

**OPINION NO. 19**Using Technology to Communicate Confidential Information to Clients

A lawyer may use technological means such as electronic mail (e-mail) and cordless and cellular telephones to communicate confidential client information without violating Rule 1.6, Minnesota Rules of Professional Conduct (MRPC). Such use is subject to the following conditions:

1. E-mail without encryption may be used to transmit and receive confidential client information;
2. Digital cordless and cellular telephones may be used by a lawyer to transmit and receive confidential client information when used within a digital service area;
3. When the lawyer knows, or reasonably should know, that a client or other person is using an insecure means to communicate with the lawyer about confidential client information, the lawyer shall consult with the client about the confidentiality risks associated with inadvertent interception and obtain the client's consent.

Adopted: January 22, 1999.

Amended: January 22, 2010.

**Comment (2010)**

*A lawyer may not knowingly reveal a confidence or secret of a client. Rule 1.6(a)(1). A lawyer should exercise care to prevent unintended disclosure. See Comment to Rule 1.6. For example, the lawyer should avoid professional discussions in the company of persons to whom the attorney-client privilege does not extend. Id. Similarly, a lawyer should take reasonable steps to prevent interception or unintended disclosure of confidential communications. All communication carries with it some such risk, for example by eavesdropping, wiretapping, or theft of mail. The precautions to be taken by a lawyer depend on the circumstances, including the sensitivity of the information, the manner of communication, the apparent risks of interception or unintended disclosure, and the client's wishes.*

*The purpose of this opinion is to address concerns that certain devices or methods may not be used by lawyers to communicate client confidences or secrets because they do not guarantee security. The committee believes absolute security is not required, and that the use of new technology is subject to the same analysis as the use of more traditional methods of communication.*

*This opinion reflects the prevalent view of other states and technology experts, that communications by facsimile, e-mail, and digital cordless or cellular phones, like those by mail and conventional corded telephone, generally are considered secure; their interception involves intent, expertise, and violation of federal law. Some states have required client consent or encryption for the use of e-mail, but the majority of recent state ethics opinions sanction the use of e-mail without such requirements. The committee finds the reasoning of the latter opinions persuasive.*

*The opinion intentionally omits facsimile machines, which typically transmit data over conventional telephone lines. With facsimile machines, the concerns are less with interception than with unintended dissemination of the communication at its destination, where the communication may be received in a common area of the workplace or home and may be read by persons other than the intended recipient. The Director has received client complaints involving such situations and cautions lawyers to take reasonable precautions to prevent unintended dissemination. Similar concerns may be raised by voice-mail and answering machine messages.*