



DELVACCA PRESENTS

**ATTORNEY PITFALLS WITH SOCIAL MEDIA AND E-MAIL:
ETHICS CONSIDERATIONS RAISED BY SOCIAL MEDIA AND
DANGERS TO THE ATTORNEY-CLIENT PRIVILEGE**

**AUGUST 9, 2012
THE UNION LEAGUE OF PHILADELPHIA**

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Attorney Pitfalls with Social Media and E-mail:

Ethics Considerations Raised by Social Media and
Dangers to the Attorney-Client Privilege



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Overview

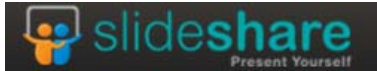
- 2012 In-House Counsel New Media Engagement Survey
- Social Media: Ethics Rules in Play
- The Digital Attorney-Client Privilege
 - Maintain the Privilege: in re Vioxx Revisited
 - E-mails Know no Borders but Privileges do
- Digital Means and Devices Create Variations of Old Themes
 - ABA Commission on Ethics 20/20
 - ABA Opinions on E-mails
 - Case Study: E-mails to Attorneys from Work

Social Media: Blogs, LinkedIn, Facebook,

....



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2012 In-House Counsel New Media Engagement Survey

- <http://www.insidecounsel.com/2012/01/25/social-media-use-among-in-house-lawyers-on-the-ups>

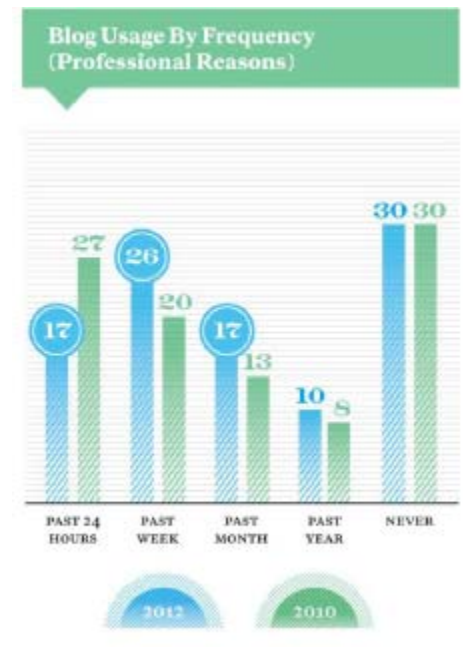
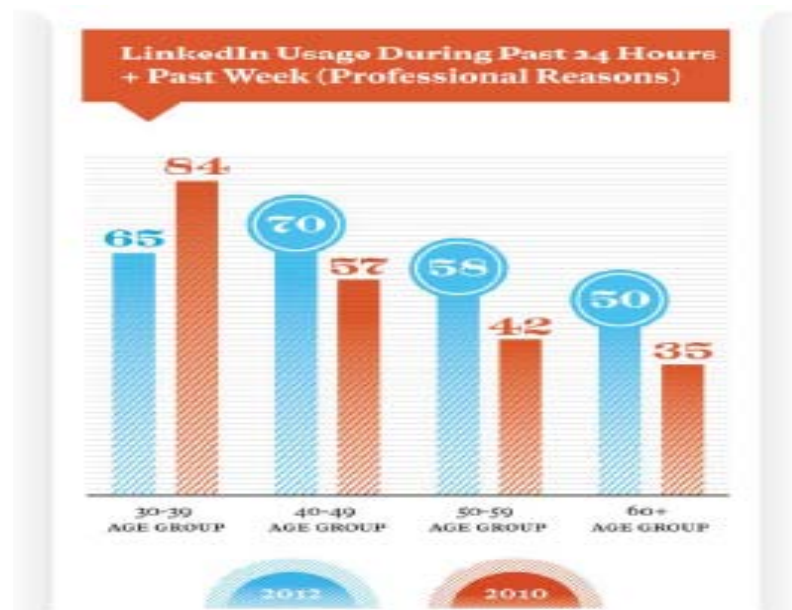


2012 In-House Counsel New Media Engagement Survey Cont'd

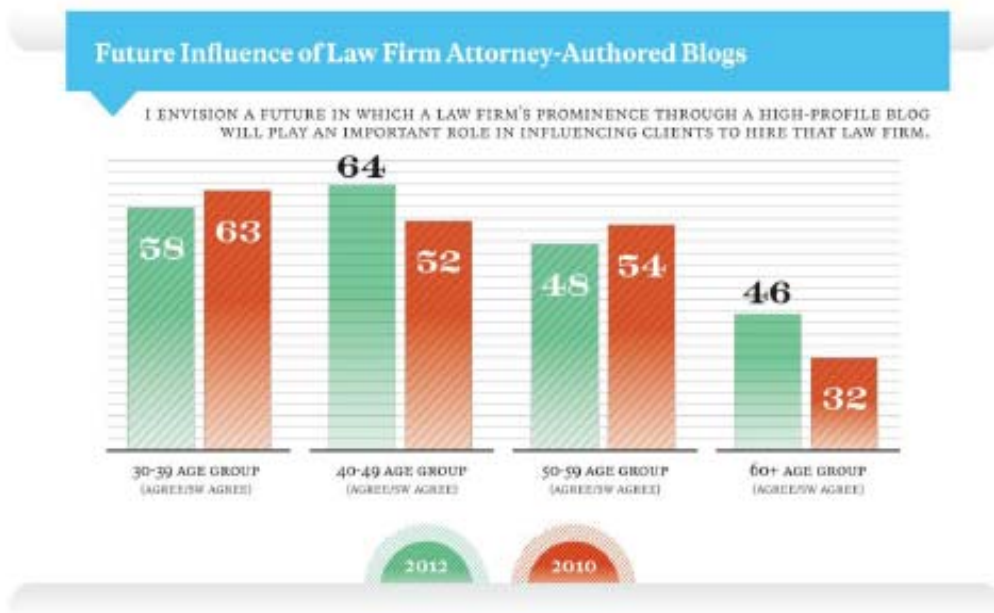
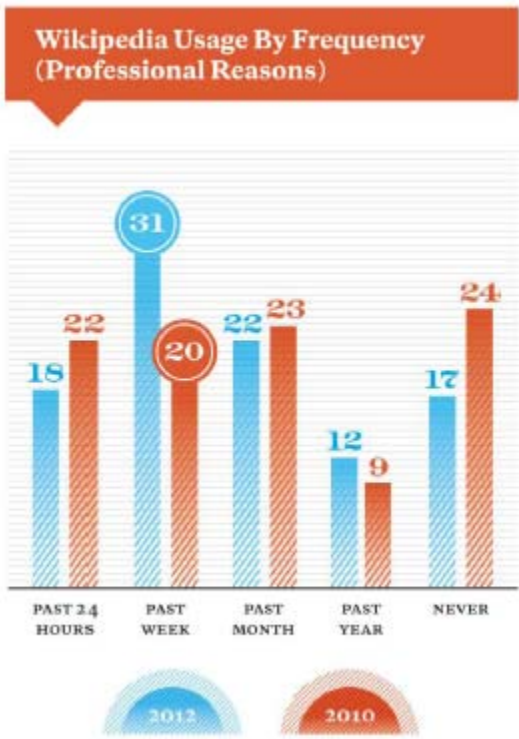
- media usage data from 334 GCs, chief legal officers, AGCs and other in-house counsel
- counsel in their 40s, 50s and 60s are consuming more content online than they did two years ago
- Blogosphere: interest in law firm blogs
- ranked LinkedIn as the most credible social network for professional use



2012 In-House Counsel New Media Engagement Survey Cont'd



2012 In-House Counsel New Media Engagement Survey Cont'd



2012 In-House Counsel New Media Engagement Survey Cont'd

- 'Invisible users': in-house lawyers rarely contribute to discussions on social channels, preferring to listen and consume social media as a filter for useful information.
- 34% of respondents said they are using social media platforms as a means of communicating with outside counsel, which is an increase from the 26% who reported doing so in 2010.

2012 In-House Counsel New Media Engagement Survey Cont'd

- Use of Social Media by attorneys, including in-house counsel, still increasing
 - Source of information
 - Career moves
 - Contacts with outside counsel (LinkedIn)
 - Generational gaps disappearing

2012 In-House Counsel New Media Engagement Survey Cont'd

- Use of online networks for in-house counsel: Consumer
 - online use to access content
 - cost-saving (exchange of information)
 - identifying outside counsel
- Use of online networks for outside counsel: Actor – Consumer
 - expand professional networks
 - manage their professional reputation online
 - pressures:
 - staying on the radar
 - peer review

Social Media: Ethics Rules in Play

- Duty of Confidentiality
- Fairness to Opposing Party and Counsel
- Truthfulness in Statements to Others
- Advertising Rules
- Competence
- Creation of Unintended Attorney-Client Relationships
- Conflicts
- Solicitation
- Bar Membership
- ...



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Social Media: Ethics Rules in Play Cont'd

- Some thoughts...

“#127409 [the client’s identification number] This stupid kid is taking the rap for his drug-dealing dirtbag of an older brother because ‘he’s no snitch.’ I managed to talk the prosecutor into deferred prosecution...”

Social Media: Ethics Rules in Play Cont'd

- ...with consequences
- Confidentiality
 - In re Peshek (III.):
 - assistant public defender, admitted in 1989
 - personal blog: 2007 – 2008
 - loss of job; disbarment requested but suspended for sixty days



Social Media: Ethics Rules in Play Cont'd



- Some more thoughts...
 - An associate working as temporary prosecutor wrote blog posts, where he called opposing counsel a 'chicken' for requesting a continuance
 - Jay Kuo (Cal.)
 - Reprimanded; resigned
 - A judge posted 80 anonymous comments on a newspaper's website
 - Judge Shirley Strickland Saffold (Ohio)

Social Media: Ethics Rules in Play Cont'd

- An IT-staffing firm filed suit against a former employee, a recruiter, for breach of noncompetition agreement
 - Allegation: employee violated agreement when she connected on LinkedIn with former potential recruits 
- Google Terms of Service
 - When you upload or submit content ...,you give Google ... a worldwide license to use, host, store, reproduce, ...communicate publish, ... and distribute such content.



Social Media: Ethics Rules in Play Cont'd

Truthfulness in Statements to Others

- Using pretext to obtain a person's information on a social networking website
- Philadelphia Bar Association Advisory Opinion 2009-2 (March 2009):
 - unethical to make a friend request to a third-party witness for the purpose of trying to discover what is on the witness' social-networking profile, without disclosing the affiliation and association



Social Media: Ethics Rules in Play Cont'd

- Advertising Rules

- Peer rating and recommendations are governed by the Rules of Professional Conduct

- Recommendations

- Some states permit testimonials under certain conditions. (Cal., Del., N.J., N.Y., Pa., Tex., ...)
- Some states prohibit any kind of testimonial reference (Ark., Fla., Ind., S.C., Wyo.)

Social Media: Ethics Rules in Play Cont'd

- Advertising Rules
- Pa., N.J., Del. Rule 7.1, 7.2, and 7.4;
 - Not false or misleading
 - Misleading if leads to unjustified expectations (results)
 - Prohibited to give impression of specialization unless principal part of the practice
 - Prohibited to be “specialist” unless patent attorney, admiralty or certified

Social Media: Ethics Rules in Play Cont'd

- South Carolina Advisory Opinion 09-10:



- Once an attorney 'claims' a profile (e.g. Avvo), he/she is responsible for all communications made at or through that listing

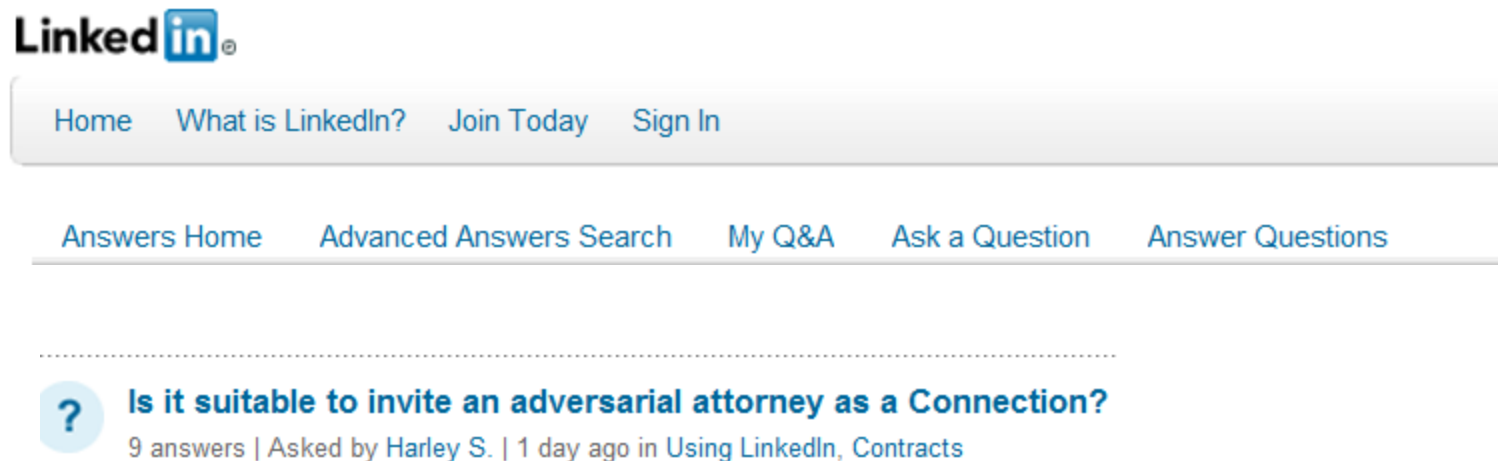
- 'Specialization'





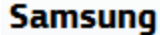
- LinkedIn provides for "specialties"
- provides for "answer" toolbar ratings (Q&A show "expertise")

Social Media: Ethics Rules in Play Cont'd

- ‘Specialization’
 - provides for “answer” toolbar ratings (Q&A show “expertise”)

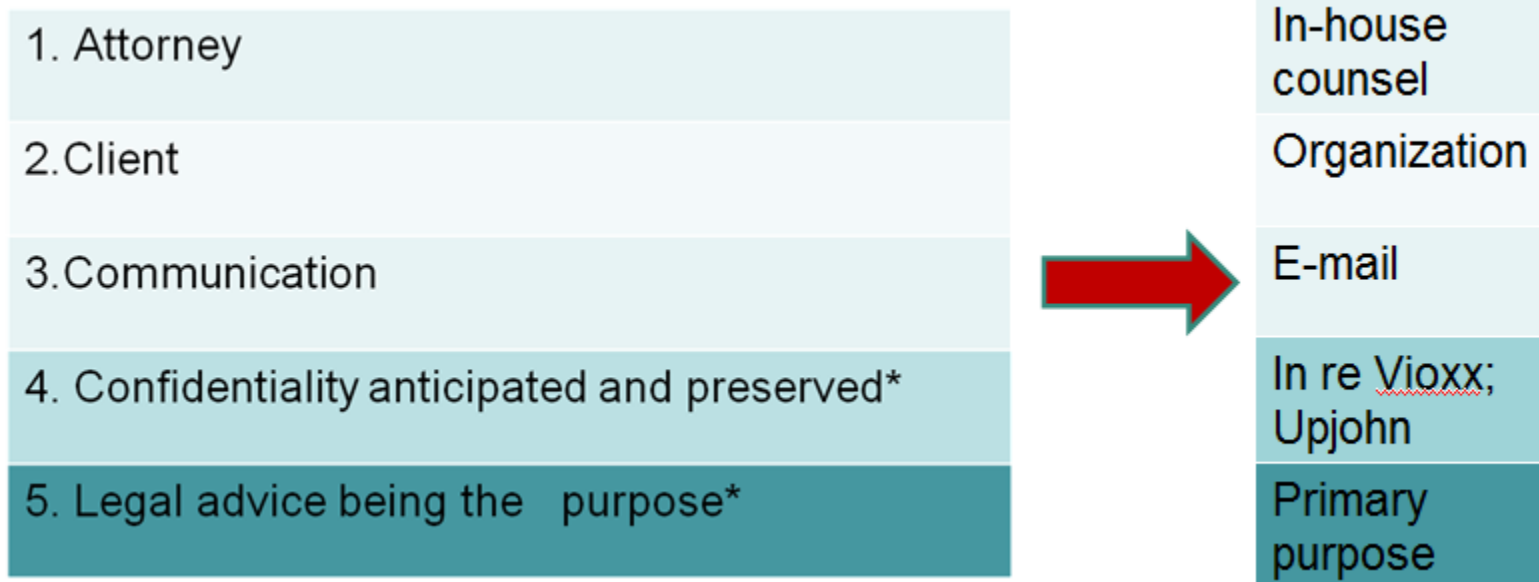


The Digital Attorney-Client Privilege

- The meaning of send “to,” “cc,” “bcc,” forward ...
- Personal liability may be based on a “cc” or “bcc”
- Maintain the privilege   
 - In-house counsel are often held to a higher standard because in-house counsel may perform non-legal business functions within the corporation

The Digital Attorney-Client Privilege Cont'd

- Maintain the privilege
- Elements of the attorney-client privilege



The Digital Attorney-Client Privilege Cont'd

- Maintain the privilege
- “Many courts have relied on two rebuttable presumptions (although often not stated expressly) regarding the role of the lawyer in determining the nature of the advice:
 - (1) if outside counsel is involved, the confidential communication is presumed to be a request for and the provision of ‘legal services’; and
 - (2) if in-house counsel is involved, the presumption is that the attorney’s input is more likely business than legal in nature. As a result ... these courts apply ‘heightened’ scrutiny to communications to and from in-house counsel in determining attorney-client privilege.”
 - Lindley v. Life Investors Ins. Co. of Am., 267 F.R.D. 382, 389 (N.D. Okla. 2010)

The Digital Attorney-Client Privilege Cont'd

- Maintain the privilege
- In resolving privilege disputes, courts are faced with the task of determining which hat in-house counsel was wearing in a communication
 - “[N]either is the answer to ‘What makes advice legal?’ a simple question of content ...” “What is clear is that the determination is fact-driven.”
 - Lindley, 267 F.R.D. at 390-391

The Digital Attorney-Client Privilege Cont'd

- Maintain the privilege
- In-house counsel, acting as the attorney for the corporation (legal advice), benefits from being 'old-fashioned' when using e-mail
- Formalities in attorney-client e-mail communications
 - In re Vioxx revisited
 - “inferences drawn from the pattern of e-mail distribution within the company”

The Digital Attorney-Client Privilege Cont'd

Field	Recipients	Inference
To	Lawyers and non lawyers	Not privileged
To CC	Non lawyers Lawyers	Mere cc does not attach privilege
To BCC	Non lawyers Lawyers	BCC may be privileged
To Forwarded	Non lawyers Lawyers	Not privileged Privileged if for legal advice and only the message to the lawyer (not the thread)
To CC	Lawyers Non lawyers	Privileged if non lawyers informed because need to know based on corp. responsibilities

The Digital Attorney-Client Privilege Cont'd

- Meaning of send “to,” “cc,” “bcc,” forward, ...; in re Vioxx; Upjohn

Attachments	To*	Editing tools	Inference
Attachment for edits	Both non lawyers and lawyers (disclosed)	Line-edits by lawyers	not privileged
Attachment for edits	Lawyers only	Line-edits by lawyers	privileged

The Digital Attorney-Client Privilege Cont'd

- Meaning of send “to,” “cc,” “bcc,” forward, ...; in re Vioxx; Upjohn

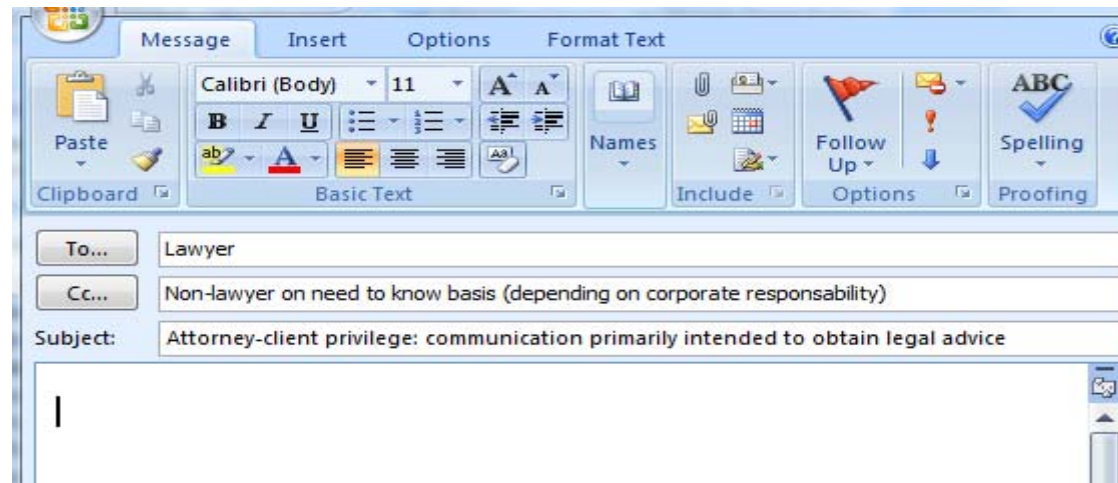
e-mail thread after interaction with lawyer	Sent by	Sent to	Inference
	Non lawyer	Non lawyer	loss of privilege unless legal advice is circulated within corporate structure to person who needed advice in order to fulfill corporate duties
	Lawyer	Relevant person with information	Remains privileged if for the purpose of getting more information in order to render legal advice

The Digital Attorney-Client Privilege Cont'd

- Meaning of send “to,” “cc,” “bcc,” forward, ...
 - “...exemplify ...the difficulty that courts ...face when ...assessing the application of privileges to corporate level documents that, on their face, often do not provide any clear indication that they were generated primarily for the purpose of obtaining legal advice.”
 - Craig v. Rite Aid Corp. No. 4: 08-CV-2317 2012 U.S. Dist. LEXIS 16418, at *14 (M.D. Pa. Feb. 9, 2012)
 - “...cannot insulate its files from discovery simply by sending a “cc” to its Solicitors.
 - Southersby Dev. Corp. v. Borough of Jefferson Hills No. 09-208 2011 U.S. Dist. LEXIS 131048, at *4 (W.D. Pa. Sept. 13, 2011)
 - “The absence of ‘privileged’ or ‘confidential’ markings ... is not dispositive but it is relevant to a privilege analysis.”
 - In re Processed Egg Products Antitrust Litigation, 278 F.R.D. 112, 120 n.9 (E.D. Pa. 2011)

The Digital Attorney-Client Privilege Cont'd

- Maintain the privilege
 - employees/executives should *only* mention lawyers in the “to”-field;
 - the intent to obtain legal advice is best expressed in a “to” message



The Digital Attorney-Client Privilege Cont'd

- Maintain the privilege
- diminish the risk of recipients “forwarding” legal advice to third-parties
 - legal advice in a memo, a pdf. document, with all the traditional marks of confidential attorney-client advice
 - issue phrased as a legal issue
 - advice = legal advice (not just a status report)
 - signature or identification of the capacity of attorney
 - titles
 - caution in the cover message



The Digital Attorney-Client Privilege Cont'd

- E-mails Know no Borders but Privileges Do
 - US courts apply the privilege to both outside and inside counsel
 - Some foreign jurisdictions apply the privilege only to outside counsel
 - E.g. E.U., France, Belgium, Switzerland

The Digital Attorney-Client Privilege Cont'd

- E-mails Know no Borders but Privileges Do
 - when communicating with non-US jurisdictions, in-house counsel communications may be considered unprivileged
 - when a company produces these communications in such a jurisdiction, privilege may be considered waived in the US
 - make clear that only produced because it is compelled and no intention to waive the applicable privilege

The Digital Attorney-Client Privilege Cont'd

- E-mails Know no Borders but Privileges Do
- In re Vitamin Antitrust Litigation
 - Misc. No. 99-197(TFH), MDL No. 1285, 2002 U.S. Dist. LEXIS 26490, at *105, *115 (D.C.C. Jan. 23, 2002)
 - “disclosure must be made in response to a court order or subpoena or the demand of a government authority backed by sanctions for noncompliance, and that any available privilege or protection must be asserted”
 - “it is not enough that, had [the corporations] not responded, the [European Commission] might then have made demands which, if flaunted would have subjected defendants to penalties or other adverse consequences.”

Digital Means and Devices Create Variations of Old Themes

- ABA Commission on Ethics 20/20
- ABA Opinions on E-mail
- Case study: employees “reasonable expectation of privacy” when writing an attorney while using employer’s devices, servers, e-mail, internet, ...

Digital Means and Devices Create Variations of Old Themes Cont'd

- ABA Commission on Ethics 20/20
 - 3 year study - how globalization and technology are transforming the practice of law and how the regulation of lawyers should be updated
 - No revolutionary changes to ABA Model Rules
 - Clarifications to existing ABA Model Rules
 - Website to help lawyers address evolving ethical issues relating to technology

Digital Means and Devices Create Variations of Old Themes Cont'd

- ABA Commission on Ethics 20/20
 - Proposals relate to
 - Duty to protect confidential information
 - Model Rule 1.6(a)
 - Duty of competence
 - Model Rule 1.1
 - Duty to third parties; inadvertent disclosure
 - Model Rule 4.4(b)
 - Advertising
 - Lawyer's mobility; practice pending admission

Digital Means and Devices Create Variations of Old Themes Cont'd

- ABA Commission on Ethics 20/20

Protect confidences in a digital age

- New paragraph (c) in Model Rule 1.6 that would make clear that a lawyer has an ethical duty to take *reasonable measures* to protect a client's confidential information from inadvertent disclosure, unauthorized disclosure, and unauthorized access, regardless of the medium used.

Digital Means and Devices Create Variations of Old Themes Cont'd

- ABA Commission on Ethics 20/20

Protect confidences in a digital age

- Lawyers cannot guarantee electronic security
- Take reasonable precautions
 - » Factors
 - » Cost of the safeguards
 - » Sensitivity of the information
- ABA will create a website with guidance

Digital Means and Devices Create Variations of Old Themes Cont'd

- ABA Commission on Ethics 20/20

Remain competent

- Would make explicit that a lawyer's duty of competence includes understanding technology's benefits and risks
- lawyer should be aware of technology because it is part of lawyer's *general ethical duty to remain competent in a digital age*

Digital Means and Devices Create Variations of Old Themes Cont'd

- ABA Commission on Ethics 20/20

Respect for Rights of Third Persons

- Model Rule 4.4.(b) A lawyer who receives a document relating to the representation of the lawyer's client and knows or reasonably should know that the document was inadvertently sent shall promptly notify the sender.
- Proposes to define the phrase "inadvertently sent":
 - When the notification obligation arises, including when receiving metadata that was inadvertently sent

Digital Means and Devices Create Variations of Old Themes Cont'd

- ABA Commission on Ethics 20/20
 - Model Rule 4.4.(b) Inadvertent Disclosure
 - Would add language:
 - electronically stored information can trigger the obligation
 - Some cases have dealt with Model Rule 4.4(b) on inadvertent disclosure when deleted documents on an employee's company computer were retrieved by the employer and used by the employer's attorney

Digital Means and Devices Create Variations of Old Themes Cont'd

- ABA Opinions
 - ABA Opinion 99-413 (1999), Protecting the Confidentiality of Unencrypted E-mail
 - ABA Formal Opinion 11-459 on the Duty to Protect the Confidentiality of E-mail Communications with One's Client (2011)
- Case study: an employee's "reasonable expectation of privacy when using employer's devices, servers, e-mail, internet

Digital Means and Devices Create Variations of Old Themes Cont'd

ABA Opinion 99-413 (1999), Protecting the Confidentiality of Unencrypted E-mail

- A lawyer may transmit information relating to the representation of a client by unencrypted e-mail sent over the Internet without violating Rule 1.6(a) because the mode of transmission affords a *reasonable expectation of privacy* from a technological and legal standpoint.
- Cautioned lawyers to consult their clients and follow instructions as to mode of transmission of highly sensitive information.

ABA Formal Opinion 11-459 (2011) Duty to Protect the Confidentiality of E-mail Communications with One's Client

- A lawyer sending or receiving substantive communications with a client via e-mail, text messages, or other electronic means must warn the client about the risk of sending or receiving electronic communications using a computer or other device, or e-mail account, where there is *significant risk* that a *third party* may gain access.
 - Employer's computer, e-mail, devices
 - Unsecured computers or public computers
 - Computers available to others

Digital Means and Devices Create Variations of Old Themes Cont'd

Privilege attached

Nat. Eco. Research Ass., Inc. v. Evans

(Super. Ct. Mass. 2006)

Stengart v. Loving Care Agency

(Sup.Ct. N.J. 2010)

Sims v. Lakeside Sch.

(W.D. Wash. 2007)

No privilege attached or waived

Kaufman v. SunGard

(D.N.J. 2006)

Long v. Marubeni America Corp.

(S.D.N.Y. 2006)

Sims v. Lakeside Sch.

(W.D. Wash. 2007)

Scott v. Beth Israel Medical Center

(N.Y. Sup. Ct. 2007)

Holmes v. Petrovich

(Cal. Ct. App. 2011)

45

Digital Means and Devices Create Variations of Old Themes Cont'd

- Case study: E-mails from client to attorney at work



1. Attorney
2. Client
3. Communication
4. Confidentiality anticipated and preserved*
5. Legal advice being the purpose*

Digital Means and Devices Create Variations of Old Themes Cont'd

- Case study: E-mails from client to attorney at work

	Stengart v. Loving Care	Holmes v. Petrovich
Facts	<ul style="list-style-type: none">•E-mails to lawyer•company-issued laptop•Through personal, web-based e-mail account•Loving Care recovered files on the hard drive (expert)•Loving Care's attorney reviewed e-mails and used them.	<ul style="list-style-type: none">•E-mail to attorney•from company computer, using a private password•deleting the e-mails once sent

Digital Means and Devices Create Variations of Old Themes Cont'd

- Case study: E-mails from client to attorney at work

	Stengart v. Loving Care
Employer Policy	"The company reserves and will exercise the right to review, ..., access ... all matters on the company's media systems and services at any time..." "E-mail..., internet use and communication...are considered part of the company's business... Such communications are not to be considered private..." "The principal use of electronic mail is for company business... Occasional personal use is permitted;..."

Digital Means and Devices Create Variations of Old Themes Cont'd

- Case study: E-mails from client to attorney at work

	Holmes v. Petrovich
Employer Policy	company's technology resources should be used only for company business and employees were prohibited from sending or receiving personal e-mail; "E-mail is not private communication because others may be able to read or access the message. E-mail may be best regarded as a postcard rather than a sealed letter."; the company "may inspect all files or messages ... at any time for any reason at its discretion."

Digital Means and Devices Create Variations of Old Themes Cont'd

- Case study: E-mails from client to attorney at work

Holmes v. Petrovich

Holmes's belief that her e-mails would be private was unreasonable because she was warned that the company would monitor e-mail and because she was told she had no expectation of privacy in any messages sent via the company computer. When, with knowledge of the monitoring policy, Holmes used a company computer to e-mail her attorney, Holmes in effect knowingly disclosed this information to a third party, the company.

Digital Means and Devices Create Variations of Old Themes Cont'd

- Case study: E-mails from client to attorney at work

Stengart v. Loving Care

- The Court's analysis drew on two principal areas
- adequacy of the notice provided and
- important public policy concerns raised by the attorney-client privilege

- law of search and seizure did not apply - only private conduct
- pointed to common law tort of "intrusion"
- a subjective and an objective component
- whether an employee has a reasonable expectation of privacy in work setting must be addressed on a case-by-case basis.

Digital Means and Devices Create Variations of Old Themes Cont'd

- Case study: E-mails from client to attorney at work

Stengart v. Loving Care

The Court found:

- policy was not clear
- did not address personal e-mail accounts
- employees did not have express notice that e-mail on personal e-mail account were subject to monitoring
- employees were not warned that such e-mails could be retrieved
- personal use of e-mail was permitted

Digital Means and Devices Create Variations of Old Themes Cont'd

- Case study: E-mails from client to attorney at work

Stengart v. Loving Care

- Stengart took steps to protect the privacy of the e-mails and that she had a subjective expectation of privacy.
- In addition, in light of the language of the policy and the attorney-client nature of the communications, the court found that her expectation of privacy was objectively reasonable.

Digital Means and Devices Create Variations of Old Themes Cont'd

- Case study: E-mails from client to attorney at work

Stengart v. Loving Care	Holmes v. Petrovich
rejected the employer's argument that Stengart had brought a third person into the conversation--watching over her shoulder.	"...This was akin to consulting her attorney in one of defendants' conference rooms, in a loud voice, with the door open, yet unreasonably expecting that the conversation overheard by Petrovich would be privileged."

Digital Means and Devices Create Variations of Old Themes Cont'd

- Case study: E-mails from client to attorney at work

Stengart v. Loving Care

“Because of the important public policy concerns underlying that attorney – client privilege, even a ... policy that banned all personal computer use and provided unambiguous notice that an employer could retrieve and read an employee's att-cli communications, if accessed on a personal, password-protected e-mail account using the company's computer system...would not be enforceable.”

Digital Means and Devices Create Variations of Old Themes Cont'd

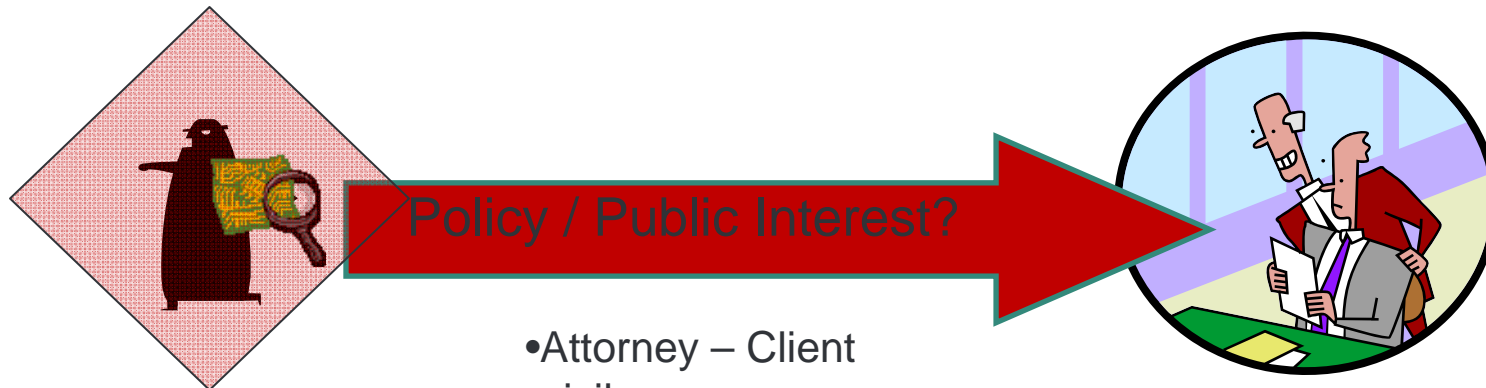
- Nat. Eco. Research Ass. v. Evans
 - Super. Ct. Mass. 2006
- Employee used yahoo e-mail to write attorney while using a work computer; not warned of 'screen shots'; Evans deleted all files and ran a disk fragmenter before returning laptop.
- "The personal use of e-mail, the internet and telephones should be kept to a minimum ... All computer resources are the property of the Company. To the extent permitted by law ..., the Company may, from time to time and at its discretion, review any information sent or stored using these resources. Be aware that e-mails are not confidential and the Company may read them during routine checks."
"NERA does permit the use of Internet resources ... for personal use provided such use results in personal time savings that can be (at least partially) applied toward work."

Digital Means and Devices Create Variations of Old Themes Cont'd

- Drafting an Employer's policy
 - Provide clear notice
 - Complete ban of personal use
 - All technology, devices, systems are the property of the employer
 - No expectation of privacy
 - Regular compliance checks
 - Regular reminders

Digital Means and Devices Create Variations of Old Themes Cont'd

- Drafting an Employer's Policy



- Attorney – Client privilege
- Free speech
- Privacy

The End



Technology Access and Monitoring Policy

The Company provides and maintains various technological systems, including telephone and voicemail access, computer hardware and software, an e-mail system, and internet access to conduct Company business and to assist you in the performance of your job. By logging into or using any of these networks and/or systems, you acknowledge that you are using Company property for business purposes, that the Company has a right to monitor and prevent access to any aspect of the networks and/or systems you are using, and that you agree to abide by all policies and procedures respecting the use of these resources.

This policy covers all emails (and their attachments) sent or forwarded through the Company's email system, and any material viewed, obtained for used from email or internet service provided by the Company.

Employees should not expect any privacy in anything they receive, send, or store on the Company's email system, or any information they view, print, or save from the internet. The Company may monitor messages and internet usage without prior notice.

Internet and Email Policy

Voice mail, email, and Internet usage assigned to an employee's computer or telephone extensions are solely for the purpose of conducting Company business. Some job responsibilities at the Company require access to the Internet and the use of software in addition to the Microsoft Office suite of products. Only people appropriately authorized, for Company purposes, may use the Internet or access additional software.

Software Access Procedure

Software needed, in addition to the Microsoft Office suite of products, must be authorized by your supervisor and downloaded by the IT department. If you need access to software, not currently on the Company network, talk with your supervisor and consult with the IT department.

Internet Usage

Internet use, on Company time, is authorized to conduct Company business only. Internet use brings the possibility of breaches to the security of confidential Company information. Internet use also creates the possibility of contamination to our system via viruses or spyware. Spyware allows unauthorized people, outside the Company, potential access to Company passwords and other confidential information.

Removing such programs from the Company network requires IT staff to invest time and attention that is better devoted to progress. For this reason, and to assure the use of work time appropriately for work, we ask staff members to limit Internet use.

Additionally, under no circumstances may Company computers or other electronic equipment be used to obtain, view, or reach any pornographic, or otherwise immoral, unethical, or non-business-related Internet sites. Doing so can lead to disciplinary action up to and including termination of employment.

Email Usage at Company

Email is also to be used for Company business only. Company confidential information must not be shared outside of the Company, without authorization, at any time. You are also not to conduct personal business using the Company computer or email.

Please keep this in mind, also, as you consider forwarding non-business emails to associates, family or friends. Non-business related emails waste company time and attention.

Viewing pornography, or sending pornographic jokes or stories via email, is considered sexual harassment and will be addressed according to our sexual harassment policy.

Emails That Discriminate

Any emails that discriminate against employees by virtue of any protected classification including race, gender, nationality, religion, and so forth, will be dealt with according to the harassment policy.

These emails are prohibited at the Company. Sending or forwarding non-business emails will result in disciplinary action that may lead to employment termination.

Company Owns Employee Email

Keep in mind that the Company owns any communication sent via email or that is stored on company equipment. Management and other authorized staff have the right to access any material in your email or

on your computer at any time. Please do not consider your electronic communication, storage or access to be private if it is created or stored at work.

ELECTRONIC DATA SYSTEMS POLICY

The Company maintains a voice-mail system and an electronic- mail (E-mail) system to assist in the conduct of business within the Company. These systems, including the equipment and the data stored in the system, are and remain at all times the property of the Company. As such, all messages created, sent, received or stored in the system are and remain the property of the Company.

Messages should be limited to the conduct of business at the Company. Voice-mail and electronic-mail may not be used for the conduct of personal business.

The Company reserves the right to retrieve and review any message composed, sent or received. Please note that even when a message is deleted or erased, it is still possible to recreate the message; therefore, ultimate privacy of messages cannot be ensured to anyone. While voice-mail and electronic- mail may accommodate the use of passwords for security, confidentiality cannot be guaranteed. Messages may be reviewed by someone other than the intended recipient. Moreover, all passwords must be made known to the Company. The reason for this is simple: your system may need to be accessed by the Company when you are absent.

Messages may not contain content that may reasonably be considered offensive or disruptive to any employee. Offensive content would include, but would not be limited to, sexual comments or images, racial slurs, gender-specific comments or any comments that would offend someone on the basis of his or her age, sexual orientation, religious or political beliefs, national origin, or disability.

Employees learning of any misuse of the voice-mail or electronic-mail system or violations of this policy shall notify the Director of Human Resources immediately.

ABA Business Law Section sample company policy on e-mail and Internet usage

Company computers, computer files, the e-mail system, Internet access and the software furnished to employees are company property and are to be used for company business only, and not for personal use to communicate with friends or family or to access the Internet for personal purposes. (or: While use of the computer, e-mail and Internet is intended for job-related activities, incidental and occasional brief personal use is permitted within reasonable limits, so long as it does not interfere with the employee's work.)

The company specifically prohibits the use of computers (including Internet access) and the e-mail system in ways that are disruptive, offensive to others or harmful to morale, including sexually explicit messages, images and cartoons, ethnic slurs, racial comments, off-color jokes or anything that could be construed as harassment or shows disrespect for others, defames or slanders others, or otherwise harms another person or business.

Employees may not access the Internet to log onto any Web sites that contain any such material, including any pornographic Web site, or any Web site that contains any discriminatory message, or disparages any group. Employees may not use computers or the e-mail system for commercial messages of any kind or for messages of a religious or political nature, chain letters, solicitations, gambling or other inappropriate usage. E-mail and Internet access should be used in such a way that all transmissions, whether internal or external, are accurate, appropriate, ethical and lawful.

Illegal duplication of software or violation of copyright laws by the duplication or sharing of software, or the distribution of copyrighted material, is strictly forbidden. Also, an employee should not use a password, access a file or retrieve a stored communication that is not normally accessible to that employee.

In order to enforce these policies, computer, Internet and e-mail usage may be monitored by the company, including retrieving and reading e-mail messages and other computer files, and monitoring of Internet traffic. Therefore, e-mail messages and other use of the company's computers is *not confidential*, and even though you may be issued a private password or other private access code to log in to the computer, you should have *no expectation of privacy* with regard to your use of the system.

Employees should immediately notify their supervisor or manager of any violations of this policy. Employees who violate this policy will be subject to disciplinary action, up to and including termination of employment.

Brian M. Jones, Assistant Vice President and Senior Corporate Counsel

Brian is Assistant Vice President and Senior Corporate Counsel at Global Indemnity Group, which has headquarters for its domestic operations in Bala Cynwyd, Pennsylvania and its foreign operations in Ireland. He joined the predecessor companies of Global Indemnity in 1999. Brian works with various units of both the domestic and international companies within the group, including executive, finance, human resources, information technology, operations, reinsurance, underwriting, and marketing, as well as directly with unaffiliated third parties on contractual, insurance, intellectual property, reinsurance, and other transactional matters. He also represents the companies in arbitration, litigation, mediation and settlement proceedings.

Brian received a Bachelor of Arts Degree in History from the Pennsylvania State University and his Juris Doctor from Villanova University School of Law. He is admitted to practice law in Pennsylvania and New Jersey and is a member of various legal organizations, including the Pennsylvania Bar Association, Montgomery Bar Association, and DELVACCA. Brian currently co-chairs DELVACCA's Contracts and Commercial Law Committee.

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Chris Day concentrates his practice in complex litigation. Prior to joining the firm, he was instrumental in obtaining the largest jury verdict in Pennsylvania history, \$352,000,000. Chris acted as co-counsel representing a mortgage warehousing lender against various defendants, including a large regional bank. Since joining the firm, Chris has continued his success in obtaining substantial jury verdicts and settlements and in effectively defending claims on behalf of our clients.

Chris has a history of success representing companies, banks, trustees, health insurers, and individuals in complex commercial disputes, including contract disputes, shareholder oppression claims, international trade disputes, lender liability claims, reinsurance claims and policy disputes, and various bankruptcy adversarial proceedings. Chris has been engaged as special litigation counsel by bankruptcy trustees to pursue fraudulent conveyance, tort and contract claims, and various avoidance actions on behalf of bankruptcy estates, and has managed litigation of national and regional product liability class action matters.

Experience

Commercial Litigation

- Successfully represented a mortgage warehousing lender against various defendants, including a large regional bank, for conversion of funds, leading to verdict of \$352,000,000.
- Successfully represented contractors in obtaining contractual payments and liens in excess of \$1,000,000 owed for extensive work performed in erection of local stadium.
- Successfully obtained verdict in excess of \$780,000 on behalf of Dutch company against multinational defendant on breach of international trade agreement.
- Successfully represented Fortune 100 American health insurance company in defense of pharmacy-related class action.
- Assisted in obtaining a decision in excess of \$2,000,000 upon a client's verbal employment agreement with a financial institution.
- Successfully represented minority shareholder of closely held company against majority shareholder in shareholder oppression matter, obtaining settlement value in excess of \$1,200,000.
- Represented national pharmaceutical wholesaler in various workouts and adversarial proceedings around the country.
- Retained by California bankruptcy trustee as special counsel to pursue estate assets of mortgage warehousing company against various lenders.
- Successfully defended national retail chain property owners, and individual property owners, in premises liability actions.
- Defeated jurisdiction challenge in shareholder oppression matter and successfully defeated majority shareholder's appeal before Pennsylvania Superior Court.

Practice Areas

Alternative Dispute Resolution/Arbitration and Mediation

Bankruptcy Litigation

Business, Commercial, and Contract Disputes

C3 | Complex Commercial Contract Litigation

Financial Services Litigation

Insurance

Insurance & Reinsurance

Insurance & Reinsurance Litigation

International Law

Litigation

Managed Care Litigation

Real Estate Litigation

Shareholder Litigation

- Represented regional bank in pursuing claims of fraud and misrepresentation against another lender stemming from pyramid and check kiting schemes of a mutual account holder.
- Successfully defended household-name Fortune 500 company against product liability claims.
- Represented lenders in mortgage foreclosure and workout matters.

Insurance & Reinsurance

- Assisted in evaluating a German insurer's loss exposure in an American casualty book of business.
- Assisted in providing analysis of insurance and reinsurance coverage issues and third party claim rights.

Education

- J.D., Temple University, 1995
Captain, *Jessup International Moot Court*
Winner, *Captain Robert Miller Knox Award for Outstanding Writing*
- B.A., English, LaSalle University, 1991

Professional / Civic Activities

- Member, Delaware Bar Association
- Member, Philadelphia Bar Association
- Member, Pennsylvania Bar Association
- Member, American Bar Association
- Past Member, Lawyer's Club of Philadelphia
- Past Member, Temple Inn of Court
- Arbitrator, Philadelphia Court of Common Pleas Mandatory Arbitration Program
- Member, Mackrell International Litigation Practice Group
- Member, Irish-American Chamber of Commerce
- Member, Italy-America Chamber of Commerce

Bar / Court Admissions

- Commonwealth of Pennsylvania
- State of New Jersey
- State of Delaware
- U.S. District Court for the Eastern District of Pennsylvania
- U.S. District Court for the District of New Jersey
- U.S. District Court for the District of Delaware
- U.S. Court of Appeals, 3rd Circuit

Publications / Presentations

- Presenter, "Attorney Pitfalls with Social Media and E-mail: Ethics Considerations Raised by Social Media and Dangers to the Attorney-Client Privilege," DELVACCA Seminar, August 2012.
- "Health Plans' Commercial Uncertainties Persist After Supreme Court's Decision Upholding the Affordable Care Act's Constitutionality," *Communiqué*, August 2012.
- "The Expert Witness," presented at MCP Hahnemann University, June 1999



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Karolien M. Vandenberghe divides her time between the firm's International Law and Insurance & Reinsurance Practice Groups.

Karolien has earned J.D. and LL.M. degrees from the University of Pennsylvania, an LL.M. degree from the University of Stellenbosch, a J.D. (equivalent) degree from the University of Antwerp, and the Candidate in Law degree from the Facultés Universitaires Notre-Dame de la Paix.

Practice Areas

Export, Import, Trade and Customs

International Law

Insurance & Reinsurance Litigation

Insurance & Reinsurance Regulatory and
Transaction Practice

At the University of Pennsylvania, Karolien was a Research Assistant to Professor Tom Baker. She assisted Professor Baker on the project *Principles of the Law of Liability Insurance* for the American Law Institute.

As a member of the Brussels Bar, Karolien practiced in Belgium from 2000 to 2008. During this time, she litigated before commercial courts, courts of first instance, and courts of appeal, and she advised clients on commercial contracts, distribution law, insolvency law, and private international law. She published on contract law, civil procedure, and commercial law, and she contributed to international memberships, such as DIRO, Insolvency Conference, and Legalink.

Karolien has regularly performed pro bono work. As an attorney in Belgium, she litigated pro bono cases in immigration law, political asylum law, family law (including urgent measures), and property law (including judicial expertise). At the University of Pennsylvania, Karolien's pro bono activities included work for International Medical Relief of Children and Penn Law International Human Rights Advocates.

Karolien is fluent in Dutch, English, and French. She is proficient in German, and she has a working knowledge of Afrikaans.

Education

- J.D., University of Pennsylvania, Philadelphia, Pennsylvania (2011)
- LL.M., University of Pennsylvania, Philadelphia, Pennsylvania (2009)
- LL.M. (Public Law), University of Stellenbosch, Stellenbosch, South Africa (2000)
- J.D. (equivalent), University of Antwerp, Antwerp, Belgium (1998)
cum laude
- Candidate in Law, Facultés Universitaires Notre-Dame de la Paix, Namur, Belgium (1994)

Languages

- Dutch (fluent)
- English (fluent)
- French (fluent)
- German (proficient)
- Afrikaans (fair)

Professional / Civic Activities

- Member, Women's International Trade Association
- Alternate Delegate, International Business Law Consortium
- Member, ARIAS U.S.
- Member, German-American Chamber of Commerce
- Member, Italy-America Chamber of Commerce
- Member, International Human Rights Advocates, Penn Law (September 2010 - May 2011)
- Member, International Medical Relief of Children (September 2009 – May 2010)
- Editor, *Res et Jura Immobilia*, Bruylant (2006 - 2008)
- Assistant to Juvenile Judge F. Raes, Field Study, Family Group Conferences (March 2000)

Bar / Court Admissions

- Commonwealth of Pennsylvania
- Brussels, Belgium

Publications / Presentations

- Presenter, "Attorney Pitfalls with Social Media and E-mail: Ethics Considerations Raised by Social Media and Dangers to the Attorney-Client Privilege," DELVACCA Seminar, August 2012.
- "Cosmetic Sets Return to the Essentials. The Court of International Trade Rejects Customs' Prior Rulings on Retail Sets in Reusable Containers. *Estée Lauder, Inc. v. United States*, No. 07-00217 (Ct. Int'l Trade, Jan. 3, 2012)," *Communiqué*, April 2012.
- "Three Bilateral Free Trade Agreements: U.S. – Colombia Trade Promotion Agreement, U.S. – Panama Trade Promotion Agreement, and the U.S. – Korea Free Trade Agreement," *Communiqué*, December 2011.
- *Judicial Appointment of an Expert*, For Example (Bij Voorbeeld), Kluwer, September 2008 (with J. Lambers).
- *Attorney-Client Contract*, For Example (Bij Voorbeeld), Kluwer, March 2008 (with J. Lambers).
- *European Insolvency Regulation: Some Questions for the Main and Secondary Administrator*, Insolvency Conference Milan, May 2007.
- *International Commercial Agency Contract*, For Example (Bij Voorbeeld), Kluwer, March 2007 (with J. Lambers).
- *National Commercial Agency Contract*, For Example (Bij Voorbeeld), Kluwer, March 2007 (with J. Lambers).
- *European Insolvency Regulation: Four Years of Experience*, DIRO Conference, Barcelona, May 2006 (with N. Crama).
- *Discrimination in Belgian Labor Law*, Legalink Conference, Rome, November 2005.
- *The Judicial and Voluntary Appointment of an Expert*, Real Estate Compendium, Part V, Construction (Compendium Onroerend Goed, Deel V, Bouwrecht), Kluwer, 2004 (with J. Lambers and L. Verstaen).
- *Protection of Confidential Information and Trade Secrets in Labor Relations*, Legalink Conference, Vienna, May 2004.
- *Consumer Protection in the Acquis Communautaire*, PHARE Seminar Series, Brussels, November 2003.
- *Comparative Corporate Governance: The Belgian Experience*, Legalink, July 2003.
- *Liability of Corporate Directors*, Financial Statements and Balance Sheet (Jaarrekening en Balans), Kluwer, 2003.



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Practice Areas

Alternative Dispute Resolution/Arbitration
and Mediation

Environmental Litigation

Insurance

Insurance & Reinsurance

Insurance & Reinsurance Litigation

Insurance & Reinsurance Regulatory
and Transaction Practice

International Law

Litigation

Joe Donley is Partner-in-Charge of the Philadelphia office, Leader of the Insurance & Reinsurance Practice Group and a member of the firm's Executive Committee. Joe concentrates his practice in complex civil litigation with an emphasis in the areas of insurance and reinsurance litigation. He has extensive experience representing both foreign and domestic clients in a variety of insurance related matters, including regulatory matters and agency proceedings. He has successfully handled numerous major reinsurance arbitrations and has been retained by insurers to assist in coverage matters and to assist in the assessment of adequacy of reserves for major books of US Casualty Business, including toxic tort, construction defects, and general casualty. Joe earned his Juris Doctor degree from the University of Akron in 1976 and his Bachelor of Science degree in Law Enforcement and Corrections from Pennsylvania State University in 1973. Upon graduating law school, he was Law Clerk to the Chief Justice of the Pennsylvania Supreme Court before entering private practice in Philadelphia, Pennsylvania.

For several years, Joe has been named a *Pennsylvania Super Lawyer*, an honor bestowed upon the top five percent of Pennsylvania lawyers, designated as a "World's Leading Insurance and Reinsurance Lawyer" by Euromoney Legal Media Group, and also named in The International Who's Who of Insurance and Reinsurance Lawyers. He is a member of the International Law Committee of the Philadelphia Bar Association and the International Bar Association. Joe is Co-Chair of Mackrell International's Insurance Practice Group.

Education

- J.D., University of Akron, 1976
Editor-in-Chief, Akron Law Review, 1975-1976
- B.S., Pennsylvania State University, 1973

Professional / Civic Activities

- A founding partner of Kittredge, Donley, Elson, Fullem & Embick, LLP, formed in 1981
- Law Clerk to Hon. Benjamin R. Jones, Chief Justice, Pennsylvania Supreme Court, 1976-1977
- Served as Judge Pro Tempore in the Philadelphia County Court of Common Pleas, 1977
- Philadelphia, Pennsylvania and American Bar Associations
- Member, Philadelphia Association of Defense Counsel
- Fellow, International Society of Barristers
- Member, ARIAS U.S.
- Pennsylvania Super Lawyer
- Past President, Board of Trustees for The Wyndcroft School
- Member, Board of Directors for The Pottstown Symphony Orchestra, 2007-2010
- LMG's World Leading Insurance & Reinsurance Lawyer

- Co-Chair, Mackrell International's Insurance Practice Group
- Member, International Bar Association
- Member, International Law Committee of the Philadelphia Bar Association
- Member, Italy-America Chamber of Commerce
- "AV Preeminent" Peer Review Rated – Martindale-Hubbell

Bar / Court Admissions

- Commonwealth of Pennsylvania
- U.S. District Court for the Eastern District of Pennsylvania
- U.S. District Court for the Middle District of Pennsylvania
- U.S. District Court for the Western District of Pennsylvania
- U.S. District Court for Colorado
- U.S. Court of Appeals, 3rd Circuit
- U.S. Supreme Court
- U.S. Court of International Trade

Publications / Presentations

- "Additional Insureds, Indemnification Agreements, and Certificates of Insurance. Are You Really Covered?," *Communiqué*, May 2012.
- Speaker, Reinsurance Association of America's Re Basics Conference, "Demystifying Reinsurance: A Basics of Reinsurance Course," Chicago, May 2011.
- Speaker, Reinsurance Association of America's Current Issues Forum, "Risks and Opportunities in the New Run-Off World," Philadelphia, May 2010.
- Author, "Insurance: The Return to the Fundamentals of Risk Management," *ATL Insurance Law 2010: Top Lawyers on Trends and Key Strategies for the Upcoming Year*, February 2010.
- Co-Author, "Hugging the Shore: Can North American Insurers Compete in the Global Market?" *Canadian Insurance Business Magazine*, December 2009.
- "Best Practices to Avoid Bad Faith Claims," *Minimizing Insurance Liability*, January 2009.
- "The Globalization of the Insurance Industry," Mealey's Litigation Conference, Philadelphia, December 2008.
- "Tropical Storm Allison, The Perfect Energy Storm, Village Green Apartments," presented at the Aegis National Claims Conference, October 2006.
- "New Asbestos Documentation Requirements for Centuries Old Cedent – A Cedent's Viewpoint," presented at the Mealey's Reinsurance Summit: Industry Challenges and Solutions Conference 2002, November 18 and 19, 2002.
- "Insurance Coverage for Environmental Claims," presented at the National Business Institute Seminar of Current Issues in Pennsylvania Environmental Law, April 1999.
- "Discovery of Reinsurance Information Remains Unresolved in Most Jurisdictions," Mealey's Litigation Report: Reinsurance, October 15, 1997.
- "Privileges and Other Considerations Regarding the Production of Documents and Things (Pa.R.C.P. 4009; Fed.R.C.P.34)," presented at the Pennsylvania Bar Institute Seminar in Philadelphia, September 1995 and August 1996.
- "Taking Depositions: Current Issues and Practical Considerations," Pennsylvania Bar Institute Seminar, Philadelphia, September 1995, August 1996.
- "Gwaltney: Where Do Citizen Suits Go Now?," Pennsylvania Bar Institute Seminars in Philadelphia and Pittsburgh, July 1988.
- Note, 8, *Akron Law Review* 171, 1974.
- "Guidelines for Drafting Municipal Noise Control Ordinances"
- "Discovery of Reinsurance — Information Remains Unresolved in Most Jurisdictions"



KEVIN P. ALLEN

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Mr. Allen, the Leader of the firm's Commercial & Corporate Litigation Practice Group, joined Thorp Reed & Armstrong, LLP in 1995 and became a partner in 2002. He concentrates his practice on commercial litigation, with an emphasis on contractual disputes and business torts, and on First Amendment and defamation disputes. Mr. Allen has lectured and published articles on topics within these practice areas. He is also the author of the book *The Attorney-Client Privilege and the Work-Product Doctrine in Pennsylvania* (PBI Press 2012), now in its third edition.

He also appears frequently before federal and state courts in Western Pennsylvania, and is a member of the bar of the United States Supreme Court, the United States Court of Appeals for the Federal Circuit, the United States Court of Appeals for the Third Circuit, and the State of West Virginia. In addition to his bench and jury trial experience, Mr. Allen has argued appellate cases before the Third Circuit, the Federal Circuit, and Pennsylvania's Supreme, Superior, and Commonwealth Courts.

Practice Areas

Alternative Dispute Resolution/Arbitration and Mediation
Attorney-Client Privilege
Business, Commercial, and Contract Disputes
Defamation, First Amendment, and Media Easements
E-Discovery and Records Management Litigation
Manufacturing & Distribution
Media
Railroads
Real Estate Litigation
Shareholder Litigation
Trade Secret and Non-Compete Litigation
Zoning

Experience

Commercial Litigation

- Represented Pittsburgh-based manufacturer in injunction proceedings where court blocked competitor's \$58 million acquisition of manufacturer's distributor. The Pennsylvania Superior Court affirmed the preliminary injunction. *York Group v. Yorktowne Caskets, Inc.*, 924 A.2d. 1234 (Pa. Super. Ct. 2007).
- Represented Pittsburgh-based paint manufacturer in three-week federal trial involving multi-million dollar claims of breach of contract, defamation and breach of covenant not to compete. Court declared the manufacturer the "prevailing party" and awarded more than \$900,000 for reimbursement of attorneys' fees and costs. *PPG Industries, Inc. v. Zurawin*, C.A. No. 95-2078 (W.D. Pa.). The United States Court of Appeals for the Third Circuit affirmed, 52 Fed. Appx. 570, 2002 WL 31289285 (3d Cir. 2002).
- Obtained, from the Allegheny County Court of Common Pleas, summary judgment and a damage award of more than \$4,600,000 on behalf of an industrial corporation deprived of contractually-guaranteed royalty payments.
- Represented major investor in professional hockey team during adversary bankruptcy claims of team's creditors against investor. *In re Pittsburgh Hockey Associates*, No. 98-21874BM (Bankr. W.D. Pa.).
- Represented leading life insurance company in numerous federal and state actions involving claims of fraudulent sales practices.
- Represented defendant in precedent-setting case establishing that no right to a jury trial exists under Pennsylvania's Consumer Protection Law. See *Ihnat v. Povar*, 26 PLW 979 (2003).
- Represented investors in claim against partnership and managing partner for improper acquisition of partnership assets, specifically two multi-million dollar apartment complexes in Arlington, Virginia.

Defamation-First Amendment

- Represents both plaintiffs and defendants in defamation actions and also advises subjects of and publishers of alleged defamatory statements regarding their rights and options concerning those statements.
- Represented publicly held corporation in a federal court action and appeal involving alleged defamatory statement by a senior executive of the corporation.
- Represented a plaintiff in a state court defamation action that drew national and international attention where defendants were a prominent media entity and an individual defendant.
- Represented a businessman in a dispute with a Pennsylvania newspaper over a series of articles concerning the businessman.
- Authored "The Oddity and Odyssey of 'Presumed Damages' in Defamation Actions Under Pennsylvania Law," which was published in 2004 in the *Duquesne Law Review*.

Securities and Shareholder Litigation

- Represented corporate officer and director in actions where minority shareholders claimed damages from officer's multi-million dollar sale of stock. See *Pitterich v. Styling Technology Corp.*, 148 P.L.J. 244 (2000) (dismissing claims based on defendant's alleged conduct as a corporate director or officer). Obtained, in a related proceeding, a complete defense verdict in a court-mandated federal arbitration where claimant sought in excess of one million dollars in damages from selling shareholder.
- Obtained summary dismissal of federal securities and RICO claims directed against former bank president.
- Represented corporate officer and director in action by debt security holder which alleged that officer/director abused office for personal gain. Obtained summary dismissal of action in federal court. The U.S. Court of Appeals for the Third Circuit affirmed that decision, holding that there are no fiduciary duties owed to debt security holders

Education

- J.D., University of Pittsburgh School of Law, 1995
- B.A., Yale University, 1992

Professional / Civic Activities

- Pittsburgh History and Landmarks Foundation, Board of Trustees
- Yale Alumni Club of Pittsburgh, Board of Governors

Bar / Court Admissions

- U.S. Supreme Court
- Commonwealth of Pennsylvania
- State of West Virginia
- U.S. Court of Appeals for the Federal Circuit
- U.S. Court of Appeals for the Third Circuit
- U.S. District Court for the Western District of Pennsylvania
- U.S. District Court for the Middle District of Pennsylvania
- U.S. District Court for the Southern District of West Virginia

Publications / Presentations

Attorney-Client Privilege

- "The Attorney-Client Privilege and Work-Product Doctrine in Pennsylvania," Third Edition (PBI Press 2012).
- "Pennsylvania Lawyers, You May Again Talk To Your Clients," *Communiqué*, February 2011.
- "Attorney-Client Privilege – Make Sure Your Lawyer Is A Lawyer," *Communiqué*, July 2010.
- "The Silent Treatment," *The Legal Intelligencer*, April 2010.
- Presenter, "Privilege & Waiver Issues in IP Opinion Practice and Litigation," PBI's Fourth Annual Intellectual Property Law Institute, April 2010.
- The Attorney-Client Privilege and the Work-Product Doctrine in Pennsylvania – A Desk Reference (PBI Press 2010).
- Presenter, "Attorney Client Privilege – Recent Developments," PBI Seminar, March 2010.

- "Does the Attorney-Client Privilege Protect In-House Counsel's Advice? Uncertainty Rules – *Nationwide v. Fleming*," Communiqué, January 2010.
- "Attorney-Client Privilege: While the Pennsylvania Supreme Court Remains Silent, the Eastern District Departs from the Pennsylvania Superior Court's *Fleming* Decision," Communiqué, April 2009.
- Speaker, "Understanding the Attorney-Client Privilege in Pennsylvania," DELVACCA seminar, September 2008.
- "In re Teleglobe: The Attorney-Client Privilege and In-House Counsel," Washington Legal Foundation, November 30, 2007.
- "White Collar Crime Policy on Legal Fee Payment Implicates Civil Liberties," Washington Legal Foundation, June 8, 2007.
- "The Attorney-Client Privilege and the 'Complete Lawyer': More than Mere Legal Advice," Law.Com, March 6, 2007.
- "Attorney-Client Privilege: Everyday Rules from a High-Profile Case," Law.com, October 3, 2006.
- "Inadvertent Disclosure? Act Fast or Risk Privilege Waiver," Law.com, October 3, 2007.
- "Privilege Waiver Regarding Opinion Counsel Doesn't Extend to Trial Counsel," Law.com, December 19, 2007.
- "Companies Can No Longer Expect to Rely on 'Selective Waiver'," Law.com, April 2, 2008.

Defamation – First Amendment

- "The Right to Remain Anonymous – Should Anonymous Speech Be Protected in the Age of the Internet," *The Pennsylvania Lawyer* magazine, July/August 2011 Issue.
- "The Oddity and Odyssey of 'Presumed Damages' in Defamation Actions Under Pennsylvania Law," *Duquesne Law Review*, Vol. 42, No. 3, Spring 2004.
- "Delimiting Defamation: Pennsylvania Supreme Court Protects Reputation From Freedom of Speech Defense," *The Philadelphia Lawyer*, Summer 2008.
- "Digital Defamation," a series of articles published on Law.com addressing defamation issues in the internet era.
- "Decisions Issued Favoring Reputation Protection Over Freedom Of Speech," *Lawyers Journal*, The Journal of the Allegheny County Bar Association, December 24, 2004.
- "Is the 9th Circuit Reining in the CDA?" Law.com, September 11, 2007.
- "Federal Law Protects Internet Companies from Blame for Content," Law.com, July 3, 2007.
- "Multiple Hits, Single Publication," Law.com, June 15, 2007.

Land Use and Eminent Domain

- "The Commonwealth Court of Pennsylvania Departs from *Kelo* – Taking of Property for Economic Purpose Invalid," Communiqué, April 2009.
- "Land Use: Michigan Decision Casts Doubt On Use Of Eminent Domain," *Construction Law News*, December 2004.
- "Pennsylvania Land Use: Current Issues in Subdivision, Annexation and Zoning Law," December 2002 and December 2003.
- "Real Estate Issues Impacting Public Utilities and Telecommunication Companies," May 2002.
- "The Commonwealth Court Limits the Use of Eminent Domain as a Redevelopment Tool," *Legal Intelligence*, April 9, 2001.

Miscellaneous

- "Tortious Interference with Contract: Walking or Crossing the Line Between Vigorous Competition and Unfair Business Conduct," CLE Seminar for Pittsburgh In-House Counsel presented by *The Legal Intelligence*, June 2012.
- Presenter, "Distribution Law and Litigation – The Distributor and Supplier Relationship," TRA Seminar, Philadelphia, October 2011.
- "Beware: Your Joint Defense Agreement Might Be Ineffective," *Communiqué*, September 2011.
- Presenter, "The Distributor and Supplier Relationship: Prenuptials, Vows, Counseling, and Divorce," Thorp Reed & Armstrong Seminar, Pittsburgh, April 2011.
- Presenter, "Tortious Interference with Contract: Walking or Crossing the Line Between Vigorous Competition & Unfair Business Conduct," Philadelphia Bar Institute 16th Annual Business Lawyers Institute, November 2010.
- Presenter, "Tortious Interference with Contract: Walking or Crossing the Line Between Vigorous Competition & Unfair Business Conduct," Thorp Reed & Armstrong seminar, Pittsburgh, October 2009 and Philadelphia, May 2010.

- "Using Heightened Federal Pleading Standards, Court Dismisses Tortious Interference with Contract Claim," *Communiqué*, December 2009.
- "Contractual Fee Shifting Clauses – How to Determine "Prevailing Party" Status," *Pennsylvania Bar Association Quarterly*, Vol. LXXIV, No. 4, October 2003.

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Wheeling

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Wilmington

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Suite 710
Wilmington, DE 19801
302 250 4750

Princeton

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Princeton, NJ 08540
609 844 7595

Thorp Reed & Armstrong, LLP is a premier regional law firm with offices located in Pittsburgh; Philadelphia; Wheeling, West Virginia; Wilmington, Delaware; and Princeton, New Jersey. Approximately 100 lawyers support a wide variety of clients' needs.

Since 1895, Thorp Reed attorneys have gained a reputation as lawyers who exemplify the profession's best practices, and lawyers who other lawyers turn to when they need counsel. Businesses, financial institutions, contractors, public and governmental entities, healthcare and not-for-profit organizations of all sizes, ranging from Fortune 500 companies to the middle market and entrepreneurs, rely on Thorp Reed for quality legal services.

Concentrating on corporate law, financial and real estate transactions, and litigation, Thorp Reed & Armstrong attorneys deliver expertise in multiple practice areas and industries. Our reputation is grounded in the highest ethical standards and strongest commitment to client service. In a world of increasing complexity, Thorp Reed provides confident and sure counsel. Our multidisciplinary approach means working hard and working smart on our clients' behalf to provide innovative and cost-effective solutions to legal problems in the following practice areas:

- Bankruptcy and Financial Restructuring
- Clean Technology
- Commercial & Real Estate Finance Transactions
- Construction
- Corporate and Business
- Employee Benefits and Executive Compensation
- Estates & Trusts
- Health Care
- Insurance & Reinsurance
- Intellectual Property
- International Law
- Labor & Employment
- Land Use, Environmental, and Energy
- Litigation
- Public Sector
- Public Finance
- Real Estate and Real Estate Development
- Title Insurance
- Transportation & Logistics
- White Collar Criminal Defense/Internal Investigation

Much has changed since our founders were preeminent figures in Pittsburgh, but the values that guided them remain our values today. At Thorp Reed we are proud to carry on a tradition of professional excellence, rigorous ethics, community involvement, and, above all, dedication to our clients. Visit our website at www.thorpreed.com for more information and resources that may assist you with your legal needs.

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The attorneys in Thorp Reed & Armstrong's growing Philadelphia office practice in diverse areas of the law, including: insurance and reinsurance, international trade, intellectual property and technology litigation, product liability, commercial and real estate finance, labor and employment, transportation and logistics, and corporate and civil litigation.

Devoted to its clients and servicing their needs in any jurisdiction that may be required, Thorp Reed & Armstrong has implemented its plan to expand its services throughout Pennsylvania and its neighboring states. In addition to full service offices in Philadelphia and Pittsburgh, Thorp Reed & Armstrong also has offices located in Princeton, New Jersey and Wheeling, West Virginia.

As a full service office of the firm, Thorp Reed & Armstrong's Philadelphia-based attorneys offer clients in Pennsylvania, New Jersey and throughout the Northeast corridor skilled, thorough and cost-efficient counsel – and access to over 30 areas of law.

Areas of Practice

- Antitrust and Trade Regulation
- Bankruptcy and Financial Restructuring
- Clean Technology
- Commercial and Real Estate Finance
- Commercial Arbitration
- Corporate and Business Law
- Customs and International Trade Law
- Environmental Law
- Franchising
- Health Care Law
- Insurance & Reinsurance Law
- Intellectual Property
- Intellectual Property - Biomedical Technology
- Intellectual Property - Licensing
- Intellectual Property - Software
- Intellectual Property - Trademark/Trade Dress
- International Arbitration
- International Law
- Labor and Employment Law
- Land Use Development and Regulatory Law
- Litigation
- Non-Competition Litigation
- Product Liability
- Public Finance
- Real Estate Law
- Real Estate Litigation
- Securities
- Strategic Transactions
- Technology-based Business
- Trade Secrets and Unfair Competition Litigation
- Transportation and Logistics
- White Collar Criminal Defense - Internal Investigations
- Wrongful Termination and Workplace Harassment