



# Confidentiality, Competency, Conflicts and Technology

1

David Hricik

Professor, Mercer Law School

1

2

## Overview

- 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

2

## 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

## 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.”

5

## What not to do

The screenshot shows a dialog box titled "2020 45 minutes tech ethics Properties" with tabs for General, Summary, Statistics, Content, and Custom. The Statistics tab is active, displaying the following information:

- Created: Tuesday, February 21, 2017 at 12:44 PM
- Modified: Wednesday, May 13, 2020 at 10:42 AM
- Printed: Monday, June 12, 2017 at 5:09 PM
- Last saved by: Microsoft Office User
- Revision number: 325
- Total editing time: 38868 Minutes

A table titled "Statistics:" is shown below:

Statistic name	Value
Slides:	25
Paragraphs:	105
Words:	1002
Notes:	1
Hidden slides:	0
Multimedia clips:	0
Presentation format:	Widescreen

Buttons for "Cancel" and "OK" are visible at the bottom right of the dialog box.

5

6

## What not to do

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

6

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](https://utcle.org/elibrary)

## Title search: Competency, Confidentiality, Conflicts, and Technology

Also available as part of the eCourse

[2020 Technology Law eConference](#)

First appeared as part of the conference materials for the  
33<sup>rd</sup> Annual Technology Law Conference session  
"Competency, Confidentiality, Conflicts, and Technology"