email generally remains an acceptable method of lawyer-client communication." Opinion pg. 5. The Opinion at pgs. 5-10 then provides a list of considerations as guidance:

- **Understand the Nature of the Threat.**
- **Understand How Client Confidential Information is Transmitted and Where It Is Stored.**
- **Understand and Use Reasonable Electronic Security Measures.**
- **Determine How Electronic Communications About Clients Matters Should Be Protected.**
- **Label Client Confidential Information.**
- **Train Lawyers and Nonlawyer Assistants in Technology and Information Security.**
- **Conduct Due Diligence on Vendors Providing Communication Technology.**

Some Tech. Terminology:

Cybersecurity: measures taken to protect a computer or computer system (as on the Internet) against unauthorized access or attack.

Cyber Risk: any risk of financial loss, disruption or damage to the reputation of an organization from some sort of failure of its information technology systems.

Cloud Backup: also known as online backup, is a strategy for backing up data that involves sending a copy of the data over a proprietary or public network to an off-site server.

ESI: (Electronically Stored Information) refers to all information stored in computers and storage devices. This includes any data including ESI found in e-mail, voicemail, instant and text messages, databases, metadata, digital images and any other type of file.

Ransomware: a type of malicious software designed to block access to a computer system until a sum of money is paid.

DOWNLOADS:

Formal Opinion No. 2015-193: (California, May 2015)

[https://www.calbar.ca.gov/Portals/0/documents/ethics/Opinions/CAL%202015-193%20%5B11-0004%5D%20\(06-30-15\)%20-%20FINAL.pdf](https://www.calbar.ca.gov/Portals/0/documents/ethics/Opinions/CAL%202015-193%20%5B11-0004%5D%20(06-30-15)%20-%20FINAL.pdf)

Formal Opinion 477 (ABA, May 2017) 11 pgs.

<https://www.americanbar.org/content/dam/aba/images/abanews/FormalOpinion477.pdf>

Recommended Book:

ABA Cybersecurity Handbook (avail. for pre-order, release date: 11/6/2017)

The ABA Cybersecurity Handbook: A Resource for Attorneys, Law Firms, and Business Professionals, Second Edition

<https://shop.americanbar.org/eBus/Store/ProductDetails.aspx?productId=280127783&term=cybersecurity>

Contact: Deena Mayne | Freebird Media | 760-613-8965 | deena@freebird-media.com