

21<sup>st</sup> Annual In-House Counsel Ethics Seminar

NEXT CHALLENGE. NEXT LEVEL.

NEXSEN | PRUET

## Data Privacy & Security Ethics

**Joseph A. Dickinson**

Member of Nexsen Pruet





## ATTORNEYS OBLIGATIONS TO PROTECT CLIENT DATA

- ▶ Ethical Rules
- ▶ Federal laws
- ▶ Federal and state laws requiring notification of data breaches
- ▶ State laws requiring information security measures



## ETHICAL OBLIGATIONS TO PROTECT DATA

- ▶ The duty of confidentiality
- ▶ The duty to communicate
- ▶ The duty of competence
- ▶ The duty to supervise
- ▶ The duty to keep clients' property safe



## RULE 1.1 – COMPETENCE

Paragraph 8 of the Comment to Rule 1.1 - “a lawyer should keep abreast of changes in the law and its practice, *including the benefits and risks of technology...*”

# FORMAL OPINION 483

Duty of Competence

Duty of confidentiality



Formal Opinion  
483

Lawyers must comply with the data security and data breach notification laws of the 50 states that are applicable to their practices. (“law firms are inviting targets...”)- hacks facilitate insider trading

Ethics Opinion 483 requires lawyers to:

Have an IRP – what is it? Incident v. Breach - (respond to any data event where material client information is misappropriated, destroyed, or otherwise compromised, or where a lawyer’s ability to perform the legal services for which the lawyer is hired is significantly impaired by the episode). Current and past clients.

## FORMAL OPINION 477R

Securing Communication of Protected Client Information – “A lawyer generally may transmit information relating to the representation of a client over the internet without violating the model rules of professional conduct where the lawyer has undertaken reasonable efforts to prevent inadvertent or unauthorized access.”

Security

Privacy

At rest

In transit

Third party disclosures

> Diligence

> Litigation

> IT/Cloud Services/eDiscovery



Formal Opinion  
477R





## NC & SC RULES OF PROFESSIONAL CONDUCT

### **Rule 1.6 – Confidentiality of Information**



## PRACTICAL IMPACT

- Assess data flow
- Assess, understand and manage third parties (cloud, e-discovery, IT vendors)
- Law firms are common and relatively easy targets
- Health plans?
- Know the applicable laws/regulations (HIPAA, GDPR, CPRA, other state laws, FTC, GLBA)
  - CMMC
  - Cybersecurity practices and procedures Controlled Unclassified Information (CUI) and Federal Contract Information (FCI).
- Incident response





# QUESTIONS?

Thank you!