TECHNO ETHICS IN THE PRACTICE OF LAW

By

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INTRODUCTION

- Internet is now with us as a conventional communication, research and law practice tool.
- It has seen rapid growth in the last decade.
- Every lawyer in practice is now using it in one way or the other.
New ethical frontiers have emerged with its use
Development in technology is outpacing growth in the regulations
New Ethical risks have now emerged
TECHNOLOGY

- This word has its origin in two Greek words: *Techne* and *Logia*.

- *Techne* stands for art, skill etc.

- *Logia* stands for a collection of skills, methods, techniques and processes used in the production of goods or services or accomplishing tasks.

- **Technology**: a body of knowledge devoted to creating tools, processes and actions for purposes of producing goods and services.

- Also refers to the product developed for use/knowledge of techniques and processes developed for use or being used.
CURRENT LAWYERING TECHNOLOGY

- Document automation, decisions engines, e-discovery tools, communication and collaboration tools, legal research tools, and legal expert systems.

- Smartphones and tablets

- Online legal libraries and legal research sites

- **eDiscovery** is growing due to the volume and complexity of electronic data.

- **Cloud computing**

- **Social media:** Facebook, LinkedIn, Twitter etc have become important tools for networking, advertising and acquiring clients.

- **Security protocols to prevent:** security breaches in the form of malware, hacking and data theft.
The Internet, also called "the Net"
Is a system of computer networks connecting the whole world.
It can be referred to as the network of networks
It is an extensive electronic superhighway
ETHICS

- Moral principles that govern behaviour
- PRINCIPLE: a fundamental truth or proposition that serves as the foundation for a system of belief or behavior or for a chain of reasoning.
- Examples of PRINCIPLES: Integrity, Honesty, Fidelity to the Law, Industry etc.
Character: is a product of a process of living.

Character: a distinctive mental and moral qualities of an individual/thing

Derived from Greek word “kharakter” meaning: Engraved Mark, Symbol, Imprint on the Soul, Instrument for marking etc

Distinct visible token/mark
STAGES TO GROWING ETHICS

To achieve specific characteristics, one has to live in specific ways. (example-to win Olympic gold, one has to train)
STAGES IN THE GROWTH OF ETHICS

- Birth and Innocence stage: This is the period of tenderness and innocence. A child is wholly dependent on the parents or minders. At this stage, the mind is pure and fragile. It is innocent and free of fears and prejudices.

- Ingestion of information: From the near black mind, the instinct triggers a yearning for information. One becomes very receptive to information.
RISE OF BELIEFS

- A belief is a state of the mind.
- Mind in which a person thinks about certain things and accepts them to be true without questioning their validity or asking for proof.
- A person takes the thing to be true or real without seeking any empirical evidence.
- Beliefs comprise of things that we hold dear to us and are rooted deeply within us.
GROWTH OF CONVICTIONS

- **A conviction**: is a belief that is so strong and considered true that it cannot change or be changed. It is firmly held and taken to be true. Enforcement of convictions produce **values**.

- **Rise of Values**: These are beliefs which are embedded on emotions. They comprise abstract desirable goals which a person seeks to attain. Values guide decision making. Upholding and enforcement of values crystallize into **Morals**.
MORALS-CONDUCT TO SELF-DISCIPLINE

- **Enforcement of Morals**: Morals are set standards of behavior and belief system founded on what is right and wrong. Morals are anchored on a person’s belief system on what constitutes right wrong behavior.
- **Morals give rise to Conduct**
- **Birth of Conduct**: Manner of behavior
- **Self-Discipline**: Having complete control of self over desires
- **Ethics**: The Morals Principles that govern Behaviour
- **Character - Lifestyle - Destiny - Legacy**
PROFESSIONAL COMPETENCE

- Electronic Proficiency: Have it in almost every area of practice.
- Means of access: to research, information and communication
- Evaluation tool: This knowledge is a tool for evaluating professional competence. Now, lack of sound knowledge is incompetence.
Although Lawyers currently do not have to demonstrate familiarity with Internet use for competency, it is becoming factor in the accepted standard of care for professional liability.

The duty of competence requires thorough preparations. This includes a standard for electronic methods and procedures.
CONFIDENTIALITY

The contemporary raging question is now whether Internet communications are less secure than traditional forms of communication.

Lack of control of the net is a question.

Unencrypted e-mail communications with can violate the principle of confidentiality.

The responsibility to manage security and privacy risks in electronic communications remains.

E-mails still attract the same levels of confidentiality.
E-LAWYERING

Internet law practice (e-lawyering) includes giving online legal advice and preparing documents and legal products for consumers. Responsibility attaches

- **Cross jurisdiction practice**: Facilitates cross jurisdiction practice without reconciling the laws
- **Sophistication**: Legal services are now available through various Internet applications. Professional Responsibility remains
- **Unintended clients**: People seek you out
ADVERTIZING

- Subject to the rules of the service providers
- Lack of control
- Unlikely audience
- Advertising vs Publicity
CONSTRUCTIVE WAIVER OF PRIVILEGE

- Actions may amount to waiver of privilege
- Thin line between the lawyer and the person
- The net is a public place
From discussions to retainer
Online materials giving rise to retainer
BREACH OF NO CONTACT RULE

Contact with the adverse client/witnesses/materials

Unintended results
WAY FORWARD

- Installing a software firewall
- Establishing a private website for communications with a particular client
- Using password protections for sensitive documents help preserve confidentiality online.
- Continuous learning
- Using professionals/Risk Transfer
- Each case on its own merits
CONCLUSION

You continue to grow your ethical quotient on a daily basis. When you fall, pick up yourself quickly, acknowledge the error, make amends and move on.

Become better and better everyday

GOD BLESS THE LSK, GOD BLESS YOU, GOD BLESS KENYA.