

Cybersecurity Duties of a Lawyer Per the Model Rules of Professional Conduct

Livestream: March 26, 2025, 1:00 – 2:00 PM ET (available on-demand afterwards!)

Description:

Competence & Confidentiality

Attorneys handle a wealth of sensitive information every day. Maintaining confidentiality of information and data, both the personal details and related to their legal matters, must remain central to an attorney's practice and of the legal profession at large. Whether explicitly or implicitly, the ABA Model Rules of Professional Conduct include a through-line of confidentiality and underscore a lawyer's duty of care for maintaining clients' confidentiality that inevitably extends to the prevention of and reaction to data breaches.

Rule 1.1 states that a lawyer, *"...shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation."* But in addition to being competent, today's attorneys must maintain their competence, which in the face of lightning fast developments in technology and society can be daunting. Still it is required that attorneys, *"...keep abreast of changes in the law and its practice, **including the benefits and risks associated with relevant technology...**"*

Rule 1.6 is focused on the confidentiality of Information, with part (c) stating that a lawyer, *"...shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client."*

This program will identify the duties of an attorney in the context of a cybersecurity event, to what extent an attorney is expected to understand and keep up with technological risks and best practices to protect clients' information and data.

Leave this program with:

- An understanding of the ethical and professional responsibilities of lawyers to protect client information and data.
- An overview of the main risks related to cybersecurity incidents and mitigating their potential impacts.
- Practical steps to prevent, prepare for, and be in the best position possible during a cybersecurity event experienced by your organization, firm, or practice.

Outline:

- **Welcome and introduction of the topic**
 - The duties of an attorney in the context of a cybersecurity event, to what extent an attorney is expected to understand and keep up with technological risks and best practices to protecting clients' information and data.
- **Duties of a Lawyer under the ABA Model Rules of Professional Conduct**
 - Rule 1.1 – Competence of an attorney
 - Rule 1.15 – Safekeeping Property
 - Rule 1.4 – Communications
 - Rule 1.6 – To prevent disclosure or access to client information
- **Understanding cybersecurity risks and associated guidance**
 - Email
 - Excessive permissions

- Authentication
- Inconvenience of cybersecurity prevention
- Threat awareness
- Incident preparedness
- ***A lawyer's role in preventing, preparing for, and mitigating outcomes from a cybersecurity event***
 - Role in the cybersecurity incident response team
 - Preserving the attorney-client privilege during a cybersecurity event
 - Notifying customers, employees, owners of data subjects
 - In-house counsel - Outside Counsel Information Security Requirements
- ***Q&A and Closing Remarks***

Presenters:

Joel Bruesch (panelist) is an Area Vice President-Deputy Chief Information Security Officer, and 25-year veteran of cybersecurity for BMC Software, Inc. He is a Certified Information Systems Security Professional (CISSP). He heads the security departments for Solutions, Defense, Threat Intelligence, and a Security Operations Center with a supporting team of 65 individuals to address business security needs. He works closely with the legal function, supporting privacy, intellectual property protection, and governance. Whenever there is a cyber event he works with forensic companies to investigate, assess, and remediate. As someone who lives in a world of constant cyber threats and response, he brings a hands-on perspective from a mature cybersecurity program and reminds everyone that a cyber event is not a question of if, but rather when one will be experienced.

Rachel Greene (panelist) interned for the United States Attorney for the Southern District of Texas and the District Court for the Southern District of Texas and for thirteen years led intellectual property strategy for automating oil field services for an international energy company. She has advised on matters of international hacking of sensitive technologies and has been involved in the ensuing information technology, trade secret, security, and enforcement investigation activity. She advises clients investing in industrial chemical, nuclear, medical, and financial research and development as the founder of Greene IP. Her community service includes a board position with the Nancy F. Atlas Intellectual Property Inn of Court in Houston, Texas. A native of Ponca City, Oklahoma, she obtained a law degree from the University of Houston Law Center and a chemical engineering degree from the University of Virginia.

Irene Kosturakis (moderator) is Area Vice President, Chief Intellectual Property Counsel at BMC Software, Inc., where she has worked for over 18 years and is responsible for all intellectual property matters, including protecting patents, and preserving brand and trademarks. Irene advises her clients to ensure BMC is prepared whenever there may be a cybersecurity incident or data breach. To accomplish this with best practices, she works with outside counsel as well as BMC's own Information Security personnel. Irene also counsels the Product Security Group on how to internally and externally address industry software vulnerabilities. Irene is a registered Patent Attorney and a Certified Information Privacy Professional; current President of the Nancy F. Atlas Intellectual Property Inn of Court, having served on its Executive Committee for several years; immediate Past Chair of the Texas Business Law Foundation (TBLF); past Chair of the State Bar of Texas Business Law Section; and past President of the Houston Chapter of the Association of Corporate Counsel (ACC) Houston Chapter.