February 14, 2015

TO: Daniel Murphy, Sr., Esq.

FROM: Christine Graham

RE: Ethical Considerations for Cloud Based Document Storage

There were concerns in regard to using cloud-based storage for sharing client files. Specific focus was given to the security of accessing client files over the Internet; that included Google storage.

According to Rule 1.6 of Massachusetts Rules of Professional Conduct, Lawyers have the obligation to avoid using means of communication with the client that poses an unreasonable risk of inadvertent disclosure to third persons. Rule 1.6 was reexamined, following the statues of the Electronic Communications Privacy Act, where confidential communications through the Internet’s e-mail were not in violation of Rule 1.6(a). The Committee on Professional Ethics extended this policy to include computer software and more recently, Internet storage.

The Committee states that a firm must make “reasonable efforts” by (a) examining the internet provider’s terms of use and written policies and procedures in regard to data privacy and the handling of confidential information, (b) to ensure the internet provider’s terms prohibit unauthorized access to stored data on their system, (c) that the internet provider allows lawyers access and control over stored data in the internet provider’s system regardless of interruption of the provider and firm’s account relationship, (d) the internet provider ensures stored data remains confidential, that will not be intentionally or inadvertently disclosed or lost and (e) the firm will periodically revisit and reexamine the internet provider’s policies, practices and procedures, ensuring they remain compatible with the firm’s professional obligation to protect the client’s information.

The Massachusetts Bar revisits Rule 1.6 in regard to avoiding the use of communications that pose security risk by adding that a client should be informed and consenting. This elaboration of the rule should be in the firm’s workflow of signing on a prospective client for work.

Lastly, there was expressed interest in using Google for Internet storage for lawyers to access client information. Per my Google research, there were a lot of security holes. Since Google is free, security was not crucial. There were issues of unwelcomed third parties accessing it. Google had recently implemented SSL for better security. But with that said, we should not rule out other Internet vendors. There are companies that are specifically geared to law firms such as CLIO (<http://www.goclio.com/>). These companies understand the priorities of law firms and should be researched for use.

Therefore, it is not prohibited to store client private information if the right precautions are taken.

Sources:

Article: Cloud Computing/Software as a Service for Lawyers <http://www.americanbar.org/groups/departments_offices/legal_technology_resources/resources/charts_fyis/saas.html>

Mass Bar Ethics Opinions, Opinion 12-03
<http://www.massbar.org/publications/ethics-opinions/2010-2019/2012/opinion-12-03>

Rule 3:07 - Massachusetts Rules of Professional Conduct; Client-Lawyer Relationship
[http://www.mass.gov/obcbbo/rpc1.htm - Rule1.6](http://www.mass.gov/obcbbo/rpc1.htm#Rule1.6)

On Google Storage Safety:

<https://www.odesk.com/blog/2010/05/how-safe-are-your-google-docs/>