Advisory: Ethical Considerations in Using Technology for Legal Services

Your immigration program may be reliant on various technologies to provide virtual legal services now more than ever. The pandemic starting in 2020 has forced many immigration legal programs to rethink their delivery models in order to continue to provide services virtually. This change has resulted in some interesting and positive outcomes for immigration programs and their clients, including: expanding legal services to hard-to-reach communities; organizations downsizing their office space to save on overhead cost; providing staff the flexibility to work remotely; and, lastly, providing clients the option to meet legal representatives when and where it is most convenient for them.

We anticipate these changes may become, or are already, permanent. Questions about technology needs, efficiencies and securities, and program policies will consistently be at the forefront of program directors and managers' minds.

There are many technology needs and choices to choose from when you are offering virtual legal services. This may include videoconferencing software, case management databases, messaging systems and chat rooms for staff communications, mobile lines, use of email and text to communicate with clients, online payment systems and electronic signature software.

Aside from coming up with a running list of technologies you need or want, an important factor legal practitioners need to consider when adopting any of these technologies is whether the technologies you are choosing meet your ethical obligations to your clients. You will need a good understanding of legal ethics to make that determination. Turning to ABA Rules of Professional Responsibility[1] and the INA and 8 CFR[2] on professional conduct will be helpful.

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[1] See americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/model_rules_of_professional_conduct_table_of_contents/

[2] See § 240(b)(6), § 274C and 8 CFR § 292.3, § 1003.101 to 1003.109

Here, we highlight some important ethical standards and recommendations to consider when choosing and using various types of technology as well as implementing sound policies and procedures to provide effective and efficient virtual legal services.

Maintaining Client Confidentiality:

- Data security is a serious ethical concern especially with remote work. Make sure you take reasonable effort to ensure technology used protects client data and that sensitive client information or documents are transferred in a secure way. This may involve installing basic cyber-security systems like anti-virus software, encryption, VPN, or virtual private networks, firewalls, etc. on your organizations computer system and having a secure server. Consider having an IT and data security audit annually.
- Ensure staff uses secure Wi-Fi connection. Free Wi-Fi, especially in public spaces such as libraries, coffee shops and airports, should never be used to perform client casework.
- Staff should never perform client casework where information is susceptible to disclosure by third parties, whether in the home or in public spaces.
- Update your policies and procedures manual to include information about protecting client data and the do's and don'ts about working remotely.
- Ensure staff is trained on updated policies and procedures. Consider having IT or an external consultant conduct cyber awareness trainings about data security.
- Shop around and do your research on the various technology vendors. See what they offer and ask the vendor to explain in detail how data is secured against industry standards.

Maintaining Client Communications:

- Ensure clients know how to reach their legal representative, especially when they are working remotely and when they should receive a call back or email (e.g. within 24 or 48 hours).
- It is an ethical obligation for legal representatives to keep clients informed of any changes with their case. This is particularly important when there are office closures or when staff work remotely and incoming mail is received by someone other than the legal representative. Clients may need additional reassurance that their cases will be handled competently and efficiently.
- Ensure clients understand and consent to the virtual nature of the service. Consider including language in your retainer agreement about what clients should expect and consent to when sharing or transmitting information over technology. Sensitive information should never be transmitted over public networks like social media or through means that could be accessed by an outside party.

- If your organization provides community presentations via social media or other channels open to the public, be sure to remind audience members that they should not share sensitive or personally identifiable information.
- When forming a new client relationship, you may want to insist on having video conference available for the initial consultation to enhance communication and to verify identity. Are there special instructions you want to give to clients to help make sure they feel comfortable communicating with you about their case? In order to maintain confidentiality, ensure clients are in a private space away from third parties, from being overheard or from eavesdropping.
- Understand the limitations of virtual platforms in effectively communicating with clients and building client relationships. You may have clients who do not want to communicate, or have a difficult time communicating, some or all of their information with you virtually or over the phone. If you are having significant communication difficulties with clients that are impeding effective work on their behalf you may need to have virtual clients come for in-person services.
- Electronic Payment Platforms like any piece of technology ensures that your staff has adequate training. As a general practice, do not save any client payment information. If the payment platform does charge a fee per transaction make sure that your clients understand there will be an additional fee. You may also want to consider adding fees into your budget or overall fee schedule.

Maintaining Competency and Diligence in Representation:

- Ensure there is adequate supervision and oversight of remote staff. Supervision and staff meetings should be scheduled with regularity over video-conferencing or conference calls. It's too easy to lose track of what everyone is doing when no one sees each other.
- Make sure that you invest in a case management system that allows for case tracking/a tickler system and online case notes for ease of remote supervision. This allows supervisors to check on case status remotely to make sure that client cases are meeting important deadlines and client communication is being promptly recorded.
- When implementing a new type of technology to serve clients, staff need to be trained and have time to learn how to use the technology. Maintaining competency in using the technology is important to ensure competent representation. Develop or continue to revise office policies and procedures regarding client services, mail collection, tracking closures of federal agencies, etc. Since U.S. Citizenship and Immigration Services and other federal agencies are still mailing correspondences, ensure staff is designated to check on mail scans and upload every correspondence into the case management database.

Conclusion

There are many choices when it comes to technology. Approach the process with a clear understanding of your priorities and the needs of your agency and staff. Make sure to shop around and be educated of the features, benefits and limitations of the various applications and software, and consult your peers to obtain referrals. And remember, do not settle for what is cheapest, as you may end up compromising on what may be most important to you and your client, which is security. Hopefully, the technology choices you make will be satisfying and rewarding.