



Alta Pro Insurance Services

Chapter 3: Putting Cyber Security to Work in Your Practice

September 17, 2020

12 Noon Central Standard Time

Step One: Practice Cyber Risk Management

a) Cyber risk management is an ethical requirement.

b) Duty of Technical Competence / ABA Model Rule of Professional Conduct 1.1 Comment [8]: *“Maintaining Competence: To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology”*

- Cyber crime skyrocketing since Feb 2020
- FBI Incident Reports more than tripled from Feb – April (1,000/day to 3-4,000/day)
- Coronavirus social engineering/hacking scams
- Remote work vulnerabilities

c) Cyber Liability Insurance and Professional Liability Insurance

- Compare and contrast
- What is and isn't covered by LPL policy
- Is it enough to just have LPL?
- How does Cyber Liability Insurance work?
- Guidance for lawyers: how to find cyber products, how to apply, what does it cost?
- ABA Legal Tech Report 2019 – 33% of responding lawyers/firms had cyber insurance

Step Two: Have a Data Privacy Policy

a) Data privacy is an ethical requirement.

b) ABA Model Rule 1.6 Client Confidentiality. *“A lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client.”*

c) Things to consider including in your firm's Data Privacy Plan:

- Train and educate your staff to recognize, report and respond appropriately to a cyber threat or cyber event.
- Make sure all software programs are up-to-date and functioning properly.
- Install updates and patches when they become available.
- Use secure passwords (a password manager is recommended) and change them often.
- Use two-factor authentication.

- Have an office policy on cyber preparedness.
- Make sure your office policy has clear guidelines for working remotely and taking laptops and devices off-site.
- Limit access to sensitive systems, files and data.
- Obtain cyber liability insurance.
- Discuss ABA Model Rule 1.1 and its ramifications at your next office staff meeting.

Step Three: Have an Incident Response Plan

Only 25 percent of firms have formal Incident Response Plan – mostly large firms
 Only 9 percent of solo practices have a plan (*source ABA Legal Tech Report 2019*)

Ingredients to consider in your Incident Response Plan:

- Procedures for initial reporting of an incident
- Confirmation of the incidents
- Escalation as appropriate
- Investigation
- Data breach response
- Electronic data restoration
- Having a designated incident response project manager
- Assembling a cross-disciplinary response team. The team might include everyone from IT professionals to a PR firm.
- Training the response team on breach reporting obligations, mitigation requirements and the steps needed for recovery.
- Post-incident review
- Revising the plan to incorporate all lessons learned

Legal defense – malpractice

Ethics/licensing defense

Risk management / insurance considerations

- Cyber Liability Insurance and Response Plan
- Professional Liability Insurance and Response Plan
- Policy/Procedures Manual
- Team training and education

ABOUT THE SPEAKERS AND MODERATOR

Kevin M. O’Hagan, JD

Kevin O’Hagan is a founding partner of O’Hagan Meyer. After practicing at large law firms for 15 years, such as McGuire Woods and Locke Lord Edwards, he founded the firm to be a national boutique with an emphasis on personal customer service. He acts as lead counsel for several Fortune 500 companies and has tried cases in five different states, including the Delaware Court of Chancery, and has mediated cases in 15 state courts and federal jurisdictions. Kevin has also

handled multi-district litigation and class action suits. He is licensed to practice in Illinois and Virginia, and has been admitted to practice *pro hac vice* in 10 other states. *Chicago Lawyer Magazine*, in its inaugural annual edition, recognized Kevin as one of the city's *Top 40 Lawyers under 40 to Watch* and he was named a *SuperLawyer* by *Chicago Magazine* in 2005, and 2008-2021. Kevin is National Chair of the Firm's Director's & Officers practice and has successfully handled shareholder, intellectual property, restrictive covenant and breach of fiduciary matters all over the country.

Jamey Davidson, JD. Jamey Davidson is a partner in the Chicago office of O'Hagan Meyer. He heads the Chicago Office's Cyber Liability and Data Privacy Practice Group. Jamey represents insurance companies as well as their insureds in Cyber Liability matters ranging from ransomware matters to cybercrime matters. He acts as Breach Coach and Privacy Counsel to large and small companies responding to cyberattacks and cyber threats. He acts as monitoring counsel for domestic and London based cyber liability carriers for matters all over the country and has successfully negotiated many ransom and extortion payments and worked to recover funds that were stolen in cybercrime schemes. Jamey frequently writes and lectures on cyber liability, cyber liability insurance issues, the ethical issues and legal responsibilities of lawyers, damages in legal malpractice actions, attorney-client privilege and client confidentiality.

Moderator

Ernest (Jay) Reeves Jr. has worked in the legal profession for more than 40 years, including 35 years of private practice in North Carolina and South Carolina (where he represented lawyers in licensing, ethics and bar disciplinary matters). He has also been Legal Editor at *Lawyers Weekly* and Vice President of Risk Management at *Lawyers Mutual of NC*.

He has presented hundreds of CLE programs to lawyers and bar groups on practice management, ethics and tech topics, including the 10 Building Blocks of Risk Management, which he has presented across the U.S. and Canada. He was a panelist and moderator for the recent CLE webinars "Law Firm Cybersecurity Best Practices 2021" and "Putting Cybersecurity to Work in Your Practice," both of which were CLE-accredited in multiple states.

He helped launch the North Carolina Legal Tech Expo in the late 1990s, a trail-blazing immersive tech experience for lawyers sponsored by the NC Bar Association. He was a past Vice-President of BarCARES of North Carolina. He was a member of the Orange County (NC) Bar Professionalism Oath Committee. He is author of the book, "*The Most Powerful Attorney in the World.*" He is founder and owner of Your Law Life LLC. He now runs Your Law Life LLC, which helps lawyers and firms stay safe and successful.

Contact: Jay Reeves, [Your Law Life LLC](#)

Phone 919-619-2441

jay@yourlawlife.com

SPONSOR

Alta Pro Insurance Services

Lawyers Risk Purchasing Group



www.altaprorpg.com info@altaprolawyersrpg.com

DISCLAIMER: This manuscript contains general information that might be helpful in your practice. It addresses risk management and ethical considerations regarding technology and cybersecurity. Nothing in this manuscript is intended as legal advice or opinion, nor is this manuscript intended to establish the legal standard of care applicable to any situation. Each case is different, and each client has different needs. The law changes rapidly. Independent research and due diligence are always part of your ethical responsibility.