

Nova Law Review

Volume 28, Issue 3

2004

Article 11

The Technology Challenge: Lawyers Have Finally Entered the Race But Will Ethical Hurdles Slow the Pace

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THE TECHNOLOGY CHALLENGE: LAWYERS HAVE FINALLY ENTERED THE RACE BUT WILL ETHICAL HURDLES SLOW THE PACE?

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Lawyers are notoriously slow in adapting technology into their practice. In fact, many technology experts opine that lawyers were never in the race. Nonetheless, as technology has developed, specifically targeted at the legal field, many lawyers have begun to incorporate the technology into their daily activities because it simplifies the practice of law. However, as attorneys now race to incorporate technology into their legal practice, they must also confront novel ethical issues that will inevitably arise as lawyers enter cyberspace. In this regard, technology and ethics have been on a collision course for several years. This was recognized recently when the American Bar Association (“ABA”) undertook two significant studies aimed to analyze precisely how technology fits into a lawyer’s daily practice.

In an attempt to clarify legal practice in cyberspace, many rules governing professional conduct have been altered. In 2002, the *Model Rules of Professional Conduct* were significantly amended.¹ Albeit nearly a decade late,

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1. MODEL RULES OF PROF’L CONDUCT (amended 2002). In February and August of 2002, the ABA House of Delegates approved many changes to the Model Rules. *Inside the Bar: Wisconsin Influences ABA’s MJP Position; Provides Diploma Privilege*, Sept. 2002, at

the rules began to address what the practice has long recognized: many lawyers employ virtual technology to carry out many facets of their legal practice. Commensurate with this recognition, a separate ABA task force set out to conduct a legal profession technological survey.² The apparent goal of this independent survey was to apprise the overall membership on the specific technical methodology and tools lawyers use in their daily professional practices. A comparative analysis of these two important works can allow lawyers to effectively evaluate the benefits and ethical risks of incorporating specific technological tools into their daily practice regimen.

The purpose of this article will be to examine many aspects of a typical lawsuit in the context of the various technology options available to attorneys. The *2002 Legal Technology Survey* ("Technology Survey") will be analyzed to aid in determining which technological tools lawyers use in their daily practice. Next, the article will apply the *2002 Model Rules of Professional Conduct* ("Model Rules") to many of the technological tools highlighted in the Technology Survey, in practicable application, to gauge the ethical challenges facing the tech-savvy practitioner. Finally, the article will provide a template setting forth the best outline of conduct for attorneys to effectively balance the demands of competing in a technology-driven world against the new Model Rules technology-directed ethical considerations.

I. DOES IT RAIN IN THE WORLD WIDE WEB?

One need not travel far into the World Wide Web before discovering a plethora of destinations for the tech-savvy rainmaking attorney, aiming to attract clients through effective web marketing and advertising. Attorneys seek promotional exposure in sites such as Martindale-Hubbell® and its Lawyers.com website. This destination initially serves as a link to lawyers in many different practice specialties throughout many various geographic regions.³ Searching the site, one then discovers direct links to the selected law firm's site. Martindale-Hubbell® is certainly not alone in this offering. Indeed, Lawquote.com asks that a potential client fill out a particularized ques-

<http://www.wisbar.org/newsletter/2002/09/wiam.html>. "Ethics 2000" was the popular name given to the ABA Commission that proposed the major changes. Margaret Colgate Love, *Update on Ethics 2000 Project and Summary of Recommendations to Date*, http://www.abanet.org/cpr/e2k-mlove_article.html (last visited Mar. 15, 2004).

2. ABA, LEGAL TECH. RES. CTR., SURVEY REPORT: LITIGATION AND COURTROOM TECHNOLOGY (2002), TECHNOLOGY [hereinafter LITIGATION & COURTROOM]. The Legal Technology survey was a 155 question survey distributed to 17,352 ABA lawyer members in private practice in the United States. The research center received 3,094 responses. The report is published in five volumes. *Id.* at iii.

3. See <http://www.lawyers.com> (last visited Mar. 27, 2004).

tionnaire, which then serves as a fundamental search guide to match the eager client with a suitable law firm.⁴ Following this link, it is up to the attorney or law firm to then contact the client to meet, discuss the client's needs, and seal a deal for representation.⁵ Lawyersinternetguide.com is a site that also serves to match a potential client with a lawyer.⁶ The sweetener in this arranged match is that the site promises the client seeking representation a "free consultation" once a match is confirmed.⁷

By virtue of the offerings found in cyberspace, it is readily apparent that tech-savvy attorneys know how to design offerings aimed at attracting clients through impressive and stylistic website design (the lure) combined with easy linkage opportunities (the catch). Overall, most law firm sites contain the following: the "law firm contact information; biographical data for each firm member; profiles of the firm's practice areas; copies of the firm['s] newsletters" (often uploaded in easy to read Adobe® pdf format); and "articles written by firm members."⁸ In addition however, today's website design technology can do more than simply pass on a firm's basic information. Impressive websites carry a tremendous amount of valuable information to potential clients. One immigration law firm, Siskind, Susser, Haas & Chang has reported phenomenal success with its web offering.⁹ In addition to the standard attorney biographies, the site holds hyperlinks that instantly transport the reader of the firm's informational page to any one of more than 300 articles written by firm members.¹⁰ The dynamic site also provides an online publicly-available immigration newsletter subscribed to by more than 9,000 people.¹¹ The site stores a document collection containing complete texts of new immigration legislative bills with links to valuable immigration Internet resources.¹² E-mail contact points are positioned in key locations through the site.¹³ These points include a consultation questionnaire that allows potential clients to consult by telephone, internet voice, or video-conference with a

4. See <http://www.lawquote.com> (last visited Mar. 27, 2004).

5. See *id.*

6. *LawyersInternetGuide.com: Your Online Source to an Attorney Near You*, at <http://www.lawyersinternetguide.com> (last visited Mar. 27, 2004).

7. See *id.*

8. Michael L. Goldblatt, *Planning a Successful Law Firm Web Site*, 47 LA. B. J. 117 (1999).

9. Greg Siskind, *How to Build a 'Virtual' Law Firm*, 18 PA. LAW. 14 (1996). Mr. Siskind is a partner in the above recognized firm which has offices in Knoxville, Memphis, Nashville, and Toronto. *Id.* at 17 n.1.

10. *Id.* at 14.

11. *Id.*

12. *Id.* at 16.

13. Siskind, *supra* note 9, at 16.

firm practitioner.¹⁴ Potential clients can also log on for periodic real-time chats with one of the firm's immigration lawyers.¹⁵ Harnessed to this incredible web offering, from its inception in 1992 to 1998, the firm went from a little known law firm to a well-known successful firm whose site records 50,000 hits per week.¹⁶

Websites are not the only virtual tool available to attorneys interested in employing the Internet to attract clients. E-mail distribution lists or listservs are another method of effectively marketing a firm.¹⁷ Many lawyers report joining existing listservs that focus on specific areas of the law while making valuable contacts. Internet sites such as Yahoo!® Groups are a good example of listservs that provide information on a variety of topics and interests.¹⁸ Alternately, many law firms choose to simply set up listservs for their existing clients, potential clients, and even other lawyers by hiring companies like Customzines.¹⁹ Customzines inputs listserv data, designs the accompanying newsletter, and is responsible for e-mailing the offering to each entity/person on the list.²⁰

Many law firms report success in the use of one of two listserv types: announcements only lists or Internet discussion lists.²¹ The announcement only listserv includes information of interest to a certain group.²² Contrariwise, "interactive discussion lists" are designed so that each recipient can take part in a subsequently-scheduled, interactive discussion.²³

Attorneys have made great forays into the virtual marketing world. According to the Technological Survey, a majority of attorneys, 64.39%, have law firm homepages.²⁴ Even though a majority of lawyers have some form of a website, the content among legal websites varies tremendously. For

14. *Id.*

15. *Visalaw.com, The Immigration Law Portal of Siskind Susser*, at <http://www.visalaw.com> (last visited Mar. 27, 2004).

16. Siskind, *supra* note 9, at 14.

17. Patrick M. Byers, *Marketing Gets a Cyber-Boost*, N.Y.L.J., Sept. 14, 1998, <http://www6.law.com/ny/tech/091498s4.html>.

18. *Yahoo!® Groups*, at <http://groups.yahoo.com> (last visited Mar. 27, 2004).

19. *Customzines.com*, at <http://www.customzines.com> (last visited Mar. 27, 2004).

20. *Id.*

21. Larry Bodine, *Listservs Bring Law Firms New Business*, LEGAL BIZ ONLINE, May 2001, at http://www.martindale.com/xp/Martindale/Professional_Resources/LegalBiz_Online/Legal_Marketing/01_05_4.xml (last visited Mar. 15, 2004).

22. *Id.* Baker and Mackenzie is an example of a firm with a popular listserv that sends out information to more than 10,000 recipients, including corporate counsel, CIO, and IT professions. *Id.*

23. *Id.*

24. ABA, LEGAL TECH. RES. CTR., SURVEY REPORT: WEB AND COMMUNICATION TECHNOLOGY, 133 (2002) [hereinafter WEB & COMMUNICATION].

example, only 4.17% of those lawyers with a website provide an online client intake questionnaire,²⁵ 10.13% provide online legal self help guides,²⁶ 1.30% provide real-time consultations with prospective clients,²⁷ and only 6.23% provide online form preparation.²⁸

In theory, the apparent dearth of advertising in the polled attorneys' web offerings may be explained as an extreme hesitancy to violate perceived ethical obligations. The Model Rules addresses some of these perceived concerns. Rule 7.2 of the *Model Rules of Professional Conduct* ("Rule 7.2") was amended to include electronic communication as an acceptable form of advertising.²⁹ In clarifying the rule, the comments allow a lawyer to pay for online directory listings,³⁰ and specifically allow a lawyer to pay for a "qualified lawyer referral service."³¹ Thus it would appear that Rule 7.2 creates a safe harbor in which it is ethically permissible for an attorney to use the online directory vehicle to mine potential business.

Ethical concerns arise when one isolates the specific content in an attorney's website. Those law firm websites that invite people to e-mail them or even offer an online free consultation may unknowingly create an attorney-client relationship. Specifically, Rule 1.18 of the *Model Rules of Professional Conduct* ("Rule 1.18"), a new addition to the rules in 2002, serves to categorize and define a class of prospective clients with a corollary set of obligations owed by an attorney to a client.³² Rule 1.18 defines a prospective client as one who discusses with the lawyer the possibility of forming an attorney-client relationship.³³ Once a client is deemed a prospective client, the lawyer must guard confidential information and make sure the lawyer does not have an impermissible conflict of interest.³⁴

The comments to Rule 1.18 make it clear that a person who communicates unilaterally with a lawyer has not become a prospective client.³⁵ However, although Rule 1.18 does not specifically mention cyberspace contact,

25. *Id.* at 144.

26. *Id.* at 152.

27. *Id.* at 146.

28. *Id.* at 148.

29. MODEL RULES OF PROF'L CONDUCT R. 7.2 (a) (2003). "Subject to the requirements of Rules 7.1 and 7.3, a lawyer may advertise services through written, recorded or electronic communication, including public media." *Id.*

30. *Id.* at cmt. 5.

31. *Id.* at cmt. 6. A "qualified lawyer referral service" is one that is approved by an appropriate regulatory association, such as the ABA. *Id.*

32. MODEL RULES OF PROF'L CONDUCT R. 1.18 (2003).

33. MODEL RULES OF PROF'L CONDUCT R. 1.18(a).

34. MODEL RULES OF PROF'L CONDUCT R. 1.18(b)-(c).

35. MODEL RULES OF PROF'L CONDUCT R. 1.18 cmt. 2.

the bright line may be crossed when lawyers issue an invitation for communication to a potential (virtual) client through the lawyer's website. The Model Rules encourage the inclusion of specific disclaimers³⁶ for attorney advertising. Hence, many law firms have followed this caution by prominently displaying disclaimers disavowing any attorney-client relationship.³⁷

While attempting to land a client without creating an unintended attorney-client relationship, some lawyer communications, on their face, are considered unethical as an improper solicitation. Rule 7.3 of the *Model Rules of Professional Conduct* ("Rule 7.3"), amended in 2002, now includes real-time electronic contact as a method of improper solicitation, if the significant motive for the communication is pecuniary gain.³⁸ Thus, lawyers who enter chat rooms, with the specific intention of obtaining clients through this interaction, would appear to be treated no differently than a lawyers who lurk in hospital emergency rooms in search of clients, or lawyers who telephone potential clients' homes and asks if they have been in an accident. All are subject to ethical violations for solicitation in violation of Rule 7.3.

However, while chat rooms are frowned upon to secure business, Rule 7.3(c) draws distinction when considering e-mails such as those generated by listservs.³⁹ Rule 7.3(c), amended in 2002 to allow electronic communications if the words "Advertising Material" are included in the communication, is now consistent with the identical requirement as applied to written or recorded communication.⁴⁰ Thus as long as attorneys comply with the advertising designation, e-mail communications to potential clients appear to be acceptable under Rule 7.3(c).⁴¹ Of course, attorneys must be careful not to inundate potential clients with e-mail. Such harassment may not only violate

36. MODEL RULES OF PROF'L CONDUCT R. 7.1 cmt. 3 (2003). The rules suggest attorneys use disclaimers as a way to discourage clients from unjustified expectations as the result of advertising. *Id.*

37. See also Moskowitz & Moskowitz, at <http://www.lawyers.com/mm-law/index.jsp> (last visited Mar. 27, 2004). This is the website address of the law firm of Moskowitz & Moskowitz. This firm's website contains the following disclaimer: "This web site is designed for general information only. The information presented at this site should not be construed to be formal legal advice nor the formation of a lawyer/client relationship." *Id.*

38. MODEL RULES OF PROF'L CONDUCT R. 7.3(a) (2003).

39. MODEL RULES OF PROF'L CONDUCT R. 7.3, cmt. 3.

40. MODEL RULES OF PROF'L CONDUCT R. 7.3(c).

41. *Id.*

anti-spam laws,⁴² but can also constitute improper solicitation by harassment under the Model Rules.⁴³

II. ARE YOU LISTENING? COMMUNICATING WITH YOUR CLIENT THROUGH VIRTUAL TECHNOLOGY

Once the client hires the attorney, maintaining contact can constitute a challenging and often misunderstood task. Many ethical investigations arise over clients' complaints that their lawyers failed to communicate in an adequate manner concerning their legal representation.⁴⁴ The live face-to-face client meeting is the traditional means of discussing matters with clients. This tried and true method provides advantages to both lawyer and client. However, live face-to-face client meetings can be costly and time consuming. With the increased specialization of the legal field, and with the advantage of information gleaned off the internet, it may soon be commonplace for a client in Florida to discover that the best qualified intellectual property (patent) attorney is located in McLean, Virginia. An initial virtual meeting may certainly be preferable and cost effective to the client. Once retained, many lawyers simply do not set aside time for client chats, which equates to billing downtime. In those instances, frequent e-mail updates and live online question/answer sessions serve as a more economical and precise mode to maintain client contact while assuring that an attorney performs zealously and economically.

Historically, the telephone served as a traditional alternative to face-to-face meetings. However, reviewing documents necessitates coordinating the phone and fax machines. Further, if the client ultimately needs to sign documents, the documents must be faxed to the client, signed and sent back, prompting numerous delays.

42. More than half the states regulate spam, albeit with little success. See generally, Dannielle Cisneros, *Do Not Advertise: The Current Fight Against Unsolicited Advertisements*, 2003 DUKE L. & TECH. REV. 10 (2003).

43. See MODEL RULES OF PROF'L CONDUCT R. 7.3(b)(2) (stating that solicitation involving harassment is prohibited). See also Gail A. Forman, *To Infinity, and Beyond: The ABA Re-Examines the Model Rules of Professional Conduct Pertaining to Client Development in Light of Emerging Technologies*, 1 J. LEGAL ADVOC. & PRAC. 96 (1999) (stating even though the Model Rules are not directly responsive to spam e-mail, many Internet service providers have set up programs to prevent this type of solicitation).

44. See Nancy J. Moore, *Revisions, Not Revolution: Targeting Lawyer/Client Relations, Electronic Communications, Conflicts of Interest*, 88 A.B.A. J. 48 (Dec. 2002) (stating that the most frequent client complaint is lack of communication by lawyers, and the Model Rules have responded by requiring lawyers put more of their communications in writing).

Up-to-date technology can provide the benefits of face-to-face meetings combined with the benefits of telephone and fax machine contact. Inexpensive video cameras adorn many new personal computer packages. The videoconferencing tool is therefore available to the most enterprising law firms.⁴⁵ Alternatives to videoconferencing include Internet Relay Chat ("IRC"), which allows parties to engage in real-time conversation when typing over a computer screen.⁴⁶ Through the use of a chat box, the parties exchange text.⁴⁷ Private conversations may include two or more individuals. With the inclusion of white-board software, documents can be simultaneously viewed and discussed along with typed conversation over the internet.⁴⁸ Thus, a client meeting, complete with document exchange and review, can be handled from offices located anywhere internet access is available in the world.

Assuming the client and attorney agree on a real-time first interview, once it has occurred, the attorney can send a retainer agreement over the internet. With the advent of e-signatures,⁴⁹ the client can review the retainer agreement, digitally sign it, and return the signed document to his/her attorney.

If an attorney's computer arsenal is not IRC compatible, a client meeting may also be accomplished via e-mail. Documents may be scanned and attached to e-mail for review. Although the meeting is not conducted in real-time, the relatively small amount of time it takes to exchange e-mail may actually result in more thoughtful and efficient communication. In fact, e-mail is an excellent source of routine attorney-client communication. In many instances, e-mail can be sent "certified" with a requested return receipt from the client. E-mail is automatically time and date stamped. Copies of e-mail should be placed in a client's correspondence file for later reference.

45. See Hugh Calkins, *Videoconferencing: When Getting There Isn't Half the Fun, Now's the Time to Depose, Meet, and Confer on Camera*, 17 ME. B.J. 6, 7 (2002).

46. See Hon. Jefferson Lankford, *Talking Shop: Chat Up Your Practice on the Internet*, 38 ARIZ. ATT'Y 12 (2001).

47. *Id.* at 13.

48. Jesse J. Richardson, Jr., *How a Sole Practitioner Uses The "Electronic Office" To Maintain A Competitive Law Practice*, 3 DRAKE J. AGRIC. L. 141, 149 (1998).

49. See Bradley J. Hillis, *A Review of Electronic Court Filing in the United States*, 2 J. APP. PRAC. & PROCESS 319, 324 (2000). Any procedure that associates a document with a person is considered an e-signature. *Id.* at 325. An attorney or client may simply type their names, "preceded by '/s/' denoting 'signed.'" *Id.* Additionally, parties usually sign agreements that e-signed documents are the equivalent to personally signed documents. *Id.*

The Technology Survey revealed that most attorneys have not used videoconferencing.⁵⁰ In fact, most attorneys stated videoconferencing was not available at their firms.⁵¹ However, for those attorneys that do use videoconferencing, the most popular use of videoconferencing was with their clients.⁵²

While use of videoconferencing is rare, attorneys responded that they use e-mail quite often. Approximately 97% of attorneys employ e-mail some of the time, while 80% use e-mail one or more times per day.⁵³ E-mail is most often used for routine correspondence with clients.⁵⁴ Sixty-three percent use e-mail to correspond about case status.⁵⁵ Sixteen percent use e-mail to bill their clients.⁵⁶ Attorneys also revealed they felt comfortable sending attachments with their e-mail, with 91.54% reporting having sent an attachment through e-mail.⁵⁷

The most commonly perceived ethical issue associated with e-mail is the attorney's concern over protecting confidential information. In 1999, the ABA issued a formal opinion⁵⁸ concluding that it was perfectly alright to send an e-mail over the Internet without taking any extra precautions to preserve confidential information.⁵⁹ The opinion expressed the belief that e-mail affords a reasonable expectation of privacy, and that it was no different in terms of protecting confidentiality than a fax or regular mail.⁶⁰ The new Model Rules echo the formal opinion, and in the accompanying comments, states the lawyer does not have to use special security measures or encryptive devices, if the method of transmission affords a reasonable expectation of privacy.⁶¹ The comments proceed, however, to caution an attorney that special circumstances may warrant more protective measures, such as whether the e-mail contains sensitive material or whether the information contained therein is protected by law or by a confidentiality agreement.⁶²

Additionally, for the first time, the Model Rules address the ethical consequences arising when a confidential communication finds its way into the

50. WEB & COMMUNICATION, *supra* note 24, at 195 (finding that 70.36% of attorneys surveyed have not used videoconferencing).

51. *Id.* at 193. (76.61%).

52. *Id.* at 197. (26.1%).

53. *Id.* at 166. (79.90%).

54. *Id.* at 168. (96.1%).

55. WEB & COMMUNICATION, *supra* note 24, at 168.

56. *Id.*

57. *Id.* at 169.

58. ABA Comm. on Ethics and Prof'l Resp., Formal Op. 99-413 (1999).

59. *Id.* The extra precautions contemplated by the committee would be encryption. *Id.*

60. *Id.*

61. MODEL RULES OF PROF'L CONDUCT R. 1.6 cmt. 17 (2003).

62. *Id.*

wrong e-mail box, along with the resultant effect on lawyer-client confidentiality.⁶³ Rule 4.4(b) of the *Model Rules of Professional Conduct* (“Rule 4.4”) generally addresses the consequences that arise when confidential e-mail information arrives to the wrong in-box.⁶⁴ Rule 4.4 now mandates that lawyers who inadvertently receive an e-mail, that they know “was inadvertently sent, shall promptly notify the sender.”⁶⁵ The comments leave open the question as to whether the pre-existing privileged information loses its designation due to the inadvertent disclosure.⁶⁶

The Technology Survey results indicate most attorneys follow the Model Rule’s lack of concern over protecting confidentiality over the Internet.⁶⁷ Approximately 80% of those attorneys surveyed send confidential communications to their clients by e-mail.⁶⁸ Approximately 51.5% of those surveyed revealed they sent confidential communicative e-mail on a daily or weekly basis.⁶⁹ In order to protect confidentiality, a majority of those surveyed revealed they relied on a confidentiality statement included within the e-mail.⁷⁰ Of those responding, only 17.7% employ encryption methods to protect the e-mail and/or attached documentation content, while 14.3% require clients to provide oral or written consent.⁷¹ Twenty percent of those surveyed reported using email to transmit confidential communications, yet took no precautions at all.⁷²

III. DISCOVERY: TECHNOLOGY ALLOWS ONE ATTORNEY TO TAKE THE PLACE OF AN ENTIRE LITIGATION TEAM, SAVING COSTS TO THE CLIENT

In the area of discovery, technology advanced furthest in the taking of deposition testimony. For example, assume an attorney represents one of 500 defendants in an asbestos litigation. An exposure witness deposition is scheduled to occur some 300 miles from the attorney’s office. The attorney

63. MODEL RULES OF PROF’L CONDUCT R. 4.4(b) (2003).

64. *Id.*

65. *Id.*

66. *Id.* at cmt. 2.

67. WEB & COMMUNICATION, *supra* note 24 at 183.

68. *Id.* at 181 (noting that 20.58% never send confidential communications to clients by e-mail).

69. *Id.* (noting that 23.30% of attorneys send confidential communications one to four times per week, while 28.23% send confidential communications one or more times per day).
Id.

70. *Id.* at 183 (noting that 54.2% of attorneys responding rely on confidentiality statement accompanying the transmission).

71. *Id.*

72. WEB & COMMUNICATIONS, *supra* note 24 at 183.

doubts there will be any testimony obtained that would pertain to his client's defense, yet he is reluctant to abstain from attending. Enter I-Dep, LLC, an Illinois-based enterprise hosting the www.i-dep.com website.⁷³ I-Dep's helpful technology allows attorneys to attend and participate in depositions online.⁷⁴ The service allows attorneys, who choose to refrain from attending to view a deposition online via live streaming video which may be seen on the attorneys' personal computers.⁷⁵ I-Dep allows for two-way audio feeds in order to permit the "monitoring" attorney to hear the deponent and attorneys present at the discovery proceeding.⁷⁶ The technology also allows the "monitoring" attorney to pose questions to the witness.⁷⁷ The I-Dep technology also sustains a private text messaging sector, so that monitoring lawyers may type private questions and comments to the lead attorney at the deposition.⁷⁸ Not only is the private text messaging an advantage to attorneys, but this feature also permits clients and experts to monitor a deposition online, without the expense of traveling to the deposition.⁷⁹ Online users are provided with a password to log into the deposition, but no additional software is needed to run I-Dep's program.⁸⁰

While online depositions are extremely efficient for multiparty litigation, the technology may exceed the small firm or solo practitioner's budget. Attorneys who do attend live depositions still have some high-tech options that may increase the efficiency and quality of the deposition process. For example, the attending lawyer can benefit from multimedia depositions.⁸¹ Multimedia depositions combine digital audio and video with a computer assisted transcript.⁸² Thus, an attorney may view the transcript during the deposition on his laptop, and make notes as the transcript is being produced.⁸³ While an attorney reviewing and making notes during an ongoing deposition has the potential to become as annoying as the mistimed cell phone ring, the process still should save the attorney review time and make

73. See <http://www.i-dep.com> (last visited Mar. 27, 2004) [hereinafter I-Dep].

74. *Id.*

75. *Id.*

76. *Id.*

77. *Id.*

78. See I-Dep.

79. *Id.*

80. *Id.*

81. Julie K. Plowman, *Multimedia in the Courtroom: A Valuable Tool or Smoke and Mirrors?*, 15 REV. LITIG. 415, 417 (1996).

82. See generally *id.* Multimedia refers to systems that integrate onto a computer base two or more types of media, such as video and digital audio. *Id.* at 416.

83. See generally *id.*

for a more thorough deposition.⁸⁴ Of course, a multimedia deposition is also preserved for trial, complete with testimony scrolling features.⁸⁵

A less technical alternative to the multimedia format is the videotaped deposition. As attorneys and courts have come to rely on the videographer and videotape deposition format to preserve discovery testimony, it has become as commonplace as the written transcript and court reporter.⁸⁶

The Technology Survey reflects 94.59% of the polled bar members have never participated in an online deposition.⁸⁷ Of the attorneys who have participated in an online deposition, only 1.08% do so with any type of frequency.⁸⁸ The main reasons cited for not participating in online depositions were lack of knowledge about the technology, and lack of knowledge about the process.⁸⁹ Only approximately 5% reported court and financial constraints as the reasons for nonparticipation in online depositions.⁹⁰

The Model Rules do not specifically address online depositions. This omission is probably because the technological procedure is rarely used, and undoubtedly courts will structure their own rules of procedure governing the virtual discovery mechanism. Despite the omission, online depositions can present ethical concerns.⁹¹ For example, would all individuals “attending” the deposition need to be listed?⁹² If not, would the failure to list all “attending” individuals be viewed as an ethical violation of candor toward the tribunal.⁹³ By failing to disclose all those present, the party harboring undisclosed attendees may have withheld information from the court. Additionally, if an expert is online providing input to an attorney taking part in the deposition, would that online communication between the expert and the attorney be discoverable as information imparted in the company of third parties beyond

84. *Id.*

85. *Id.*

86. See generally Donald F. Parsons, Jr. & Lisa K.W. Crossland, *Technological Tools for Civil Litigation*, 14 DEL. LAW. 33 (1996). Even with a videotaped deposition, many courts still require an “official” court reporter and transcript. *Id.*

87. WEB & COMMUNICATION, *supra* note 24, at 130.

88. *Id.* at 130. Only 1.08% of attorneys participate in an online deposition one to three times per month) *Id.*

89. *Id.* at 132. Showing a reported 52.1% nonparticipation due to lack of knowledge about the technology, while 55.5% reported lack of knowledge about the process *Id.*

90. WEB & COMMUNICATION, *supra* note 24, at 132. With 5.5% reporting firm financial constraints while 5.0% reported court constraints. *Id.*

91. See Hope Viner Samborn, *Click Onto World Wide Web Deps: Services Offer Real - Time Advantages, But They're Tempered by Ethics Issues*, 86 A.B.A. J. 72, 73 (Oct. 2000).

92. *Id.*

93. MODEL RULES OF PROF'L CONDUCT R. 3.3 cmt. 3 (2003) (noting “[t]here are circumstances where failure to make a disclosure is the equivalent of an affirmative misrepresentation”).

the typical work product privilege? If so, failure to disclose may constitute a concealment of evidence in violation Rule 3.4 of the *Model Rules of Professional Conduct*, as being unfair to opposing counsel.⁹⁴ Online depositions may also provide the opportunity for virtual “attending” witnesses to listen into other deponent’s (another witnesses) testimony without disclosing the “attending” witness’ presence to the other side.⁹⁵ If not a violation of specific rules, it would appear that failing to disclose all those virtual attendees would at least constitute a violation of Rule 8.4 of the *Model Rules of Professional Conduct*, as conduct that is misleading and dishonest.⁹⁶

IV. LEGAL RESEARCH AND WRITING: BRINGING THE LAW LIBRARY TO THE DESKTOP PC AND BEYOND

Legal research on the internet is a high techies’ paradise. Unfortunately, the volume of material attorneys can research is so overwhelming that it may in fact be over productive. Lawyers have three basic options in using on line research: 1) general Internet research; 2) CD-ROM data-based research; and 3) LexisNexis™ and Westlaw® thin client-based research.

Free general Internet research may translate to initial money savings, but it also may be the most frustrating exercise, equivalent to finding the proverbial “pin in the haystack.” By choosing a search engine such as the ever popular Google™ you simply type in search terms and *voila* your search has probably resulted in 350,000 items which must be culled over.⁹⁷ Lawyers may opt to enter chat rooms or discussion groups looking for legal expertise.⁹⁸ Alternatively, intrepid researchers might narrow the search by employing a law-based search engine such as FindLaw®,⁹⁹ one of the most expansive law-based search engines on the Internet. Using FindLaw, a lawyer is able to search all court systems and retrieve most major statutory codes, making the search engine a good general legal search mechanism.¹⁰⁰ Missing

94. MODEL RULES OF PROF’L CONDUCT R. 3.4(d) (2003) (stating that a lawyer shall make a reasonably diligent effort to comply with discovery requests). *See also* MODEL RULES OF PROF’L CONDUCT R. 3.4 cmt. 2 (noting that evidentiary material includes computerized information).

95. Samborn, *supra* note 91, at 72.

96. MODEL RULES OF PROF’L CONDUCT R. 8.4(c) (2003).

97. *See* <http://www.google.com> (last visited Mar. 27, 2004).

98. *See* <http://www.abanet.org/discussions> (last visited Mar. 27, 2004). The ABA web site entertains many discussion groups and listservs. *Id.*

99. *See* <http://findlaw.com> (last visited Mar. 27, 2004).

100. *Id.*

of course from FindLaw® are research specific directories and citator services.¹⁰¹

As a viable alternative to the legal search engine, one might simply resort to searches conducted within an ever-expanding list of court specific sites created to aid legal researchers. For example, the United States Supreme Court maintains a website where one can access Supreme Court decisions dating back to 1980.¹⁰² Most United States Courts of Appeal and United States District Courts maintain similar sites.¹⁰³ Some of these federal court sites contain references to unpublished slip opinions not readily available on any other legal search engine, (including Westlaw® and LexisNexis™).

Attorneys may choose to conduct research using CD-ROMs. CD-ROM virtual library products are usually purchased and updated for a monthly maintenance or license fee. CD-ROM virtual libraries exist for most subject matter specialties and for many state practice guides. CD-ROM virtual libraries are especially beneficial for the small law firm, enabling them to have access to the same traditional library sources carried by large law firms, though due to space and budgetary constraints, such smaller firms in past history were forced to abstain from carrying.

LexisNexis™ and Westlaw® online research mega-centers continue to advance research capabilities. Both companies feature readily accessible online libraries along with intuitive search engines providing access to an extraordinary amount of information through navigable menus, directories, and logical search methodology.¹⁰⁴ Although both services charge access fees, these two entities have made efforts to establish parity in pricing, thereby designing programs which are affordable to the large, medium and small practice lawyer alike.¹⁰⁵ Westlaw® offers options, such as package rates, for the small firm along with affordable monthly payment plans.¹⁰⁶ The company has designed pay-as-you-go programs, such as the single document pay plan and other cost saving methods, which place lawyers from all regions and firms (large, medium and small) on equal footing in the online research industry.¹⁰⁷

101. *Id.* However, FindLaw® does provide a link to <http://www.westlaw.com>. *See id.* For twelve dollars, an attorney is able to retrieve a case by its cite and Shepardize it. *Id.*

102. *See* <http://www.supremecourt.org> (last visited Mar. 27, 2004).

103. *See* <http://www.uscourts.gov> (last visited Mar. 27, 2004).

104. *See* Lexis, at <http://www.lexis.com> (last visited Mar. 27, 2004); *see also* Westlaw, at <http://www.Westlaw.com>(last visited Mar. 27, 2004).

105. *See id.*

106. Westlaw®, at <http://www.westlaw.com> (last visited Mar. 27, 2004).

107. *Id.*

LexisNexis™ and Westlaw® have been forced to adopt more affordable cost programs as a result of healthy competition. For example, Versuslaw is a new fee-based service that retrieves appellate court cases from all fifty states.¹⁰⁸ One may sign up for the program on a monthly basis or a per project basis (one opinion at a time).¹⁰⁹ Other fee base services will come to you instead of you signing onto them. For example, Lois Law Watch™ monitors Federal District Courts in your designated area of interest and alerts you by e-mail of significant decisions in those areas.¹¹⁰

The Technology Survey concludes that most attorneys use both free online resources for legal research as well as fee-based resources. Approximately 80% of those polled reported using some form of fee-based legal research.¹¹¹ Similarly, 71% of those surveyed revealed they also use free research web sites.¹¹² Attorneys most often start research projects with a fee based service.¹¹³ Attorneys practically never use chat rooms¹¹⁴ and rarely use e-mail discussion lists¹¹⁵ as sources for legal research. Other more advanced research options were used sparingly. Approximately 50% never use e-mail case alert services¹¹⁶ (e.g. www.loislawwatch.com), and 58% never use online advance sheet services.¹¹⁷

Although the use of online research has greatly increased, attorneys have not abandoned researching the old fashioned way, by using books. According to the Technology Survey, lawyers spend practically the same amount of time using print resources as they do with online resources.¹¹⁸ Also, given the proliferation of CD-ROM products, it is somewhat surprising that relatively few lawyers spend much research time using them.¹¹⁹

Online research is perhaps the only area where failure to use the most efficient methods of research may actually cause ethical concerns. The Model Rules governing competence¹²⁰ and fees¹²¹ however, raise potential

108. See <http://www.versuslaw.com> (last visited Mar. 27, 2004).

109. *Id.*

110. See Loislaw, at <http://www.loislaw.com/info/content/global.htm> (last visited Mar. 27, 2004). Lois Law Watch is a service provided by fee based Loislaw, a competitor of LexisNexis™ and Westlaw®. *Id.*

111. ABA, LEGAL TECH. RES. CTR., SURVEY REPORT: ONLINE RESEARCH 169 (2002) [hereinafter ONLINE RESEARCH].

112. *Id.* at 164 (71.54%).

113. *Id.* at 149 (46.01%).

114. *Id.* at 152 (95.30%).

115. *Id.* at 154 (67.27%).

116. ONLINE RESEARCH, *supra* note 107, at 160 (50.70%).

117. *Id.* at 162 (58.15%).

118. *Id.* at 174 (noting 34% of their research time is spent with print materials).

119. *Id.* (noting 12% of their research time is spent with CD-ROM materials).

120. MODEL RULES OF PROF'L CONDUCT R. 1.1 (2003).

ethical issues concerning online research. Rule 1.1 of the *Model Rules of Professional Conduct* is a general rule requiring lawyers to be competent in their legal knowledge, thoroughness, and preparation.¹²² Although this rule and comments are devoid of any mention of technology, an issue may arise whether thoroughness and preparation standards are best served by book or online research. For example, if an attorney has an issue concerning the interpretation of a federal rule of evidence, Westlaw® would be able to provide the attorney in a matter of seconds with every state's analysis of the issue, as well as law reviews and legislative history.¹²³ While that same attorney could conduct the same research through book research, it's unlikely an attorney would have the time or inclination to access all of the hard copy library volumes necessary to produce the same results as that rendered online.¹²⁴ Thus, an attorney's thoroughness and ultimate preparation is greatly enhanced through online research.

A more immediate concern in the area of competence may be the availability of recent court decisions online that are not available as quickly in hard copy.¹²⁵ If an attorney is filing a brief, and a decision was available online before the filing date, but was not available in print, would an attorney be deemed incompetent for not citing that online decision?¹²⁶ While courts may adopt rules governing the duty to report decisions available online before becoming available in print, there would certainly appear to be a competence issue that bar associations may have to confront.

Another related ethical concern would be fee related research costs. Rule 1.5 of the *Model Rules of Professional Conduct* provides that fees and expenses must be reasonable.¹²⁷ As the costs of computerized research declines and most lawyers use online research, a lawyer may have an ethical obligation to use computerized research or cut his billing time for manual research.¹²⁸ For example, in researching the federal evidence problem, if an attorney conducts the research online, he may complete his research in a half hour.¹²⁹ The same research may take four hours by reviewing a collection of books.¹³⁰ If the attorney bills \$200.00 per hour, that would be an \$800.00 fee

121. MODEL RULES OF PROF'L CONDUCT R. 1.5 (2003).

122. MODEL RULES OF PROF'L CONDUCT R. 1.1 (2003).

123. See Diane Karpman, *Not Using New Technology: Ethical and Liability Risks? Keep Up or Face Peril* GPSOLO, June 2003, at 23.

124. See *id.*

125. *Id.*

126. See *id.*

127. MODEL RULES OF PROF'L CONDUCT R. 1.5 (2003).

128. See Karpman, *supra* note 123, at 24.

129. See *id.*

130. *Id.*

for research using books versus a \$100.00 (\$200/2) fee for electronic research.¹³¹ While the expense of online research would need to be factored into the equation, it is doubtful that the expense would match the \$700.00 difference.¹³² Thus, if the average attorney would use online research and charge \$100.00, the attorney charging \$800.00 may be deemed to have charged an unreasonable fee.¹³³

V. FILING DOCUMENTS ELECTRONICALLY WITH THE COURT: THE RACE TO THE COURTHOUSE JUST BECAME A BLIP ON YOUR SCREEN

Electronic filing of court documents is an extremely efficient and cost-effective method of getting documents from the law office to the courthouse.¹³⁴ When the IRS began to permit electronic filing of tax returns, it paved the way for other governmental offices to use e-mail as a means of receiving documents.¹³⁵ The court system, while initially slow to respond, has begun to make real progress in this area, especially in the federal court system.¹³⁶ Twenty-nine United States District Courts now accept electronic filing to varying degrees.¹³⁷ Fifty-seven United States Bankruptcy Courts allow electronic filing.¹³⁸ All ninety-four United States District Courts plan to allow electronic filing by 2005.¹³⁹

Electronic filing has numerous advantages, including simplifying and standardizing the filing process, and reducing errors in copying and transcription.¹⁴⁰ However, the biggest advantage in electronic filing lies in reducing the costs of printing, copying, and mailing associated with paper documents.¹⁴¹ When courts take that extra step of setting up systems that allow the entire file to be viewed electronically, it enables more people to have access to the system.¹⁴²

131. *Id.*

132. *Id.*

133. See Karpman, *supra* note 123, at 24.

134. See Bradley J. Hillis, *The Digital Record: A Review of Electronic Court Filing in the United States*, 2 J. APP. PRAC. & PROCESS 319 (2000).

135. *Id.*

136. *Id.* at 321.

137. CM/ECF, at http://www.uscourts.gov/cmecf/cmecf_court.html (last visited Mar. 27, 2004).

138. *Id.*

139. *Id.*

140. Robert Plotkin, *Electronic Court Filing: Past, Present, and Future*, 44 BOSTON B. J. 4 (2000).

141. *Id.* at 16.

142. *Id.*

State and federal rules of civil procedure have also paved the way for electronic filing. Many of the federal rules of procedure have been amended to allow courts to permit electronic filing if provided by local rule.¹⁴³ Most jurisdictions have set up technology committees to study the most effective way for courts to implement electronic filing.

However, electronic filing may not be as simple as a click of the mouse. Courts must grapple with specific court rules as to format, font, and type sizes in electronic format.¹⁴⁴ Also, courts must deal with the variety of formats used to convert print images into digital format for a variety of documents.¹⁴⁵ Courts must develop systems that enable a lawyer to easily convert their software programs to court systems.¹⁴⁶ Additionally, as courts adopt electronic filing, most still retain the ability for lawyers to file paper.¹⁴⁷ Dealing with two different filing systems can be complicated and unwieldy. Ultimately, a court may decide to go entirely electronic. If so, either the lawyer must have online capabilities or the court needs to take the time to convert paper to paperless.¹⁴⁸ Both options appear fraught with complications. Thus, with electronic filing, the courts may have to work out the kinks before large scale implementation is possible.

Attorneys are beginning to take advantage of electronic filing. One in five lawyers engaged in electronic document filing at some time.¹⁴⁹ For those attorneys that have filed documents electronically, approximately 95% have been satisfied with the experience.¹⁵⁰ Motions were the most frequently filed documents,¹⁵¹ followed by pleadings.¹⁵² However, the majority of lawyers still delivered documents in person to the courthouse.¹⁵³

The reluctance to file documents electronically would seem to have little to do with impediments with ethical rules. Since electronic filing is controlled by the court system, there is little possibility that lawyers would be

143. See FED. R. CIV. P. 5(b)(2)(D); FED. R. APP. P. 25(a)(2)(D).

144. Hon. Donald E. Shelton, *Electronic Court Filing Presents Both Challenges and Benefits*, <http://www.icle.org/connection/julyaug/celect.htm> (last visited Mar. 27, 2004).

145. *Id.*

146. See generally *id.*

147. *Id.*

148. Michael E. Heintz, Note, *The Digital Divide and Courtroom Technology: Can David Keep up With Goliath?* 54 FED. COMM. L.J. 567, 573 (2002).

149. ABA, LEGAL RES. CTR., SURVEY REPORT: LITIGATION AND COURTROOM TECHNOLOGY 176 (2002). The number of attorneys filing documents electronically has almost doubled since the 2001 Survey. *Id.* at xiv.

150. *Id.* at 180 (stating 50.44% reported they were somewhat satisfied with the experience while 44.25% reported they were very satisfied with the experience).

151. *Id.* at 179 (noting that 66.7% of motions were filed electronically).

152. *Id.* (noting that 61.4% of pleadings were filed electronically).

153. LITIGATION & COURTROOM, *supra* note 2, at 172 (71.50%).

able to act unethically in this area. Local court rules are very specific as to the process and specifications required for electronic filing, thus eliminating competency concerns that may encompass ethical considerations.¹⁵⁴

However, as most courts move towards electronic transmission of documents, lawyers should likewise move toward using this method of transmission. It will no doubt be consistent with the Model Rules, goal of lawyers expediting litigation,¹⁵⁵ by allowing parties to access documents instantaneously. It will also aid the court with an efficient method that eliminates volumes of paper and storage problems.¹⁵⁶ No longer will attorneys race to the courthouse drop box, or search for inventive and creative ways of adding mail days to the due date of their documents. In fact, if lawyers do not at least begin to adopt the process of filing documents electronically, they may find themselves left behind when courts permit only electronic filing.¹⁵⁷

VI. VIRTUAL SHOWCASE: TRIALS AND TECHNOLOGY

Since the vast majority of cases settle before trial, it is possible that an attorney involved in litigation will never have to confront an actual trial and the technology now associated with trying a case. However, given the slim chance an attorney actually has to try a case, technology abounds. First, a few courts have become cutting edge electronic courtrooms, equipped with state of the art technology that aids attorneys, judges, and jurors in the trial process.¹⁵⁸ A wired courtroom includes flat plasma screens, multi-media presentation capabilities, video cameras, real time trial transcript capabilities that will send transcripts to lawyers and judges during a trial, along with video conferencing technology for virtual courtroom testimony and viewing of pre-recorded depositions.¹⁵⁹

Of course, a wired courtroom cannot be appreciated by the sophisticatedly “wireless” counsel. Even when the courtroom does not contain the technological bells and whistles, an attorney can still make good use of advances in technology to present his case. If the courtroom is not wired, many comparable technological tools and display mechanisms can be obtained

154. See e.g., *Case Management/Electronic Case Files (CM/ECF)*, http://www.uscourts.gov/cmecf/cmecf_court.html (last visited Mar. 27, 2004) (providing court instructions for electronic filing for the Northern District of Florida).

155. MODEL RULES OF PROF'L CONDUCT R. 3.2 (2003). Although the focus of this rule is to prevent dilatory practices in litigation, the availability of electronic filing would certainly aid efficiency. MODEL RULES OF PROF'L CONDUCT R. 3.2 cmt. 1.

156. Shelton, *supra* note 144.

157. See *id.*

158. Heintz, *supra* note 148, at 570.

159. *Id.*

through equipment rental facilities, who are in the business of helping attorneys effectively present their cases.¹⁶⁰

If high tech is not in the courtroom or in a lawyer's budget, a basic laptop computer may provide many benefits for a trial attorney. First, through the use of litigation support software, a trial attorney is able to store an entire trial file on a couple CD-ROM discs to be accessed through his/her laptop.¹⁶¹ Moreover, a lawyer may be able to provide everyone in the courtroom with visual access to exhibits, pleadings, or deposition testimony.¹⁶² Laptops also enable attorneys to present exhibits through PowerPoint® presentations, complete with graphics and dazzling effects.¹⁶³

In addition to laptops, attorneys may use other types of technology to effectively present their cases. Deposition testimony can be shown through high powered monitors.¹⁶⁴ A full multimedia presentation would include not only the monitor, but also the transcript that scrolls down alongside the deposition video.¹⁶⁵ The transcript can be highlighted, enlarged, and otherwise enhanced for the important testimony.¹⁶⁶

Computer animation and computer simulations are becoming standard in the courtroom. Whether used by experts to explain their theory of a case, or to aid a witnesses' testimony as to how an accident occurred, these computer generated programs bring cases to life.¹⁶⁷ DVD and/or CD-ROM discs are becoming standard fare, replacing the need for traditional video cassette recorders ("VCR") or the old standby poster board.¹⁶⁸ New trial technology can turn any trial into a razzle dazzle high-tech show. The possibilities are endless in using technology for trials. Attorneys need only be careful in their choice and selection from an array of diverse products.¹⁶⁹ While too little technology makes for a sleepy jury, too much technology may mesmerize the jury with the equipment, and ultimately lose their interest in the subject—the actual case at hand.¹⁷⁰

160. Stephen G. Norten, *The Electronic Courtroom Revolution: The Right Stuff*, 26 VT. B. J. & L. DIG. 47, 48 (March 2000).

161. *Id.* at 47.

162. *Id.*

163. *Id.* at 48.

164. *Id.*

165. Norten, *supra* note 160.

166. *Id.*

167. Donald F. Parsons, Jr. & Lisa K.W. Crossland, *Technological Tools for Civil Litigation*, 14 DEL. LAW. 33, 38–39 (1996).

168. *Id.* at 39.

169. *Id.* at 37–38.

170. *See id.* at 38.

The Technology Survey reports that most attorneys do not use litigation support software,¹⁷¹ and only a few attorneys use trial presentation software.¹⁷² However, many attorneys stated they would be likely to purchase litigation support software if their opponent was using it,¹⁷³ or if their firm had a policy or recommendation regarding use.¹⁷⁴

Approximately 72% of lawyers surveyed have had no training in courtroom technologies.¹⁷⁵ Therefore most attorneys are unaware of the technology available to them.¹⁷⁶ For those attorneys who reported using technology, the most readily available device used was the laptop with presentation software.¹⁷⁷ Lawyers rarely use more advanced litigation tools, especially those tools available for annotation or evidence presentation, like color video printers, light pens, and touch screens.¹⁷⁸

The Model Rules do not need to address ethical concerns in relation to technological use in the courtroom, mainly due to the judge's ability to control its use. Nonetheless, razzle-dazzle technology can carry potential ethical issues. High tech courtroom equipment may help attorneys create misleading arguments by misrepresenting evidence. For example, a lawyer may recreate an accident using technology with overly dramatic overtones and graphics, thus distorting the relevant evidence. Even highlighted transcripts through multimedia presentation may tend to mislead by overemphasizing some testimony while distorting others. Of course, these tactics would most likely be corrected through effective cross examination. If so outrageous, it would likely be stopped before ever reaching the courtroom floor by a judge.¹⁷⁹ In any event, as more attorneys become familiar with courtroom technology, future changes to the Model Rules may be required to tackle the ethical concerns relating to courtroom presentation of evidence.

171. LITIGATION & COURTROOM, *supra* note 2, at 63 (finding 89.59% of attorneys surveyed did not use litigation support software).

172. *Id.* at 71 (4.46%).

173. *Id.* at 162 (38.1%).

174. *Id.* (56.5%).

175. *Id.* at 163 (71.88%).

176. LITIGATION & COURTROOM, *supra* note 2, at xiii.

177. *Id.*

178. *Id.*

179. See FED. R. EVID. 403 (stating that it would likely disallow the demonstrative evidence if the probative value of the evidence was substantially outweighed by the danger of misleading the jury).

VII. CONCLUSION

Based on the *Model Rules of Professional Conduct* and the results of the 2002 *ABA Technological Survey*, a technologically proficient and ethically sound lawyer should follow these guidelines:

1. A lawyer should have a website. While the website does not need bells and whistles, which can be expensive and high maintenance, it should provide adequate information to attract clients. It also should provide an easy method of contact. If you want to have an online free consultation, make sure you display prominent disclaimers about forming an attorney-client relationship. Joining or participating in listservs may also be a method of attracting clients, and e-mail is a good advertising method as long as it is properly designated as such. Be aware of real-time electronic contact, as those chat rooms may be construed as solicitation.

2. E-mail is an effective and efficient way for attorneys to communicate with clients. When e-mailing confidential information, it is best to highlight on your e-mail that the communication is confidential. Also, make your client fully aware of its confidentiality. For highly sensitive information, some form of encryption may be necessary. Also, check and double check the e-mail address of the receiver. If an e-mail is misdirected, its confidentiality may be lost.

3. Lawyers should connect to fee based legal research services like Westlaw and Lexis. CD-ROM's are an inexpensive and efficient method for specialized or state research topics. The day may be coming where clients will not pay bills for book research that may have been accomplished less expensively through online research.

4. Lawyers should begin to file court documents electronically where available. Courts will begin to prefer this method of filing, and learning the system while it is still optional will reduce the panic when it becomes mandatory. It also expedites litigation, a goal of the ethical rules.

5. A lawyer going to the courthouse to try a case should have a laptop and some basic litigation support software programs installed on it. Through software, a lawyer will be able to review documents, court files, and notes efficiently. Also with a laptop, a lawyer can use PowerPoint®, an inexpensive, but effective way of presenting evidence. The days of easels and handwritten diagrams are beginning to wane. Although there are many companies that will aid lawyers in presenting evidence with the dramatic flair of a Hollywood production, be wary of creating an overly dramatic effect. This result may be an actual misrepresentation of the evidence, along with an unimpressed and annoyed judge.

The goal of incorporating state-of-the-art technology into all facets of an attorney's practice may be commendable, but, given ethical concerns, it

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may be impractical. Despite this proviso, most lawyers are successfully incorporating many variants of helpful and time saving technology into their law practices. If these lawyers are careful to keep their technology practices keep in line with governing ethical requirements, they can begin to take advantage of the numerous technological advances in the practice of law.