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Avoiding Ethics Complaints: Finding the Rules and LEOs

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Virginia Lawyer

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VIRGINIA LAWYER REGISTER

The Official Publication of the Virginia State Bar

Hirschler President
Courtney Moates Paulk

The Ethics Issue

plus

Winning Closing Arguments

Lawyer Wellness: Getting Out of the Office

The Importance of Lawyer Independence

The Professionalism Course: First in the Nation

THE 5 CYBER SECURITY TIPS



1

Keep hardware and software as current as possible.

You don't need to be first in line for the latest and greatest, but don't be the last in line either. Once software becomes unsupported, it is unethical to use it because it is no longer receiving security updates and is vulnerable to hackers. Apply patches as soon as they are available to reduce vulnerability to an attack or compromise.

2

Backup all data.

Don't forget to periodically conduct a test restore of the backup and make sure your backups are impervious to ransomware – either backed up in the cloud or agent-based. Talk to your IT provider to learn more. Backups should be encrypted with a user-defined encryption key, whether on-site, off-site or stored in the cloud. If using a cloud vendor, the vendor should not have access to the decryption key.

3

Develop a password policy.

The policy should mandate the use of strong passwords (14 characters or more with upper and lower case, numbers, and special characters) and require that passwords be changed on a regular basis. The use of a password manager can make this task quite easy. Consider enabling two-factor authentication (2FA) when available.

4

Mandate that all work-related internet sessions be encrypted.

Prohibit the use of public computers and unsecured open public Wi-Fi networks. Access to the office network must always occur through the use of a VPN, MiFi, smartphone hotspot or some other type of encrypted connection.

5

Provide mandatory social engineering awareness training to everyone at the firm at least once a year.

Technology alone cannot protect your data. The greatest vulnerability comes from the folks who use your network. Cyber attacks are successful because someone did something stupid like clicking on a link, opening an e-mail attachment, or verifying an ID and password when they shouldn't have.



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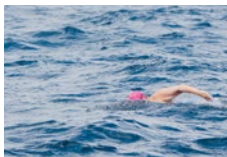


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Avoiding Ethics Complaints: Finding the Rules and LEOs

by Joyce Manna Janto

One nightmare shared by all lawyers is the prospect of a letter from the Standing Committee on Lawyer Discipline informing them of a complaint. Prudent lawyers avoid this by becoming familiar with the ethical rules and standards of their jurisdiction. Because, as many a lawyer has learned, ignorance of the rules is no excuse.

The obvious starting place is the Virginia CLE Publication's *Guide to Legal Research in Virginia*.¹ The current edition has a chapter on researching ethical issues. It serves as a finding aid and includes detailed instructions for using a variety of resources. It also contains annotations on the sources mentioned.

The *Code of Virginia* is the source for ethical rules and opinions. The bar is under the jurisdiction of the Supreme Court, so the Virginia Rules of Professional Conduct² (Rules) are in the Rules of the Supreme Court of Virginia volume. The Rules are annotated; along with the text of the Rule are the comments, its history, and interpretive cases. Legal Ethical Opinions (LEOs) issued by the Virginia State Bar (VSB) are provided as unnumbered volumes of the *Code*. These opinions have no precedential value but provide guidance on how the disciplinary committees might interpret a Rule. Sections 54.1-3900 through 54.1-3944 of the *Code* also limit lawyer activity. Unlike the Rules, they focus on the business of law. They define the practice of law and the corporate structure of law offices. They also outline the procedure for the disciplining and licensing of lawyers.

The *ABA/BNA Lawyer's Manual of Professional Conduct* provides information for those seeking a broader interpretation of a Rule. Arranged in Rule number order, the *Manual* has ethics opinions from the ABA, state, and local bar associations. In addition, the *Manual* contains a current awareness newsletter. The newsletter summarizes

recent opinions issued by courts or bar associations along with articles, written by practitioners, on current ethical issues.

Online, the starting place is the website of the VSB.³ Here you will find proposed, adopted, and rejected amendments to the Rules, along with LEOs and disciplinary actions. There are two options to find LEOs on this page. The first is a link to a page maintained by the Virginia Law Foundation.⁴ Here, you can find LEOs by number or by subject. A subject search allows the use of Boolean connectors and limitation by date. The other option is a page maintained by McGuireWoods.⁵ Their database contains summaries of LEOs and formal opinions issued by the ABA. There is a topical index and the database supports keyword searching. If you can't find a LEO dealing with your specific concern, you can request one via email from the VSB webpage. *This service is confidential; Ethics Counsel for the VSB cannot disclose the contents of any discussion about the email without the express consent of the person posing the question.*

What about traditional legal research platforms? Both Lexis and Westlaw have the ABA ethics materials: the Model Rules and the formal and informal LEOs. Lexis has the Virginia LEOs. Westlaw has the Virginia disciplinary orders. Each service has a collection of secondary sources. Westlaw has a greater number of treatises. Lexis arranges its ethical materials in a "Legal Ethics" library that collects in one place the relevant databases. Lexis also has a separate "Ethics Law - Emerging Issues" database dealing with hot topics and the *ABA/BNA Lawyer's Manual on Professional Conduct*. Fastcase⁶ does not have the Rules or LEOs, but disciplinary orders are available.

Finally, don't overlook Google. Using the advanced search option improves your results. At the bottom

of the search page, click "Settings" and select "advanced search." This allows you to conduct Boolean searches and limit results. The search *internet advertising ethics opinions* garners twenty three million hits. An advanced search *internet advertising "ethics opinions" site:org* yields six thousand hits, all from reliable sources.

A lawyer's life can be stressful; using the resources outlined in this article can relieve the stress of wondering if your behavior is conforming to the ethical standards of the Virginia State Bar.

Endnotes:

- 1 GUIDE TO LEGAL RESEARCH IN VIRGINIA ch. 10 (Joyce Manna Janto ed., 8th ed. 2017).
- 2 art Six, Integration of the State Bar, Section II, Rules of Professional Conduct.
- 3 www.vsb.org
- 4 <http://www.vacle.org/leoslegallinks-pg107.aspx>
- 5 <http://leo.mcguirewoods.com/>
- 6 <http://www.fastcase.com/>



Joyce Manna Janto was appointed deputy director of the University of Richmond Muse Law Library in July 1991. Prior to this, she served as acquisitions librarian (1982-89) then as associate director for Collection Development (1989-1991). She teaches Legal Research I & II, Virginia Legal Research, and Professional Responsibility. Janto holds a BS Ed. from Clarion State University of Pennsylvania, an MLS from the University of Pittsburgh, and a JD from the University of Richmond.