

2023 Real Property Law Health & Wellness Retreat



March 24-26, 2023
Fairmont Sonoma Mission Inn
Sonoma, CA

Attorney Ethics in Remote Virtual Workspaces

Carl Chamberlin, Dianne Jackson McLean, Joanna Storey | March 25, 2023

BASF Legal Ethics Committee Leadership



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California Court of Appeal
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Klinedinst PC
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The views expressed are the speakers' own, represent only a sampling of ethical issues that might arise, and do not constitute legal advice or suggest the outcome of any pending or future proceeding.

Agenda



Our Topics

- Competence and Diligence
- Securing Client Information
- Protecting Client Interests
- Keeping Clients Informed

CRPC 1.1 Competence



(a) A lawyer shall not intentionally, recklessly, with gross negligence, or repeatedly fail to perform legal services with competence.

(b) For purposes of this rule, ‘competence’ . . . shall mean to apply the (i) learning and skill, and (ii) mental, emotional, and physical ability reasonably necessary for the performance of such service. . . .”

ABA Model Rule 1.1, Comment [8]

COPRAC 2015-193

CRPC 1.1, Comment [1]

CRPC 1.3 Diligence



(a) A lawyer shall not intentionally, repeatedly, recklessly or with gross negligence fail to act with reasonable diligence in representing a client.

(b) For purposes of this rule, “reasonable diligence” shall mean that a lawyer acts with commitment and dedication to the interests of the client and does not neglect or disregard, or unduly delay a legal matter entrusted to the lawyer.

Competence and Diligence

TRANSACTIONAL

Changing Laws - (Orders, Waivers, Etc.)

- Expiration of State of Emergency- Brown Act

Technology- Comment 1 – Rule 1.1

- “includes duty to keep abreast of the changes in the law and its practice, including the benefits and risks associated with relevant technology.”.

COPRAC Proposed Opinion- No. 20-0004 Ethical Obligations When Working Remotely-

LITIGATION

- ABA 498 Opinion - Virtual Law Office
- Training is Key
 - Staff members usually do not watch CLEs
- Wellness Moment
 - Benefits and risks of remote working

Securing Client Information & Property



CRPC 1.6 – Confidential Information

- A lawyer shall not reveal info protected from disclosure by Bus. & Prof. C. 6068(e)(1)...

Bus. & Prof. Code Section 6068, subd. (e)(1)

- Duty to “maintain inviolate the confidence, and at every peril to himself or herself to preserve the secrets, of his or her client.”

CRPC 1.15 – Client Funds and Property

CRPC 5.1, 5.3 – Supervised Workers

Keeping Client Information & Property Secure

TRANSACTIONAL

Remote Office - Limiting Access to Client Files

- Where Are the Files
- Disaster Plan

Supervising Attorneys/Staff

- Transaction Closings
- Organizing
- Communications
- Project Planning- What Demands In-Person Meetings

LITIGATION

- Wire Transfers – Phishing
- ABA 477 Revised (2017) Securing Communication of Protected Client Information
- California 2020-203 Data Breach
- Videoconferencing Risk Management

Practical Tips

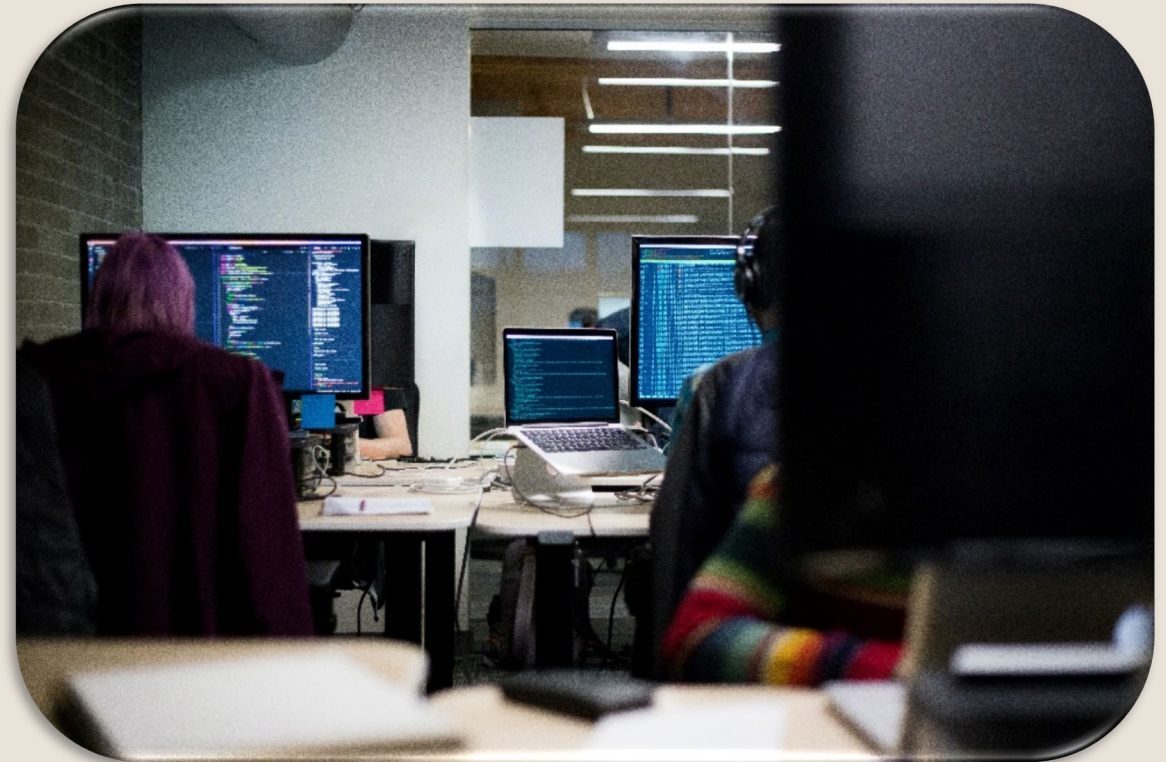
Perform a 360° view of your space

Be mindful of background discussions

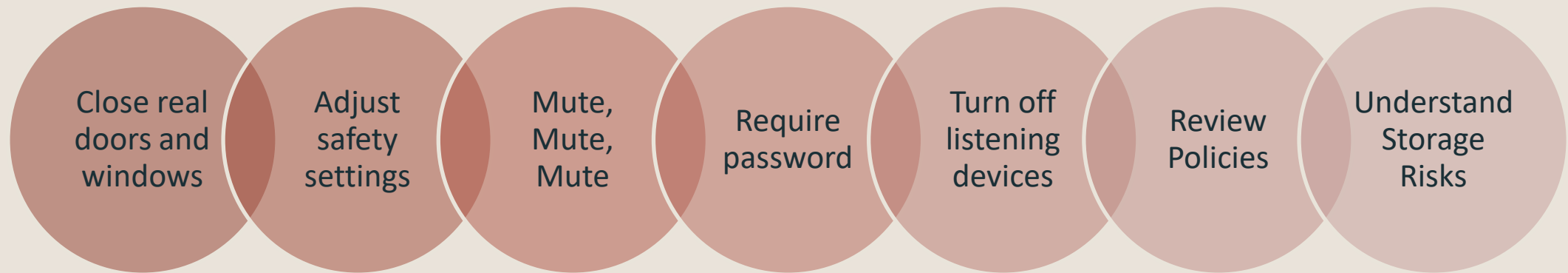
Practice Screen Sharing

Practice with staff and clients

What's Your Brady Bunch Name?



Hot Mics and Live Video



Protecting Client Interests



Beneficial for the client?

Client has adequate access?

Joint representation conflicts?

Specific scenarios

Protecting Client Interests

TRANSACTIONAL

No Contact Rule (Rule 4.2) - Transactions

- Client- Waiver of Attorney-Client Privilege
- Risks of Reply All Emails, and Email Chain
- ABA Opinion 503- November 2, 2022- Implied Consent
- California COPRAC Opinion 2011-181

Who is the Client

- Disclosure
- The Unintended Client

Associates and Staff

LITIGATION

Remote Depositions and Hearings

- Access and Connectivity
- Protecting the Record
- Explain Risks of Remote Appearances

Keeping Clients Informed



CRPC 1.4 – Client Communications

- Promptly inform of matters requiring informed consent
- Reasonably consult re objectives
- Keep client reasonably informed about significant developments

CRPC 1.4.1 – Settlement Offers

Keeping Clients Informed

TRANSACTIONAL

Material Change of Events

- Documents
- Communication
 - Methods of Communication-Technology

Execution and Delivery of Documents

LITIGATION

- Manage Client Expectations
- ABA 500 Language Access in the Client-Lawyer Relationship (2021)
- Document Important Advice with Written or Electronic Communications
- Inform Client About Expected Delays

QUESTIONS

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**THANK YOU
FOR JOINING US!**