Tip of the Month

APRIL 2016

Be Careful How You Use Text Messages to Communicate with Clients

Many of today’s phones allow you to send a text by speaking the message to your phone rather than typing it. The speech-to-text feature is fast, easy and convenient. However, you may not realize that what you say to your phone in order to send a text is: (1) recorded and (2) reviewed for “quality control” purposes. Using the speech-to-text function of your phone to send a text to a client may result in the loss of attorney-client privilege because of the third party review issue. Lawyers should not use this feature when texting messages to clients, but if they want to use this feature, it is a good risk management practice to inform the client, disclose the risks to attorney-client communications and obtain the client’s informed consent. Before you send text messages to clients using this feature, it is a good idea to obtain the client’s informed consent after full disclosure of the risks involved. (For the same reasons, it is a good idea to avoid using the speech-to-text function to send any type of personally identifying information via a text message). There are good reasons not to use text messages for communications with clients at all. Unlike firm emails sent via a lawyer’s phone, text messages are not linked to the firm’s network. Should any type of dispute ever arise which relates to the subject of a text message, the firm may need to access the phone to obtain the message. Also, should litigation ever arise in that scenario, the text messages would have to be preserved to avoid a claim of spoliation. Text messages are not stored indefinitely on a phone and the firm may need to access a phone to preserve the information. Finally, your statements to Siri are recorded and reviewed for quality control purposes. For all of these reasons, be careful how you use and what you say to your phone.