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New e-mail, advertising rule changes require attention from solos

The new year brings significant changes to Illinois court rules and professional conduct requirements. Here are some key changes that may affect your solo practice.

Mandatory acceptance of e-mail service in the trial and appellate courts

Sole practitioners can save time and resources in 2016 as the state's progression to mandatory e-mail service takes another step forward. Although electronic service is not yet the exclusive method of delivery, attorneys must now accept service by e-mail, at the serving attorney's election.

Specifically, under Supreme Court Rules 11(d) and 131(d), all attorneys must designate at least one primary e-mail address, and no more than two secondary addresses, on all papers filed or served on other parties.

Effective e-mail service under Rule 11(b)(6) requires transmission to "all primary and secondary e-mail addresses of record," so make sure to include each e-mail address when transmitting and preparing your certificate of service.

Unrepresented parties can still require paper service, but may consent to electronic delivery under Rule 131(d) by designating an e-mail address of record.

The new e-mail service rules also apply to appellate court filings. Rules 341(e) and 367(d) clarify that only one copy of each appellate brief need be served electronically, instead of the three-copy requirement for paper service.

Finally, the committee comments to Rule 11 make clear that no specific document format is required for e-mail service, but "good faith cooperation by practitioners" is expected, and alternative formats should be tried when electronic documents cannot be opened by the recipient.

Notify sender of inadvertent ESI, including metadata

Sole practitioners should be aware that Rule 4.4 of the Rules of Professional Conduct (Respect for Rights of Third Persons), which requires counsel to promptly notify the sender of documents that are "inadvertently sent," now extends to electronically stored information. The erroneous transmission could take the form of a misaddressed e-mail intended for another recipient, or a properly addressed e-mail that contains a mistaken attachment.

Moreover, Comment 2 to Rule 4.4 extends the definition of "electronically stored information" to encompass "metadata" — defined as "embedded data" in an electronic document — that the receiving attorney knows was sent in error.

So, the next time you receive that stray e-mail or an attachment from opposing counsel, don't just save or delete — make the required notifications.

Internet-based advertising, client leads

For self-employed attorneys planning to ramp up their business-generating activities in 2016, the Rules of Professional Conduct now address Internet advertising.

In particular, Comment 5 to Rule 7.2 (Advertising) now allows attorneys to retain providers that supply "Internet-based advertisements" and "Internet-based client leads."

The comment cautions that ethical constraints still apply, including the prohibition against false or misleading communications regarding the lawyer's services or falsely implying that the referral is based on analysis of the prospective client's "legal problems."

SOLE SPEAK

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Further, Comment 1 to Rule 7.3 (newly captioned Solicitation of Clients) spells out that lawyers may advertise services to the general public, without making a prohibited "solicitation," if the communication "is directed to the general public, such as through a billboard, an Internet banner advertisement, a website or a television commercial or if it is in response to a request for information or is automatically generated in response to Internet searches."

So, the next time you receive that stray e-mail or an attachment from opposing counsel, don't just save or delete — make the required notifications.

Thus, while marketing efforts can boost your bottom line, make sure to comply with applicable disclosure and content requirements.

Reduced practice time for bar admission

For out-of-state solos wanting to join the Illinois ranks without taking the bar examination, the length-of-practice requirement for all attorneys has been reduced. Under Supreme Court Rule 705, the minimum length of practice in other jurisdictions has been shortened from five years to three years. Other requirements still apply.

Safe harbor for IOLTA funds

Lastly, no sole practitioner wants to discover unattributed Interest on Lawyers Trust Accounts (IOLTA) funds in his or her account, but a recent amendment to the Rules of Professional Conduct — already in effect, since last July — offers a mandatory and sanction-free solution for that contingency.

Under Paragraph (i) of Rule 1.15 (Safekeeping Property), a lawyer who discovers "unidentified" IOLTA funds must attempt to "identify and return the funds to the rightful owner." However, if that effort is unsuccessful after 12 months, the attorney must "remit the funds to the Lawyers Trust Fund of Illinois" and "[n]o charge of ethical impropriety or other breach of professional conduct shall attend to a lawyer's exercise of reasonable judgment under this [provision]."

What happens if you later identify the proper recipient, or determine the funds have been earned by your firm? Rule 1.15(i) allows for reimbursement: "A lawyer who either remits funds in error or later ascertains the ownership of remitted funds may make a claim to the Lawyers Trust Fund, which after verification of the claim will return the funds to the lawyer."

Check out all of the new rule changes at illinoiscourts.gov/supremecourt/rules/amend/2015 and have a prosperous, rule-compliant 2016.