Confidentiality, Competency, Conflicts and Technology

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David Hricik

Professor, Mercer Law School

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Overview

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- Brief word about choice of law
- A quick look review of the rules
- Confidentiality & Competency: examples of what not to do, what others may do to you, and what to do
- Conflicts: a brief word
- Conclusion

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A Brief Word About Choice of Law

- For discipline, Texas state and federal courts should apply the Texas Disciplinary Rules of Professional Conduct (the "Texas Rules") for conduct in Texas state or federal court.
  - USPTO practice creates uncertainties.
- For ethical issues, Texas state courts will be guided by the Texas Rules, but Texas federal Courts apply "federal" ethical principles
  - Influenced by Texas Rules but give weight to other sources including the ABA Model Rules of Professional Conduct ("Model Rules")
    - Texas Rules differ from Model Rules textually.
    - Courts have interpreted Model Rules differently than an identical Texas Rule
  - USPTO practice creates uncertainties

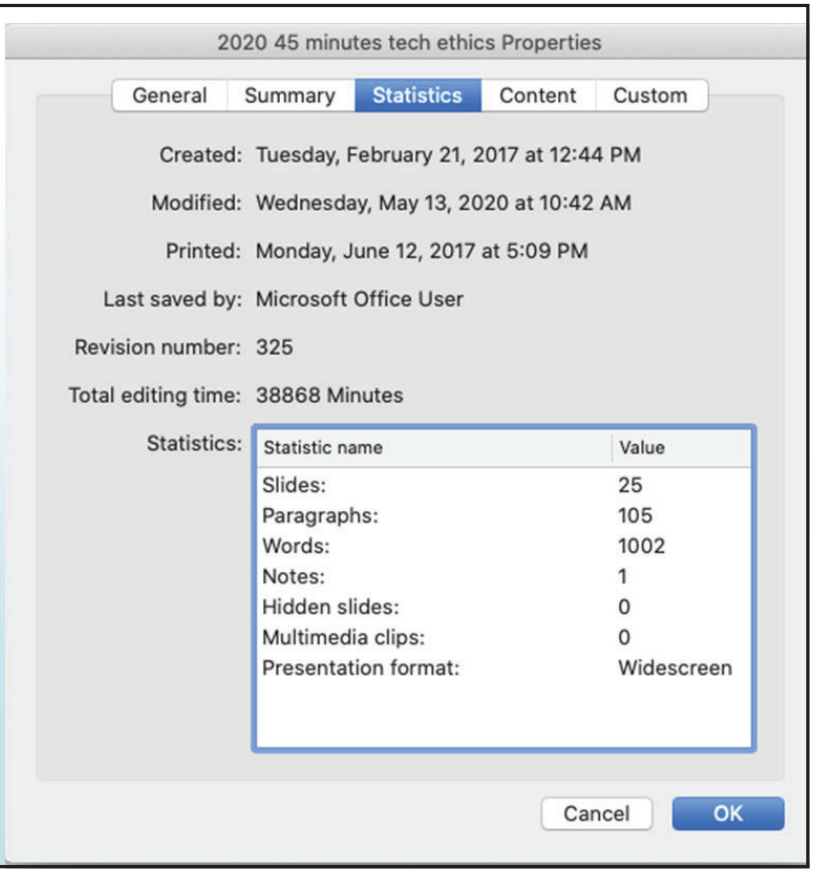
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The Rules: Competency and Confidentiality

- Comment to Texas Rule 1.01: "Because of the vital role of lawyers in the legal process, each lawyer should strive to become and remain proficient and competent in the practice of law, including the benefits and risks associated with relevant technology.."
- Model Rule 1.6(c): "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."
- Comment to Model Rule 1.1: "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,."

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What not to do



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What not to do

- Don't violate court orders or other requirements to redact sensitive information.
- Like these lawyers did…

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