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## LegalLOOP

### Va. ethics committee rules on virtual practices

In March, Virginia joined the growing number of jurisdictions that have addressed the ethical issues presented by lawyers who use cloud computing in their practices and/or practice law from a virtual office.

So, why are so many ethics committees suddenly addressing these issues? Well, it's because lawyers are increasingly using cloud computing platforms in their law practices and are opening up virtual law offices (made possible by virtue of cloud computing technologies).

So, it only makes sense that as these Web-based tools become more popular with lawyers, more lawyers are requesting that their jurisdictions provide ethical guidance regarding the appropriate steps to take when using these technologies in the practice of law.

Thus far, a number of states have handed down opinions which green light the use of cloud computing by lawyers, including Alabama (Formal Opinion No. 2012-184), Arizona (Opinion 09-04), California (Opinion 2010-179), Florida (Proposed Advisory Opinion 12-3), Iowa (Opinion 11-01), Maine (Opinion 194), Massachusetts (Opinion 12-03), New Hampshire (Opinion 2012-13/4), New Jersey (Opinion 701), New York (Opinion 842 and Opinion 940), Nevada (Opinion 33), North Carolina (2011 Formal Ethics Opinion 6), Oregon (Opinion 2011-188), Pennsylvania (Opinion 2011-200), and Vermont (Opinion 2010-6).

Virginia added its analysis to the mix when it issued Legal Ethics Opinion 1872 (online: [www.vsb.org/docs/1872-final.pdf](http://www.vsb.org/docs/1872-final.pdf)). Among other things, the opinion addressed "the ethical issues involved in a lawyer or firm's use of a virtual law office, including cloud computing."

At the outset, the committee noted that lawyers using cloud computing need not achieve absolute security, since doing so is an impossibility: "The lawyer is not required, of course, to absolutely guarantee that a breach of confidentiality cannot occur when using an outside service provider. Rule 1.6 only requires the lawyer to act with reasonable care to protect information relating to the representation of a client."

Next, the committee explained that in order for lawyers to meet the duty of exercising reasonable care, it is necessary for them to exercise due diligence when choosing a cloud computing vendor by carefully researching the vendor and its prac-

tices. A vendor will pass muster if, after examining the vendor's "use of technology and terms of service," the lawyer has a "reasonable expectation that the vendor will keep the data confidential and inaccessible by others. The committee emphasized that "if the lawyer is not able to make this assessment on her own, she will have to consult with someone qualified to make that determination."



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Another interesting issue addressed by the committee was the ethical obligations of attorneys when using electronic means to communicate with a client. The committee noted that ensuring that the client received and understood the communication was paramount: "(A)lthough the method of communication does not affect the lawyer's duty to communicate with the client, if the communication will be conducted primarily or entirely electronically, the lawyer may need to take extra precautions to ensure that communication is adequate and that it is received and understood by the client ... A lawyer may not simply upload information to an Internet portal and assume that her duty of communication is fulfilled without some confirmation from the client that he has received and understands the information provided."

So, the use of cloud computing by lawyers is now expressly permitted in Virginia, just as it is in every other jurisdiction where this issue has been considered. At this point, I think it's safe to say that the jury is no longer out and the verdict is in: cloud computing and virtual law offices are here to stay and can be ethically used by lawyers in the representation of their clients. It's no longer a matter of whether lawyers can use cloud computing in their law practices; instead, it's simply a matter of what steps must be taken prior to doing so.

(Visit our website — [www.nydailyrecord.com](http://www.nydailyrecord.com) — for embedded links to the opinions mentioned in the column).

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