

# AHERN Update



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## Navigating Risk Management During the COVID-19 Pandemic

Amid the unprecedented disruption caused by the outbreak of COVID19, and the mandated measures governments at all levels have instigated to combat it, lawyers and law firms must still tend to their ethical and professional responsibilities. In this "new normal," compliance will require some heightened effort, with the goal of maintaining continuity and client relationships. The following provides practical, common sense tips to navigate risk management in this new environment.

- **Communication.** Lawyers have a duty to communicate significant developments to clients. In the current context, this means reaching out to each client, by both email and phone, to advise about whether and how the disruption and any new legislation impacts their matter and what you are doing to address it. Check in with your clients; ask questions and make sure you understand their particular legal needs relating to your scope of engagement in this time of crisis. Follow up as you assess procedural, substantive, and technological issues (see below).
- **Competence.** The pandemic presents new issues in every area of practice. In many respects, we are being handed a new playbook of rules to learn and understand. For example, litigation involves changing court rules, calendars and statutes of limitation. Employment law may involve changes in FMLA and HIPAA rules. Estate planning and tax lawyers may need to reevaluate strategies recommended to clients. And of course, most firms have had to quickly adapt to a fully remote practice, which involves understanding technology and cyber security risks.
  - ◆ Review court orders regarding closures and calendaring changes and revise calendaring for each matter accordingly. Pay particular attention to statutes of limitation deadlines. Most State Bar websites have an updated list of court orders relating to closures, limited access, and other associated rules.
  - ◆ Consider whether the disruption has caused delays warranting trial, motion or other continuances.
  - ◆ Assess each active matter to determine how changed circumstances and/or new rules may impact the client's substantive matter.

- ◆ Review your current remote practice tools. Do they adequately permit continuity of service? Are they secure? Do all lawyers in the firm have access to the technology and have been trained on it? If transitioning from an e-calendar on your work device to a home device, ensure there are no gaps in data. Don't assume that the events from one device automatically copy to the other, even if you use a cloud-based calendaring system.
- **Confidentiality/Privilege.** Practicing remotely will involve an increase in electronic communications and virtual meetings. Be extra disciplined. Always double-check "cc" and "bcc" lines (a client could still "reply all" to a "bcc" if that feature is not disabled) and reduce virtual meeting invitations. Always consider what client information is being shared with whom and why. Know your surroundings. "Privilege issues that never would have occurred in the office are now implicated. How does working from home (with kids? A spouse/partner/roommate?) implicate the attorney-client privilege and confidentiality?" Charles Lundberg, "Quandaries and Quagmires: Legal Ethics and Risk Management in the Pandemic" (<https://minnlawyer.com/2020/03/30/quandaries-and-quagmires-legal-ethics-risk-management-in-pandemic/>). Avoid sharing anything about your matters on social media.
- **Civility.** These are unprecedented times. Our profession encompasses a diverse group of practitioners; as with everyone else, the impact of the pandemic may be felt in different ways. Bar associations are urging lawyers to "liberally exercise every professional courtesy and/or discretionary authority vested in them to avoid placing parties, counsel, witnesses, judges or court personnel under undue or avoidable stresses, or health risk . . ." See, <https://www.lacba.org/about-us-menu/lacba-committees/standing-committees/professional-responsibility-and-ethics>. In other words, be kinder than necessary.
- **Cybersecurity.** As noted above, the duties of competence and confidentiality include understanding the risks of using technology and ensuring that reasonable cybersecurity measures are in place. As noted by Mr. Lundberg: "Even if cybersecurity was not a primary risk issue for law firms before (it was, by the way), it is now. Hackers are no doubt aware that they can exploit weakened technology systems because most lawyers and support staff are suddenly working remotely."
  - ◆ Carefully scrutinize email addresses. If something seems off, it probably is. One letter change can signal a fraudulent account.
  - ◆ Be as diligent as ever when completing wire transfers. Do not trust wire transfer numbers you receive through email.
  - ◆ Consider disabling an Alexa unit and other smart devices around the home.
- **Supervision.** Firm managers should ensure that associates, paralegals and staff are all cognizant of and trained on the above best practices.
- **Wellness.** Finally, adapting to this "new normal" in the professional context while dealing with personal challenges such as caring for young children; homeschooling; and facing sickness naturally increases feelings of anxiety. The ABA Commission on Lawyer Assistance Programs has published a list of wellness resources, which can be found here: [https://www.americanbar.org/groups/lawyer\\_assistance/resources/covid-19--mental-health-resources/](https://www.americanbar.org/groups/lawyer_assistance/resources/covid-19--mental-health-resources/) Firm managers should consider a wellness initiative with policies designed to regularly check-in with their attorneys and staff and to promote a balanced perspective. Of course, a firm's economic longevity is important during these troubling times, but as stressed by Mr. Lundberg, "nothing will ensure loyalty to a firm like an open and transparent attitude of caring for the families of its staff in time of crisis."

For a more detailed guide to navigating risk management during the COVID19 pandemic, see: [https://www.michbar.org/file/pmrc/pdfs/guide\\_covid19.pdf](https://www.michbar.org/file/pmrc/pdfs/guide_covid19.pdf)