

Cyber Liability: Protecting Records and Financial Information

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Ethical Obligations

- ABA Model Rule 1.6 Confidentiality of Information
 - (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.
 - “Reasonable efforts” determined by:
 - sensitivity of the information
 - likelihood of disclosure if additional safeguards are not employed
 - cost of employing additional safeguards
 - difficulty of implementing the safeguards
 - extent to which the safeguards adversely affect the lawyer’s ability to represent clients

Ethical Obligations

- ABA Model Rule 1.1
 - A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.
- Comment [8]
 - 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....*

Data Privacy Survey

- What type(s) of data do you have?
- Which laws apply?
- Where is the data?
- How is it protected?
- Who has access?
- What policies govern handling of the data?
- What are your risks?

Managing Vendor Risk

- Due diligence
- Contract Provisions:
 - Representations and warranties related to data security
 - Right to supervise or manage incident response
 - Required cooperation following an incident
 - Audit rights
 - Required ongoing training
 - Strong notice provisions
 - Insurance requirements
 - Indemnity provisions

Incident Response Plans

- Include:
 - The initial steps to remediate and contain
 - Specific, scenario-based plans
 - Core response team information
 - Basic disclosure analysis
 - Service providers' contact information
 - Document templates
 - Insurance policies, engagement letters, and other key documents
- Test it with tabletop exercises from the news

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