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LegalCURRENTS

Technology changing at lightning-fast speeds

In last week's column, I expressed alarm regarding what I perceived to be a shift in thinking on the issue of electronic communications on the part of the American Bar Association's Standing Committee on Ethics and Professional Responsibility in Formal Opinion No. 11-459. Prior decisions, regarding communications with clients, such as ABA Formal Opinion No. 99-413, focused on the sensitivity of the issues being discussed when determining the most appropriate and secure method of communication.

However, in Op. No. 11-459 the committee appeared to depart from its prior reasoning when it stated that "A lawyer sending or receiving substantive communications with a client via email or other electronic means ordinarily must warn the client about the risk of sending or receiving electronic communications using a computer or other device, or email account, to which a third party may gain access." This conclusion implies that any type of electronic communication poses a risk, and a corresponding duty to warn, simply by virtue of the method of dissemination of information.

I don't believe that the committee's intent was to discourage attorneys from using electronic communications with their clients. Far from it. Instead, I believe this broadly worded conclusion was an unintentional oversight. However, its effect is far reaching since the committee's conclusions, while not binding, are used as a reference by state ethics committees and thus set the tone on matters of ethics nationwide.

This arguably unintentional message sent to attorneys — that electronic methods of communication are inherently suspect — could not have come at a more pivotal time. Our profession is at a crossroads and any message that discourages adaptation to new technologies could have drastic effects, both short term and long term.

This is because technology is advancing at a rate never before seen. Think back to our lives just a decade ago, as we pass the 10th anniversary of Sept. 11. That horrible day that is forever

etched into our collective conscious also serves as a technological benchmark. Recall that there were no smart phones, no cell phones with built-in cameras or video capabilities, no ability to instantaneously provide updates and information via tweets or status messages.

For many of us, the past 10 years passed unbelievably quickly and it seems as if Sept. 11 happened just yesterday. And yet, since then, so much about our day-to-day lives has changed. And much of that change accelerated at an incredible, never-before-seen rate during the latter half of the decade.

By way of perspective, consider this timeline:

- February 2004 — Facebook launched as student-only site
- April 2005 — Gmail launched in private beta
- June 2006 — Google Spreadsheets, Google's first non-email cloud product, launched
- July 2006 — Twitter launched
- August 2006 — Amazon EC2 cloud product released in private beta

• September 2006 — Facebook opened to the public. Its number of users increased from 12 million in Dec. '06 to 50 million in Oct. '07

- June 2007 — iPhone released in U.S.
- November 2007 — Kindle released in U.S.
- July 2008 — Apple launches the App Store
- April 2010 — iPad released in U.S.
- June 28 — Google+ launched in private beta and had more than 25 million users within 4 weeks

Over the last 7 years, technology has transformed our personal and professional lives. New, extremely profitable businesses exist that weren't even conceivable just 5 years ago. Think about it — the rate of change has been mind-boggling and unlike anything we've ever experienced.

Now, social media and smart phones are ubiquitous. Mobile

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By **NICOLE BLACK**

Daily Record
Columnist

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apps, a concept that didn't even exist until 3 years ago, will bring in more than \$15 billion in revenue this year. The first Kindle wasn't released until the end of 2007, but Amazon's eBook store will generate more than \$5 billion in revenue by the end of 2011 and 15 percent of Simon & Schuster's revenue comes from eBooks.

More than 30 million iPads have been sold in little over a year. National news broadcasts regularly include references to tweets and Facebook pages. News breaks on Twitter and Google's search engine tracks the flu more quickly and accurately than does the Center for Disease Control.

Finally, while it took radio 38 years to reach 50 millions users, television 13 years, and Facebook 3 1/2 years, it took Google+ just 4 weeks to reach 25 million users.

It is indisputable — change is occurring at an incredible rate and this exponential change is affecting every aspect of our lives.

The legal field is not exempt from this societal transformation and leaders in the legal field would be wise to acknowledge the level of change that is occurring, understand it, accept it and encourage lawyers to do the same.

Because ethics committees set the tone, it is therefore imperative that they lead the way by issuing thoughtful and carefully worded opinions that provide lawyers with much-needed guidance in navigating this new and ever-changing world. To do anything else would be a disservice to the profession.

Nicole Black is of counsel to Fiandach & Fiandach in Rochester. She co-authors the ABA book Social Media for Lawyers: the Next Frontier, co-authors Criminal Law in New York, a West-Thomson treatise, and is currently writing a book about cloud computing for lawyers that will be published by the ABA in early 2011. She is the founder of lawtechTalk.com and speaks regularly at conferences regarding the intersection of law and technology. She publishes four legal blogs and can be reached at nblack@nicoleblackesq.com.