JULY 2016

Competence Includes a Lawyer’s Use of Technology

An increasing number of ethics opinions of various states are recognizing that competence for lawyers includes their use of technology in compliance with the rules of professional conduct. New Hampshire Ethics Opinion 2012-13/4 opines that competent lawyers must have a basic understanding of the technologies they use and must keep abreast of changes in technology. Pennsylvania Formal Ethics Opinion 2011-200 explains that competence includes the methods and procedures used by a lawyer to represent a client, which include taking reasonable steps to ensure that client data and information is maintained, organized and kept confidential when required. Lawyers who use cloud computing need to be aware that cloud computing requires suitable measures to protect confidential information. Alabama Ethics Opinion 2010-02 states that lawyers must exercise reasonable care in storing client files, which includes becoming knowledgeable about a provider’s storage and security and ensuring that the provider will abide by a confidentiality agreement. It further asserts that lawyers should stay on top of emerging technology to ensure security is safeguarded. For risk management purposes, lawyers should become familiar with the guidelines and authorities issues in the states in which they are licensed and in which they practice.