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Practicing Law Remotely: We're Not in Kansas Anymore

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In the 1939 film, *The Wizard of Oz*, American movie goers, Dorothy, and Toto were whisked away from a Kansas farm to the land of Oz. And nothing was ever the same. Starting roughly in March of 2020, the COVID-19 global pandemic and reactions to it caused a whirlwind in the way many Americans work. The practice of law was no exception.

During portions of 2020 and 2021, and continuing for some today, gone were the days when lawyers, dressed in business attire, trekked to and from work by riding a train or driving their car while juggling a coffee and their briefcase or computer. The new normal was to go to the “office” which could be anywhere from the kitchen table to a bed...in something less than business attire. Also gone were the ways in which lawyers typically communicated and collaborated, with a massive shift from the boardroom and the courtroom to the computer screen. For those with school-aged children, during the academic year, gone were the days spent together with co-workers and watercooler conversations. Instead, lawyers essentially had to learn to work in a classroom, helping their young scholars learn *and stay on task*, while practicing law. We all had to learn to Zoom...whatever that was, and to work with each other and courts remotely.

And that wasn't the half of it. Remote work was a huge adjustment at a time of enormous societal and global turmoil, as well as, for many, real personal loss. As time has passed, many of us might wish that we could, like Dorothy, click our shoes and leave Oz. But remote work appears to be here to stay.

The American Bar Association issued two opinions during the pandemic to address what it views as the key ethical dilemmas lawyers face when working remotely. Using those opinions and the Texas Disciplinary Rules of Professional Conduct (“Rule” or the “Rules”) as guides, this paper will discuss the ethics of remote work for lawyers, generally, and school lawyers,

specifically. Though the Rules are presented and discussed separately below, in reality, they impose complimentary requirements that should be understood holistically, both with each other and with the existing Rules.

I. Rule 1.01 – Competent and Diligent Representation

Rule 1.01 imposes a duty of competence on an attorney’s representation of clients, including maintaining competence as to relevant technology. Comment number 8 to the Rule reads,

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.** To maintain the requisite knowledge and skill of a competent practitioner, a lawyer should engage in continuing study and education. If a system of peer review has been established, the lawyer should consider making use of it in appropriate circumstances. Isolated instances of faulty conduct or decision should be identified for purposes of additional study or instruction.

(emphasis added). Consistent remote work is only largely possible because of modern technology and attorneys should understand its benefits and risks to maintain their competency, but also to ensure compliance with other ethical Rules.

II. Rules 1.03 and 1.05 – Communications and Confidentiality

Rule 1.03 obliges lawyers to keep clients informed about the status of their matter, respond to requests for information, and explain the matter to clients to allow them to make informed decisions regarding the representation. For attorneys who work remotely, there are various considerations to keep in mind. For instance, what system is in place for providing remotely working attorneys with physical mail that comes to the office? How are lawyers who work remotely receiving voice mails left on their office phones?

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