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INFORMAL OPINION 2011-3

**Do the Rules of Professional Conduct Permit Lawyers to
Store Client Information Online?**

We have been asked whether the Rules of Professional Conduct permit lawyers to backup information relating to representation online. Subject to the qualifications set forth below, in our opinion the answer is yes. This opinion does not cover obligations imposed by other law such as statutes regulating the handling of personal information.

The Rules require lawyers to appropriately safeguard client property (Rule 1.15(b)) and, subject to certain exceptions not relevant here, to not reveal information relating to representation without the client's informed consent (Rule 1.6). Much if not all information relating to representation that is in digital form constitutes client property that the lawyer must safeguard appropriately. All information relating to representation is subject to Rule 1.6. In our opinion, the Rules permit online backups provided they are done in a manner consistent with Rules 1.6 and 1.15(b).

The Rules do not spell out how lawyers are to safeguard digital information. But from the obligation to appropriately safeguard client property and to not reveal information relating to representation it is reasonable to infer that before placing client information online lawyers should have a basic understanding of how digital information differs from information recorded on paper (digital information can be copied, transmitted and altered quickly with relative ease), what the basic risks of digital information are (with digital information there can be a significantly greater risk of unauthorized, undetected access) and where the lawyer's digital client information is stored (if one doesn't know the places where and the devices on which digital information is stored or from which it can be accessed it stands to reason one will have a hard time knowing whether digital client information is being appropriately safeguarded and protected from unauthorized access). Beyond that basic information the question of what constitutes reasonable efforts to protect digital information under the Rules is a matter of professional judgment.

While the legal profession has not adopted generally accepted standards for the protection of digital information, ABA Commission on Ethics 20/20 has been addressing the issue.¹ Of particular interest in this context is the work of the Commission's Working Group on the Implications of New Technologies. On September 20th, 2010 the Working Group issued an "Issues Paper Concerning Client Confidentiality and Lawyers' Use of Technology", a copy of which is attached as a resource for better understanding the ethics issues raised by the use of technology in the legal profession. As of the date of this opinion, the work of the Commission

¹ The ABA Commission on Ethics 20/20 was created by then ABA President Carolyn B. Lamm to perform a thorough review of the [ABA Model Rules of Professional Conduct](#) and the U.S. system of lawyer regulation in the context of advances in technology and global legal practice developments.

including the Working Group is ongoing. Lawyers may participate in and track the work of the Commission through its website at

http://www.americanbar.org/groups/professional_responsibility/aba_commission_on_ethics_20_20/priorities_policy.html.

In conclusion, in our opinion lawyers may backup client information online provided the backups are done in a manner consistent with Rules 1.6 and 1.15(b).

THE COMMITTEE ON PROFESSIONAL ETHICS

By _____
Wick R. Chambers, Chair