AHERN Update

Risks and Benefits of Text Messaging

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Texting is an effective tool for communicating with clients. It is fast, inexpensive, and some clients’ preferred method of communicating. But texting also presents risks.

The Benefits

Transmitted in virtually real time, text messages are fast. They go directly to one’s cell phone (or other mobile device) and tend to get more immediate attention. Transmitted by cellular servers, rather than computer servers, there is less risk of losing messages from a server going down.

Texting can enhance client relations based on better communication, demonstrating that an attorney is responsive and decisive.

Always ask clients how they prefer to communicate. Let clients know what you are and are not comfortable discussing by text. Some subjects are better for texting than others. Texting is not advisable for highly confidential, complex, or important information.

Confidentiality Risks

Before texting confidential information, consider the recipients. Be sure they understand the need to protect confidentiality. When clients use company phones, employers may claim a right to read text messages. When clients use personal phones, there may be access by family members or others.

Protect confidentiality with effective passwords for phones. Firm policy should prohibit attorneys who text confidential information to clients from allowing others to access their phones. Free software is available for encrypting text messages.

When accessing text messages in public, prevent them from being read by third parties. Set phone notifications so they do not show previews of messages, which could be read by others.

Phones should be also equipped with kill switches to deactivate them if lost or stolen, and add GPS tracking or a locator to your service. When discarding a phone, erase its memory.

Risks in Preserving Communications

Unlike e-mail, text messages are not stored on servers and service providers do not preserve them for long. Without taking additional steps to save them, texts generally disappear. If a communication is important enough that it should be documented, it should not be sent by text but by some more
readily preservable means. Firm policy should at least require that any significant communication sent by text be printed or stored electronically.

Sometimes lawyers need to communicate but not create a discoverable “paper” trail. Such communications are better done in person or by phone.

**Risk of Miscommunication**

Texts can be misunderstood. A short message might unintentionally communicate anger; humor or sarcasm can be misconstrued. While autocorrect is helpful, it can lead to garbled messages that convey lack of attention to detail. While shorthand and acronyms are common in texting, clients may misunderstand or be irritated by them. As with any written communication, make sure you convey a professional tone with a clear meaning.

**Risk to Attorney Privacy and Control**

Text messages include the sender’s phone number, giving clients greater access to their lawyers at any time of day. By effectively communicating the ground rules for texting, lawyers are better able to strike a proper balance between communication and professional boundaries.

Where there is no need for an immediate response to a client’s text, respond that you will look into the matter and get back to them. Even without an immediate substantive response, with texting there is an expectation that some response will be forthcoming without significant delay.

By reducing the risks in texting, lawyers can better enjoy the benefits of this powerful communication tool.