



TAMU Law Answers Webinar Series



Panelists:

Kelli Hinson, Partner and General Counsel, Carrington, Coleman

Milan Markovic, Professor, Texas A&M University School of Law

Janis Meyer, Of Counsel, Clyde & Co.

Susan Fortney (Moderator), Professor and Director, Program for the Advancement of Legal Ethics, Texas A&M University School of Law



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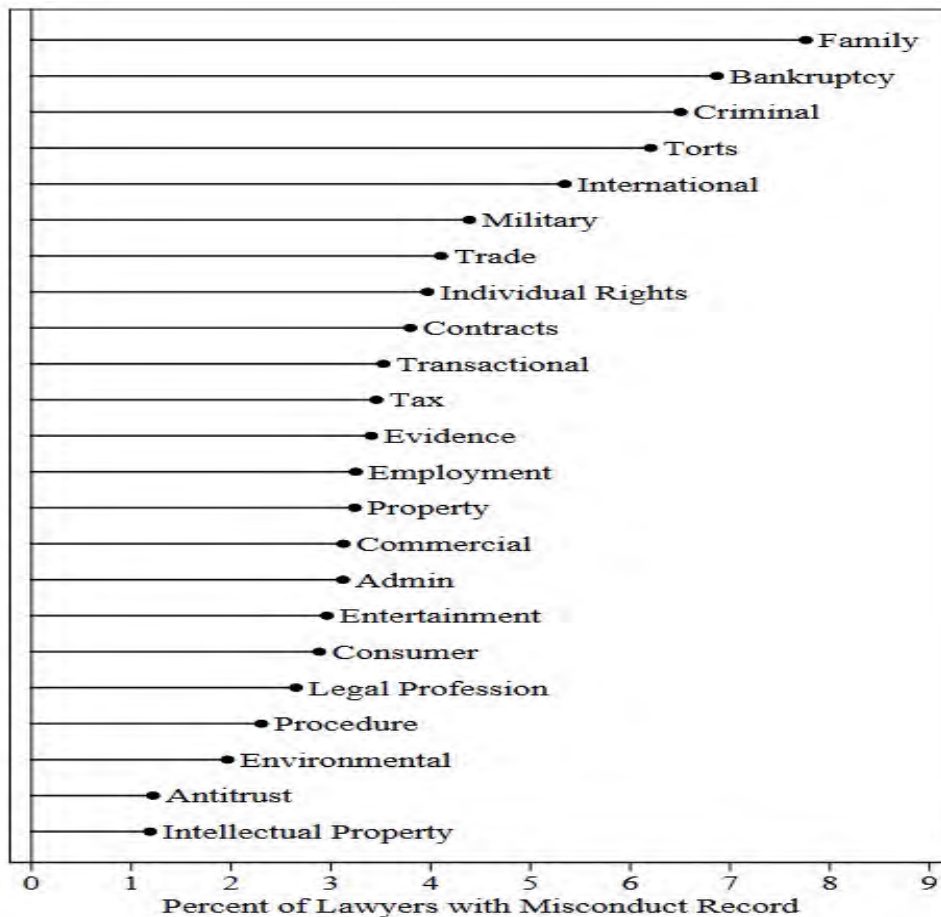
Attorney Discipline in the Covid-19 Era

Milan Markovic
Professor of Law
Texas A&M University School of Law



TEXAS A&M
UNIVERSITY.

What Do We Know About Attorney Discipline?

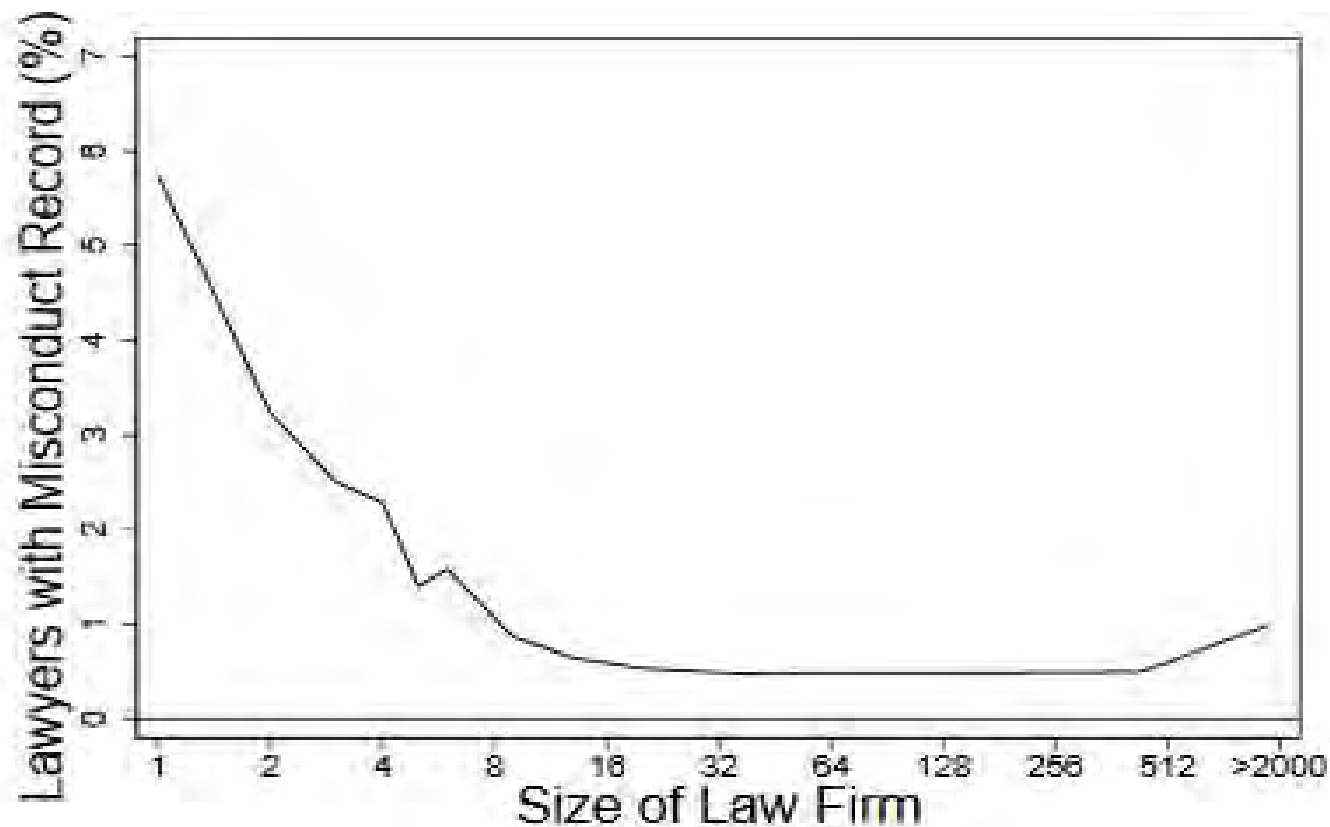


➤ Practice area matters.

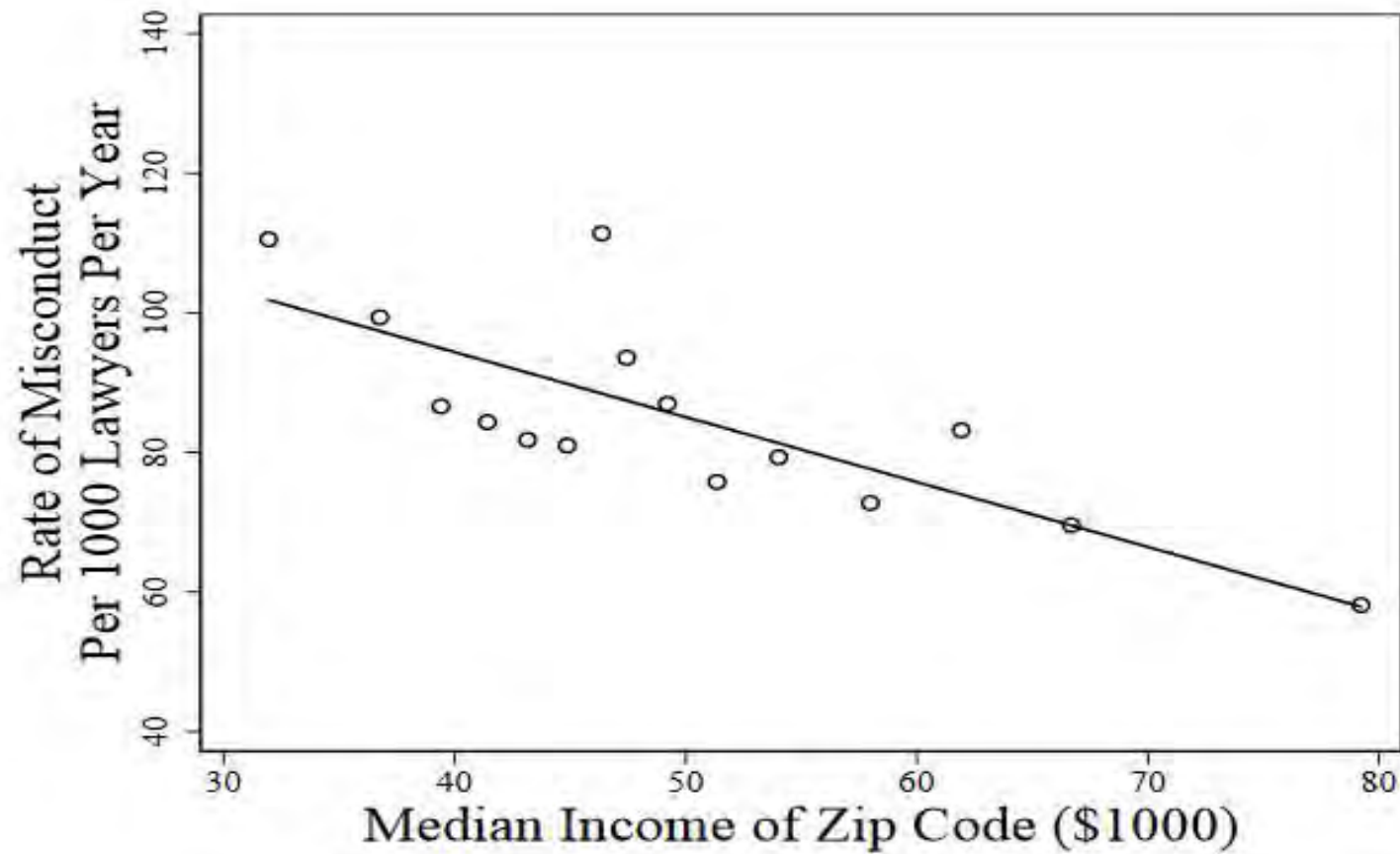


What Do We Know About Attorney Discipline?

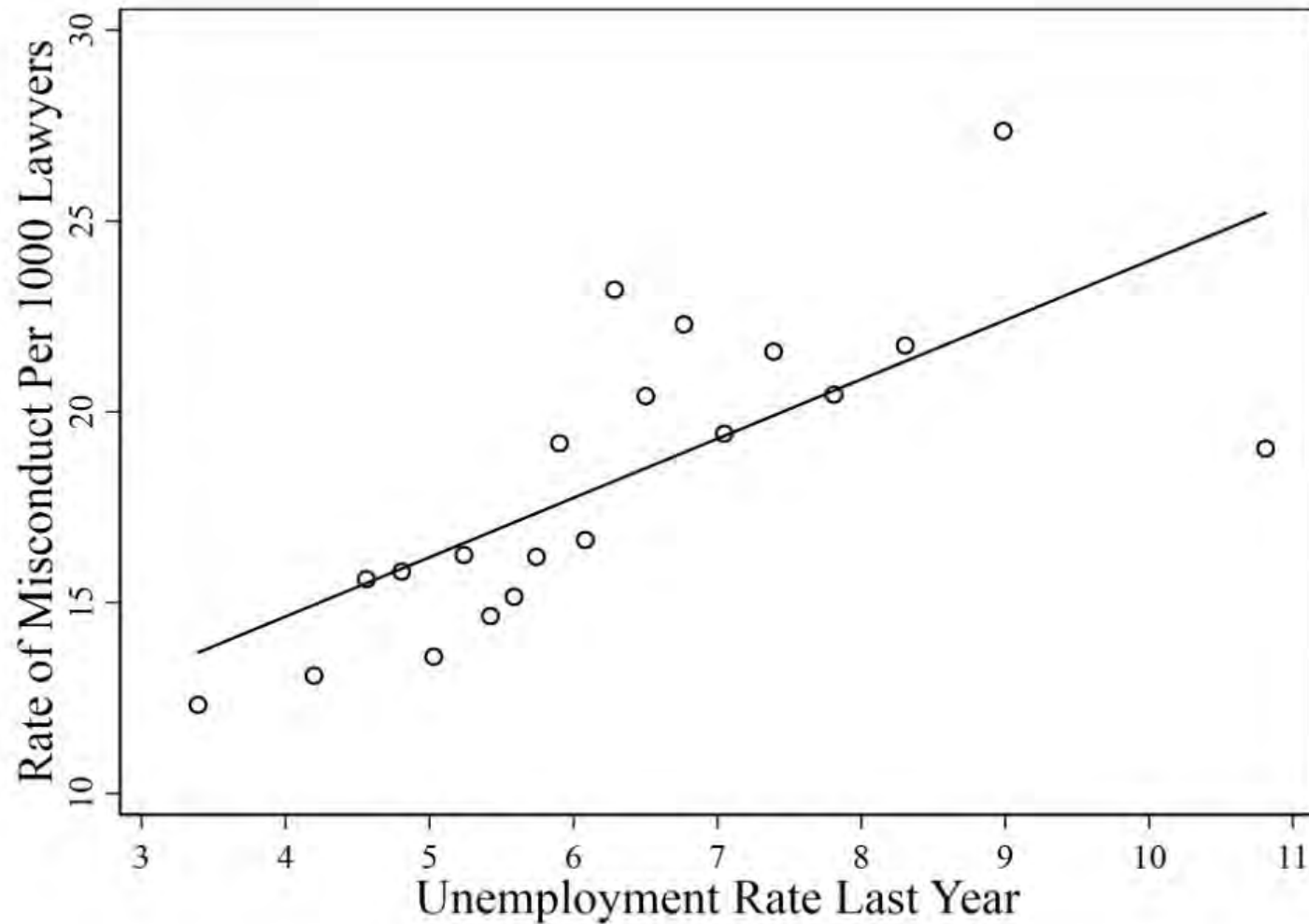
- Firm size is also a factor.



The Economy and Attorney Discipline

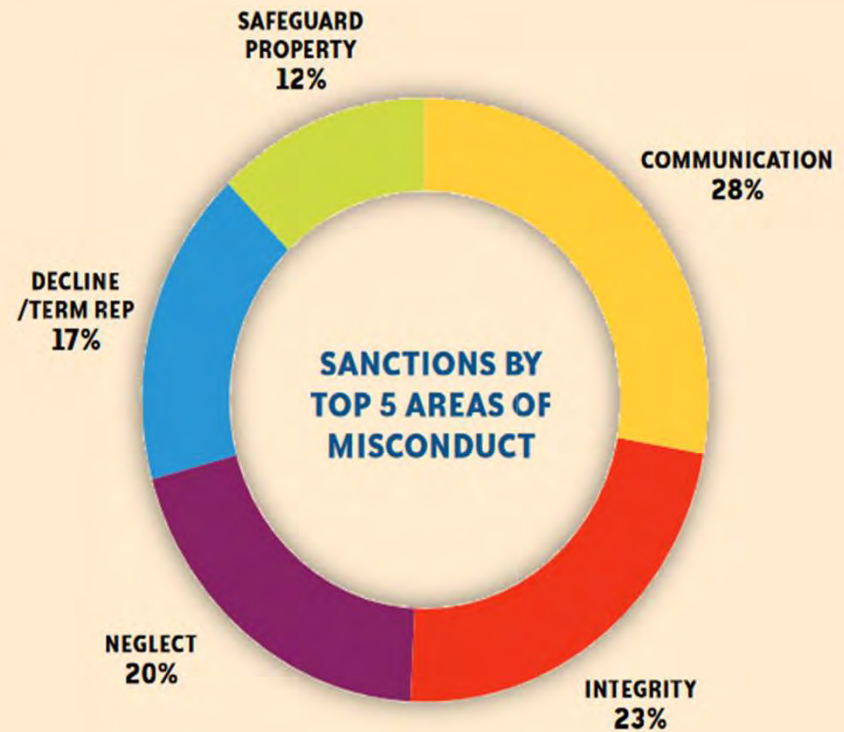
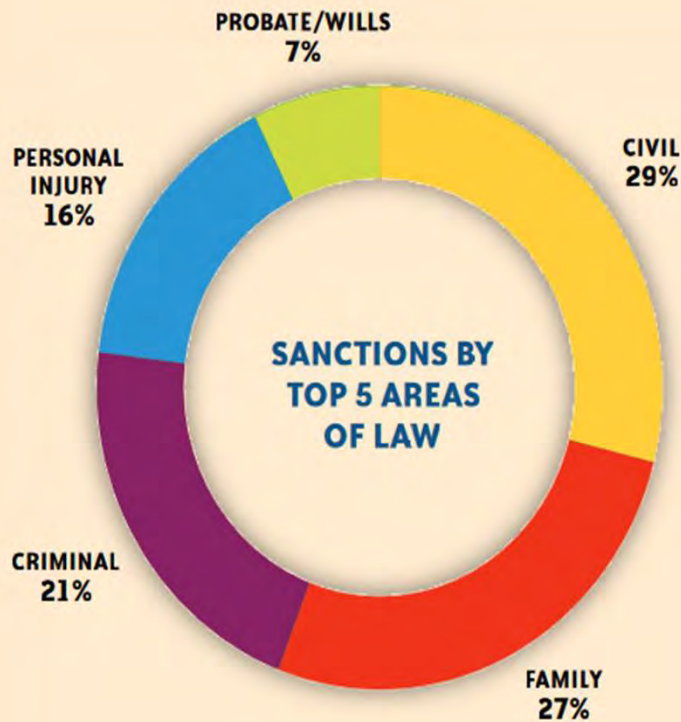


A Deteriorating Economy and Attorney Discipline



Texas Data

STATISTICAL DATA

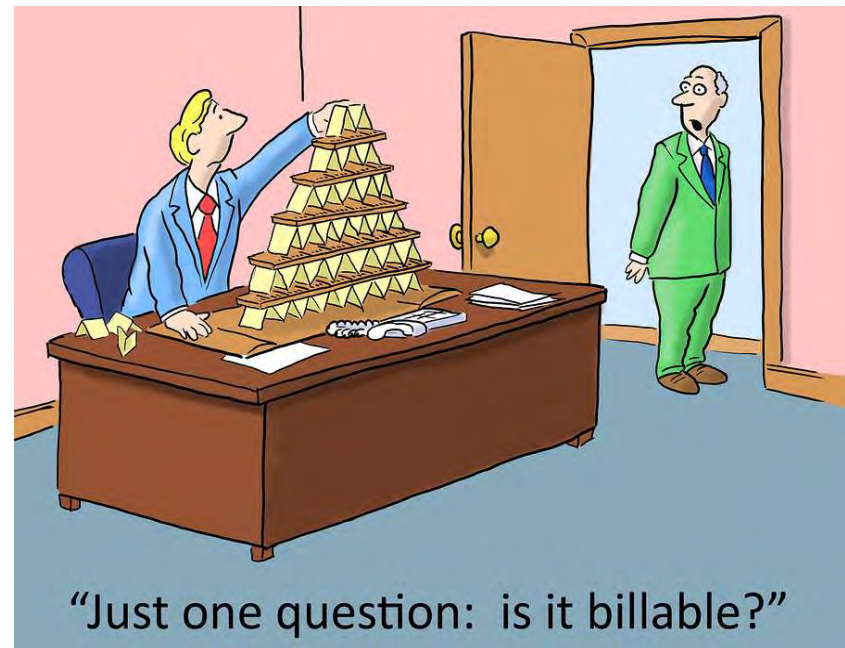


Pitfalls in the COVID Era: Dabbling

- Not just in novel areas (CARES Act) but taking on matters in new fields (e.g., family law, bankruptcy).
- Texas Rule 1.01 cmt 5: “A lawyer offered employment or employed in a matter beyond the lawyer’s competence generally must decline or withdraw from the employment or, with the prior informed consent of the client, associate a lawyer who is competent in the matter.”

Pitfalls in the Covid Era: Fees

- Under Texas Rule 1.04 cannot charge an illegal or unconscionable fee.
- Temptation to churn bills or pad hours?
- “Two factors in otherwise borderline cases might indicate a fee may be unconscionable. The first is over-reaching by a lawyer, particularly of a client who was unusually susceptible to such overreaching. The second is a failure of the lawyer to give at the outset a clear and accurate explanation of how a fee was to be calculated.”



Pitfalls in the Covid Era: Zoom

- Zoom is not a secure platform, and many corporate clients will not permit their lawyers to use it.
- If you must use Zoom, use the waiting room and password features.
- Does the client understand the risks of Zoom? Will he or she be recorded? Is Zoom effective for advising clients?



Pitfalls in the Covid Era: Supervision

- Tendency to delegate if overworked /stressed?
- All attorneys are responsible for their own conduct, but partners / supervisors can also be responsible for their subordinates' actions if they know of misconduct and fail to take remedial action.
- Supreme Court has issued an order allowing recent graduates to obtain supervised practice cards. Supervisors attest that they will “directly supervise.”
- Supervising attorney must sign filings, appear at hearings, provide final approval of legal instruments.

A large, three-dimensional sculpture of the company name 'CLYDE & CO' in a metallic, brushed steel finish. The letters are thick and blocky, standing on a light-colored, textured stone or marble ledge. The background is a wall of vertical grey panels. The lighting creates strong highlights and shadows, emphasizing the metallic texture and the three-dimensional nature of the letters.

CLYDE & Co

Remote Working and Beyond

Presented by:
Janis M. Meyer
Clyde & Co US LLP

Burdens on Lawyers Working Remotely

- **Professional responsibility obligations.**
- **Dealing with perhaps unfamiliar technology.**
- **“Human” issues.**
- **Managing Client Expectations – with respect to ongoing and new matters (and managing adversaries as well).**

What Are Our Professional Responsibility Obligations?

- **Rule 1.01 – Competence and Diligence (includes technological competence (cmt [8])).**
- **Rule 1.05 – Confidentiality.**
- **Rule 1.14 – Safeguarding Property.**
- **Rules 5.01-5.03 – Duties of Supervision.**

The Risk Management Implications of Using Technology When Serving Clients

- **Technology is constantly, relentlessly changing.**
- **Lawyers' comfort and mastery of technology vary widely.**
 - **Cannot presume any group of lawyers (young or old) is tech savvy.**
 - **Cannot presume risk management lawyers are tech savvy.**

What Does All This Mean?

As a lawyer, you need to understand the technology you are using – and the other obligations you have under the Rules

Confidentiality and security -

- **Make sure your network is secure.**
- **Use VPN (or Citrix).**
- **Ground rules for use of personal devices.**
- **Video conferencing platforms.**

Remote working

- **If you are out of the state, is this UPL?**
- **D.C. Committee on the Unauthorized Practice of Law 24-20, Teleworking from Home and the COVID-19 Pandemic.**
- **Working from home in these circumstances is “temporary” practice**

Emerging Malpractice and Risk Management Concerns

June 11, 2020

Kelli Hinson
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CARRINGTON COLEMAN

Smart in every sense of the word.

SLIDE 1

What Is Keeping Firm GCs Up at Night?



Malpractice Risks

- ▶ Clients under stress
 - ✓ Shifting the blame
 - ✓ Lawsuit as a source of income
 - ✓ Pushing the boundaries
- ▶ Lawyers under stress
 - ✓ Dabbling
 - ✓ Taking on sketchy clients
 - ✓ Client intake issues



Malpractice Risks

► Advice on evolving issues

- ✓ PPP loans
- ✓ Employee protection
- ✓ Contracts
- ✓ Insurance coverage



Malpractice Risks

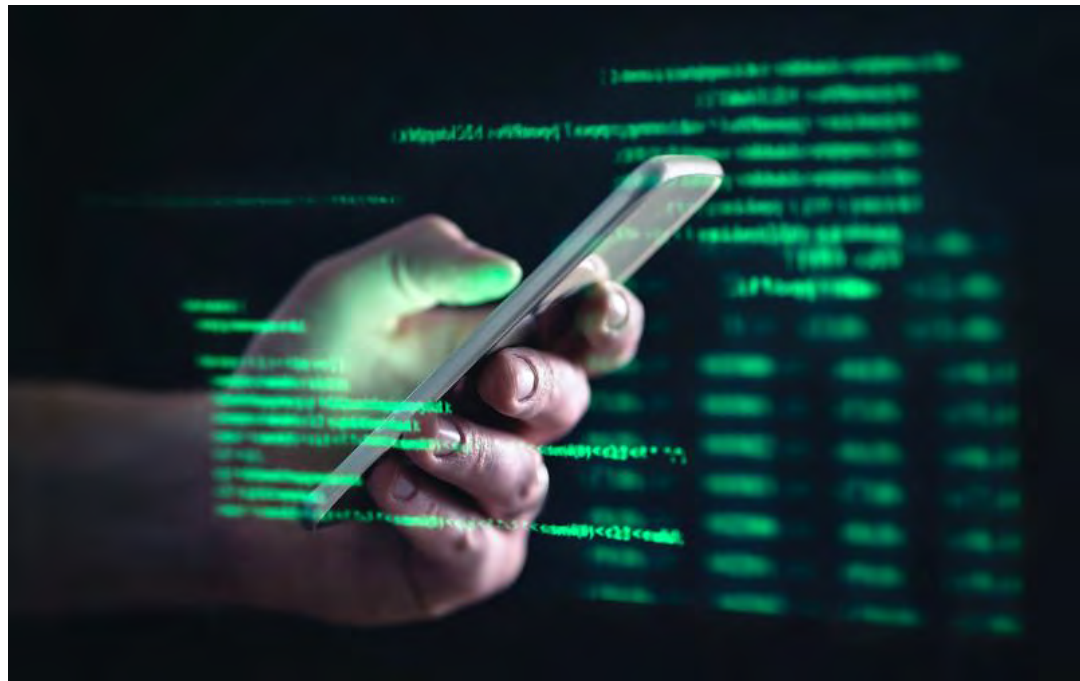
► Mistakes

- ✓ Deadlines
- ✓ Distractions
- ✓ Proof reading
- ✓ Difficulties in collaboration



Malpractice Risks

- ▶ Scams are on the rise




Malpractice Risks

▶ Unfortunate emails

- ✓ Disparaging your client, co-worker, or judge
- ✓ Claiming incompetence
- ✓ Falling on your sword
- ✓ “Humor”

▶ They’re privileged Right?




Send

To...

My Supervisor

Cc...


Bcc...

Subject


Oooooops!

Bob – I just realized I made a huge mistake on the Acme contract we sent out last night! If we can't figure out how to fix this, it will cost the company millions!

Sorry, Sally


 Send	To...	My Partner
	Cc...	
	Bcc...	
	Subject	Clients from hell!

Cathy – I just got a call from our clients, Bob and Doug. They are fighting again (of course!). Bob is such a jerk. I certainly hope Doug is able to get what's coming to him when they sell the company. We'll all have a "so long, Bob" party!!

 Send	To...	My Client
	Cc...	
	Bcc...	
	Subject	Judges are idiots


Clyde – I’m sorry to report that we lost the big motion today. As you know, we did a fantastic job. But we are dealing with a judge who’s an idiot! I’m not even sure he can read.

Ron|

 Send	To...	My Co-Worker
	Cc...	
	Bcc...	
Subject		Addition to the "Team"

Did you hear they added David to the trial team? What were they thinking? He knows nothing about anti-trust law and has never seen the inside of a courtroom! Are they just setting us up to fail?

Nigel|

 Send	To...	My Associate
	Cc...	
	Bcc...	
	Subject	New Project

Annie – I would like you to take the lead on the new TechCo matter. I know you have never done anything like this before, but all the “experts” are tied up on bigger matters, and this will be a great learning experience for you.

Don’t screw it up!

Sarah|



CLYDE&Co

Remote Working and Beyond

Presented by:
Janis M. Meyer
Clyde & Co US LLP

Returning to Work

It took a while to plan for remote working and it will take time to go back.

Despite lifting of restrictions firms are being cautious about return to work.

Why? Health issues, employment law issues, transportation issues, economic issues

So What Are We Returning To?

Ripped from the Headlines

**“Legal Work Has Plummeted and Lawyers are Stressed”,
Law 360, May 4, 2020 (new matters down 30%)**

**“Virus Smacks Legal Industry with 64,000 Jobs Lost in
April”, Law 360, May 8, 2020**

**“Law Firm Leasing Activity Craters as Industry Rethinks
its Real Estate Footprint”, New York Law Journal, May 20,
2020**

Not Your Father's Law Office

The office we go back to unlikely to be the same as the office we left

Accommodations for Covid-19 safety

Accommodations for changed economic landscape

Accommodations for changed perspective of employers/employees

Addressing Concerns

Ensuring health and safety

Addressing issues of illness, child care and other family situations

Monitoring employee health (a big change)

Resources

EEOC – Technical Assistance Q’s and A’s

CDC Guidance

Texas Executive Order

NYSBA – Guidance on Reopening Law Firms

Other State’s Guidance

What Are Law Firms Doing?

Short Term – Social Distancing and other Protections

Staggered returns

Staggered days of work in office

Staggered hours in office

Masks? Wipes? Enhanced Cleaning?

Taking temperatures?

What are Firms Doing? (cont'd)

Short Term

Change in office configurations

Social Distancing

Plastic guards around open desks

Enhanced emphasis on cleaning

One-way hallways

Bring your own lunch??

What are Firms Doing (cont'd)

Short term

Limit size of meetings

Revise employee handbooks – new laws, new procedures

Training – on social distancing, remote working for the long-term, hygiene

Procedures for vendors/guests

What are Firms Doing (cont'd)

Reconfiguring space with employee protection in mind, e.g., no “bullpens”, no open secretarial space, no collaboration spaces in hallways.

Upgrading of electronics to enable people to work from home more efficiently.

“Hoteling”?

Law Firms are Dealing with

Employee who doesn't want to return to office (fear, comfort)

Employee who insists on returning but employer would prefer he didn't (age, illness)

Employee with child care issues (schools are closed)

What to do about ...

Guests in office

Meetings

Business travel

Exposure

People who refuse to observe distancing (particularly where offender is someone in position of authority)

What Does This Mean?

Obligations to Clients

Have not changed. We still have

**Duties of competence, confidentiality, security,
supervision**

But

Differs in the “New” Normal

**Procedures we thought would be temporary are
becoming/will become a regular part of our work life**

Remote Working

Upgrading equipment and procedures

Make sure you understand the technology

Emphasis on cybersecurity

Remote Working (cont'd)

UPL issues – Probably okay for short-term but need to think of how to handle long-term remote working in another state

Tax issues

Supervision for the long term

Ethics/Risk Management Challenges

Returning to a world with business down and a high level of stress

“6 More Big-Law Firms Alter Summer Associate Programs”, Law 360, April 29, 2020

“Leaves, Layoffs Atop Employers’ Minds as COVID-19 Persists”, Law 360, April 27, 2020

“What GC’s Want from Outside Counsel as Virus Rages On”, Law 360, May 4, 2020

Challenges (cont'd)

Between downsizing and remote working, do you really need all that office space?

Do firms need bricks and mortar in all the jurisdictions they are in now?

So What Does the Future Look Like?

Changing Relationships

Between lawyers and clients

In the way services are delivered

Fee Models

Who delivers the services?

This did not start with the pandemic but has been accelerated exponentially

Issue: Can firms adapt quickly enough?

THANK YOU!!

CLYDE&Co

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440

Partners

2500

Legal
professionals

4000

Total staff

50+

Offices* worldwide

* Includes associated offices

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(1) Registered using their Texas Bar Card #,

AND

(2) Attended the entire **LIVE** webinar.

**Attendees wanting CLE credit for states other than
Texas may self-report to their state bar.**



**State Bar of Texas
MCLE Course Number:
174087582**

Attorneys who were unable to attend the live CLE webinar and have viewed the entire webinar may self-report their CLE hours for this webinar to their state bar.



TAMU Law Answers Webinar Series



**TEXAS A&M UNIVERSITY
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Tuesday, June 16, 12:00 noon - 1:00 p.m.

**Private Equity Firms and the Pandemic:
Key Players, Key Concerns, and Tough Decisions**

Tuesday, June 23, 3:00 - 4:00 p.m.

**Minority- and Women-Owned Business Enterprises and the Joint
Venture: Leveraging for More Opportunities & Bigger Engagements**

Thursday, June 25, 12:00 noon - 1:30 p.m. -- 1.5 CLE hours

**Immigrant Rights during the Pandemic:
Litigating Habeas Petitions for Detained Immigrants
Within the Fifth Circuit**

Wednesday, July 8, 12:00 noon - 1:00 p.m.

Commercial Tenant Considerations in the Age of COVID

Register at TAMULawAnswers.info

