PRESENTED AT

Mortgage Lending Institute

September 28-29, 2017
AT&T Conference Center Austin

Lawyers, Technology, and Ethics

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I. INTRODUCTION

It's not a particularly insightful statement to note that technology has changed—and continues to change—the world we live in. Current generations have seen technology move off the science fiction movie and television screen and into everyday life. One example: telephones, once connected to the walls of homes and offices, and computers that once occupied entire floors of university buildings have now merged in portable devices carried in our pockets and purses.

The legal profession has not been immune to the technological advances enjoyed by the rest of the world. Advances in technology have changed legal practice over recent decades, helping lawyers serve their clients more efficiently and arguably enabling lawyers to do things, such as manipulate large amounts of data in e-discovery, that otherwise would be impossible, or at least impractical.[1]

This article is a brief overview of the ways technology advances are affecting the practice of law, a look at some of the ethical issues arising from the expansion of technology in legal practice, and suggestions of some ways lawyers can ensure their use of technology complies with their ethical obligations to their clients.

II. TECHNOLOGY IN LEGAL PRACTICE

As a result of technological innovation and advancement, legal professionals are required to become familiar with "an ever-increasing array of word processing, spreadsheet, telecommunications, database, presentation and legal research software."[2] Our discussion of technology in legal practice will focus on two primary areas: cloud computing and mobile technology.

Cloud Computing

The National Institute of Standards and Technology ("**NIST**") has defined cloud computing as "a model for enabling convenient, on-demand network access to a shared pool of configurable computing resources (e.g., networks, servers, storage, applications, and services) that can be rapidly provisioned and released with minimal management effort or service provider interaction."[3] NIST's report identified five essential characteristics of cloud computing: on-demand self-service, broad network access, resource pooling, rapid elasticity, and measured

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[1] *See, e.g.*, Jeff Bennion, "How Technology Can Make You a Better Lawyer," Above the Law, February 16, 2016, at http://abovethelaw.com/2016/02/how-technology-can-make-you-a-better-lawyer/?rf=1. *See also* Heidi Alexander, "The Future of Lawyers: Five Big Ideas," AttorneysAtWork.com (April 26, 2013), at https://www.attorneyatwork.com/the-future-of-lawyers-five-big-ideas-from-the-suffolk-law-institute-on-law-practice-technology-and-innovation/.

[2] Sally Kane, "Legal Technology and the Modern Law Firm," The Balance (May 15, 2017), at https://www.thebalance.com/technology-and-the-law-2164328.

[3] Peter Mell & Timothy Grance, "The NIST Definition of Cloud Computing," NAT'L INST. OF STANDARDS & TECH. NIST SPECIAL PUBLICATION 800-145 (September 2011), available at http://nvlpubs.nist.gov/nistpubs/Legacy/SP/nistspecialpublication800-145.pdf.

service.[4] In everyday use, cloud computing is a broad term that describes technology that enables users to store data and applications in shared data centers accessible via the internet.

Most cloud services fall into one of three main categories, based on the specific services provided.[5] Of the three, Software-as-a-Service ("**SaaS**") is by far the most common, describing "a category of software that's delivered over the Internet via a Web browser . . . rather than installed directly onto the user's computer."[6]

Cloud computing access may be delivered via a private cloud, a public cloud, a hybrid cloud, or a community cloud.[7] In a public cloud—the form most familiar to most people—the server is located at the service provider's facility and is shared among multiple customers. The users have no control of or access to the servers and are at the mercy of the provider's security system. Popular services like Dropbox, Office 365, Google Drive, and iCloud are public clouds, available to anyone willing to pay for them.

As of 2016, surveys indicated that over 59% of lawyers used online services for removable or external storage.[8] Modern cloud computing has expanded far beyond the mere offsite storage of data. Many lawyers and law firms enjoy the convenience and efficiency of cloud practice management services offered by companies like NetDocs, Rocket Matter, and Clio that enable management of cases, clients, contacts, calendars, and document storage.[9]

The near ubiquity of the internet has generated a plethora of cloud-based services that in many cases are replacing software stored on a local hard drive. Microsoft, Google, and Apple all offer cloud-based suites of software for word processing, spreadsheet creation, presentations, email management, and document storage. When using these services, data is created, edited, and shared entirely off-site.[10]

Even those lawyers who are suspicious of the cloud and manage their practice using locally stored paper or electronic files likely use the cloud on a daily basis to some degree. An attorney who uses Gmail or other similar services is accessing email via the cloud. Microsoft's Office software suite—Word, Excel, Outlook, and PowerPoint—has moved to the cloud; lawyers

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[4] *Id.*

[5] *Id.*, discussing "Infrastructure-as-a-Service," "Platform-as-a-Service," and "Software-as-a-Service."

[6] Cloud Ethics Opinions Around the U.S., ABA Law Practice Division, at https://www.americanbar.org/groups/departments_offices/legal_technology_resources/resources/charts_fyis/cloud-ethics-chart.html.

[7] Mell & Grance, *supra*.

[8] Nicole Black, "Lawyers, Cloud Computing, and Mobile Technology in 2016," LegalITProfessionals (July 11, 2016), at https://www.legalitprofessionals.com/legal-it-columns/8775-lawyers-cloud-computing-and-mobile-technology-in-2016.

[9] For recommendations *see* Stephanie L. Kimbro and Tom Mighell, "Popular Cloud Computing Services for Lawyers: Practice Management Online," ABA Law Practice Magazine online Vol. 37, No. 5, available at https://www.americanbar.org/publications/law_practice_magazine/2011/september_october/popular_cloud_computing_services_for_lawyers.html.

[10] *See* William Jeremy Robison, Note, *Free At What Cost?: Cloud Computing Privacy Under the Stored Communications Act*, 98 GEO. L.J. 1195, 1209–12 (2010).

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First appeared as part of the conference materials for the
51st Annual William W. Gibson, Jr. Mortgage Lending Institute session
"Technology and Ethics"