

TECHNOLOGY'S DISRUPTION OF THE LEGAL PROFESSION



HISTORIC TECHNOLOGICAL DISRUPTIONS





Email as an example...

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Texas Rule 1.05 - CONFIDENTIALITY

Email use as foreshadowing ethical debates that accompany technological disruptions: Texas Rule 1.05 – The lawyer’s ethical duty to protect client confidential information.

Rule 1.05 defines client “confidential information” as including both “PRIVILEGED INFORMATION” and “**UNPRIVILEGED CLIENT INFORMATION.**”

A lawyer cannot “**knowingly**” reveal client confidential information to third parties, unless an exception under Rule 1.05 applies.

Texas Professional Ethics Committee Opinions 648 (2015) considered email technology and concluded that it was permissible for lawyers to use; however, the Opinion cautioned that, in some instances, warning clients about potential confidentiality breaches that can occur with email use and the usefulness of encryption.

Texas Rule 1.01 - COMPETENCE

Texas Rule 1.01: Attorney “COMPETENCE” AND “NEGLECT”

COMPETENCE:

Competence clearly includes procedural knowledge, and now technological knowledge, to practice law competently.

Example: Lawyer was disciplined for repeated failures to learn how to competently use a court’s electronic filing system.

Texas Professional Ethics Opinion 665 (2016) applied Rule 1.01 (competence) and Rule 1.05 (client confidential information protection) to a question about a lawyer’s inadvertent transmission of metadata containing client confidential information in an electronic document sent to adverse and/or third parties.

The Internet Flattens the World



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