



PROFESSIONAL RESPONSIBILITY

Tips for Meeting Your Mobile Device Ethical Obligations

BY TREY PEACOCK

IN THE WAKE OF THE SAN Bernardino terrorist attack and the efforts to unlock the alleged shooter's iPhone, increasing attention is being paid to various security aspects of phones and tablets. The controversy raises important questions for all practicing lawyers: What are our ethical obligations, and are we doing enough to protect our client(s)' confidences? As detailed below, the duties we owe clients are well-established, and fortunately, there are simple ways to meet and exceed those obligations.



communicate with clients and to maintain their confidential information. The most common modern tool for that is computers. And all lawyers (or their firms) protect access to their computers with strict and frequently complex password requirements. However, many of those same lawyers also communicate with and carry around plenty of their client's confidences on their iPhones, iPads and other forms of phones and tablets. And, sadly, many fail to take the same reasonable steps for security

A LAWYER'S DUTY TO COMPETENTLY SAFEGUARD CLIENT INFORMATION

Rule 1.1. of the ABA Model Rules of Professional Conduct states:

A lawyer shall provide competent representation to a client. "Competent" representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

And Comment 8 to that same rule makes clear that the obligation of competence includes keeping abreast of benefits and risks of the technology we employ:

To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology, engage in continuing study and education and comply with all continuing legal education requirements to which the lawyer is subject.

The issue of competency also extends to protection of a client's confidential information. Rule 1.6c makes clear:

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.

Comment 18 to Rule 1.6 explains that inadvertent disclosure of information relating to the representation of a client does not constitute a violation of the rule if the lawyer has made "reasonable efforts to prevent the access or disclosure." Thus, we must act competently by staying abreast of current technology and taking reasonable efforts to prevent inadvertent access to or disclosure of a client's information.

LAWYER'S USE OF TECHNOLOGY

Lawyers use a variety of technology to

on their handheld devices as they do with their computers—despite the fact that a phone or tablet is far more likely to be lost, misplaced or stolen. Given the increased risk of losing of a handheld device, users should increase the security on such devices to counter that danger.

The first line of defense for any iPhone or iPad is its passcode. Assuming it's been enabled (which should be required for any lawyer using such a device for work), most users only use a simple four-digit numeric passcode. That's not good enough to meet our obligations. Given the type of information lawyers frequently have on their handhelds, any lawyer who wants to make sure he or she has acted competently to reasonably protect a client's data should immediately change to a passcode with a minimum of six numeric digits.

THINKSTOCK

FOUR-DIGIT PASSCODES ARE TOO WEAK

Changing your passcode from four to six numeric digits raises the number of potential passcode combinations from 10,000 to 1 million. It is estimated that a brute-force attack on a phone with 10,000 combinations would only take four-and-a-half days to hack (using an estimated average of 40 seconds per try) but roughly 458 days to crack a phone using a six-digit numeric passcode. The simplicity of increasing a passcode from four to six numeric digits is the minimal amount of reasonable effort any lawyer should take to protect the secrets on their phones. It only takes a couple of minutes.

SIMPLE STEPS TO CHANGE YOUR PASSCODE TO SIX NUMERIC DIGITS

Here are the simple steps to change

your passcode on an iPhone or iPad from four to six digits:

1. Go to Settings, then Touch ID & Passcode on your device.
2. Enter your current passcode.
3. Choose Change Passcode.
4. Enter your old passcode again.
5. Then enter a six-digit new passcode using the numeric keypad on the screen and then select Next in the top right corner.
6. Verify your new six-digit passcode by re-entering it a second time and select Done in the top right corner.

BUT WE CAN AND SHOULD DO BETTER

With the increasing changes in technology, six numeric digits is the minimum any lawyer should use for work-related handheld devices. But the better course is to use something longer or more

complex. While most folks do not realize it, you can use an alphanumeric passcode on iPhones and iPads. Lawyers who work with highly confidential information (such as source code, financials and trade secrets) should use a passcode that is at least six or more alphanumeric characters long.

In today's society, security should always be important for lawyers who use and depend on handheld devices that can easily be lost, misplaced or stolen. Making sure you have a passcode that provides meaningful and reasonable protection is part of every lawyer's ethical obligation. ■

Trey Peacock, a partner at Susman Godfrey, has been winning cases based on science and data for over 25 years. He has also chaired the firm's IT committee for over two decades.

TLIEnduring

With over 36 years in the business, and our enduring commitment to exceptional coverage, Texas Lawyers' Insurance Exchange has been voted best professional liability insurance company in Texas four years in a row by Texas Lawyer magazine. TLIE is also a Preferred Provider of the State Bar of Texas and has returned over \$41,550,000 to our policyholders. See why our enduring commitment, exceptional coverage and remarkable staff make the difference.



Andy Cantiello, Underwriter

512.480.9074 / 1.800.252.9332 / INFO@TLIE.ORG WWW.TLIE.ORG

@TLIE facebook.com/TLIE01