

LET ME ASK YOU A
“HYPTOTHETICAL”
QUESTION. SUPPOSE

• • •

HOT TOPICS IN ETHICS

JERRY DIXON

JERRY MILLER

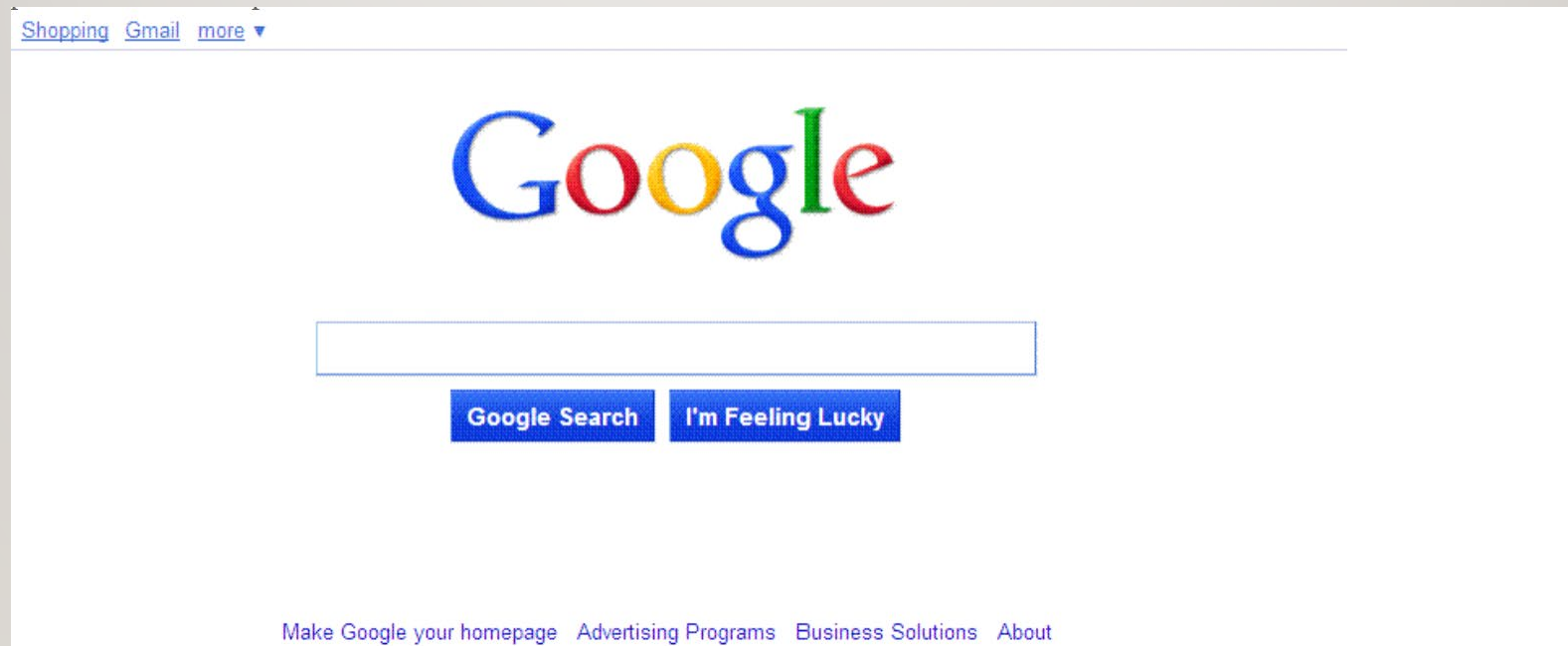
WILLIAM SLEASE



Life moves pretty fast.
If you don't stop and look
around once in a while,
you could miss it.

**THIS IS GOING TO BE
A WORKING
PRESENTATION**

PLEASE GO TO A BROWSER ON YOUR PHONE, TABLET, OR LAPTOP



TYPE IN **VEVOX.APP**
(**NOT** VEVOX.COM)

https://vevox.app ⋮

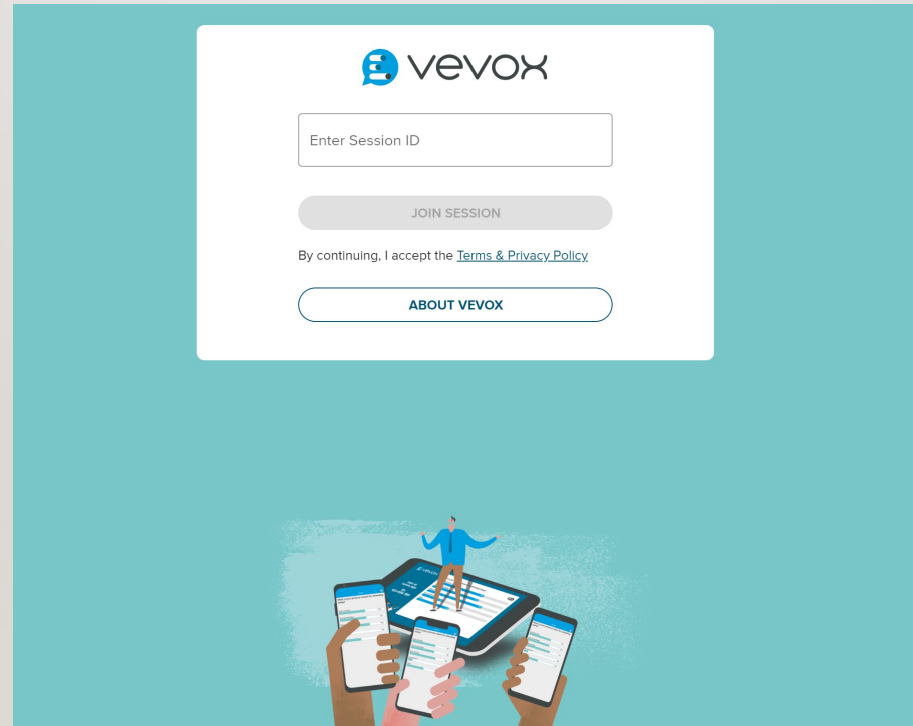
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DON'T WORRY ABOUT THE DASHES, THEY WILL AUTO ADD)





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Hot Topics in Ethics

Welcome

AA

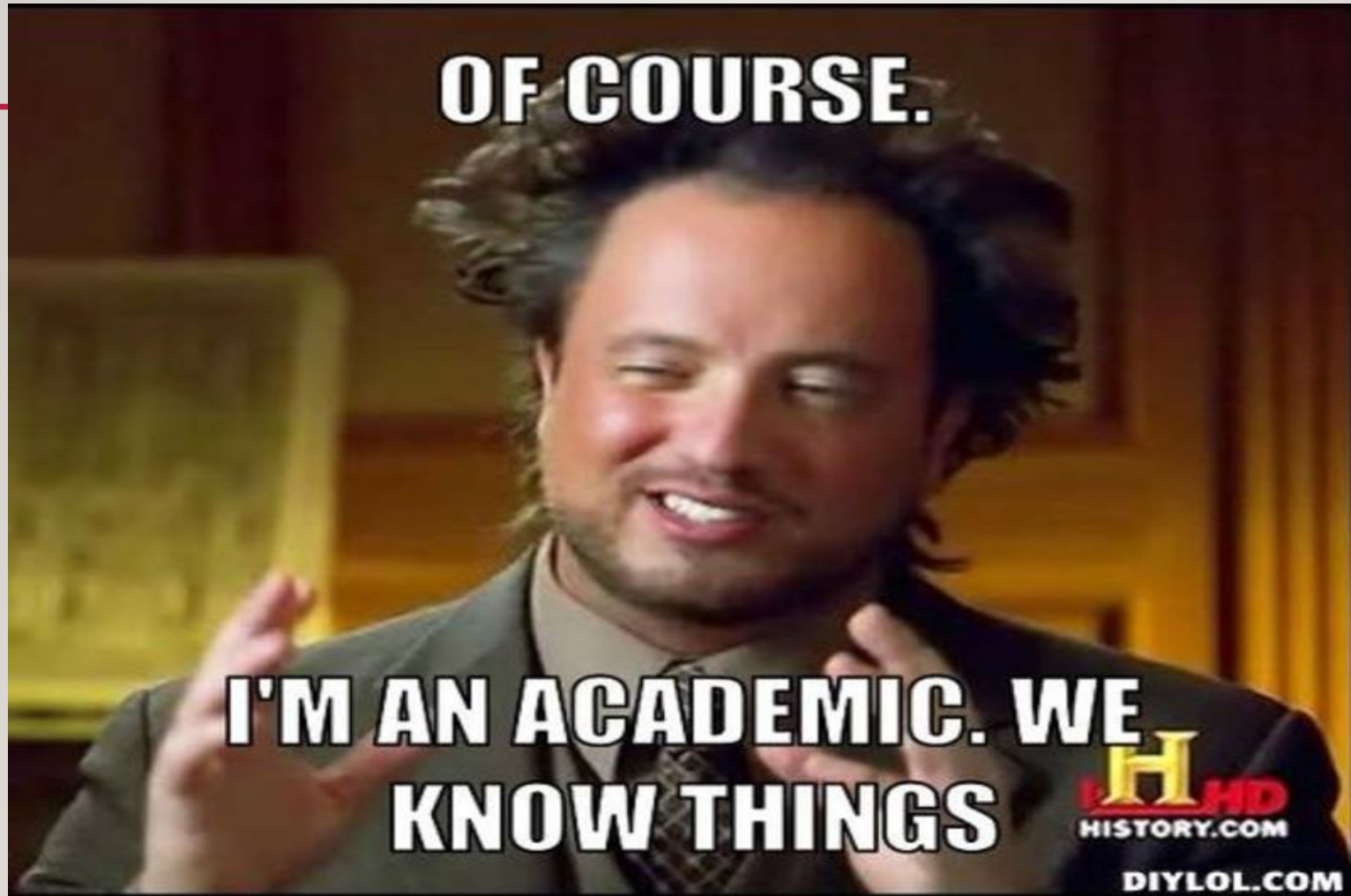
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Now, let's drill down to some substance



ARE YOU READY?



HYPO



- My client just lied during his deposition on cross-examination: I must now
 - 1. Turn him into the Court.
 - 2. Encourage him to fix the lie and if he doesn't, withdraw.
 - 3. Encourage him to fix the lie but if he doesn't, then I have no further duties other than to refrain from using the false testimony myself.
 - 4. Immediately inform opposing counsel about the lie.

MY CLIENT JUST LIED DURING HIS DEPOSITION ON CROSS-EXAMINATION. I MUST NOW:

- 1 Turn him into the Court.
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RULE 16-303 NMRA

CANDOR TOWARD THE TRIBUNAL

- (A)(3) A lawyer shall not knowingly offer evidence that the lawyer knows to be false. If ... a lawyer's client . . . has offered material evidence and the lawyer comes to know of its falsity, the lawyer shall take reasonable remedial measures, including if necessary, disclosure to the tribunal.
- If during trial, if attached to a motion – fairly clear, . . .

BUT THIS WAS A DEPOSITION (not offered yet as part of a motion) (AND SEE COMMENT [6])

- If a lawyer knows that the client intends to testify falsely or wants the lawyer to introduce false evidence, the lawyer should seek to persuade the client that the evidence should not be offered. If the persuasion is ineffective and the lawyer continues to represent the client, the lawyer must refuse to offer the false evidence. If only a portion of a witness's testimony will be false, the lawyer may call the witness to testify but may not elicit or otherwise permit the witness to present the testimony that the lawyer knows is false.
- AND DON'T FORGET 16-106 - CONFIDENTIALITY

HYPO – THE TRUST ACCOUNT SCAM



THE SCAM

- Lawyer receives unsolicited request to represent a party to
 - Finalize a last minute deal
 - Collect an unpaid debt
 - Distribute money to a beneficiary/heir just located and conveniently living near you.
- Lawyer helps finalize deal/agrees, with client consent to settle debt, or distribute \$
- Lawyer gets a cashier's check – deposits it to trust.
- Lawyer is told the check has a 5 day hold, lawyer then transfers fees and wires balance to the client
- The cashier's check is refused on the issuing bank as fraudulent

IS THE LAWYER POSSIBLY AT RISK OF HAVING VIOLATED THE RULES OF PROFESSIONAL CONDUCT?

- 1. Yes
- 2. No
- 3. Depends
- 4. What about the Bank?



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DEPENDS

- It may involve questions of
- Competence – 16-101 NMRA
- Diligence – 16-103 NMRA
- Safekeeping and Trust Accounting – 16-115 NMRA and 17-204 NMRA

WHAT'S A LAWYER TO DO?

JUST...
TRUST ME

- Know that the scam exists
- Be wary of “new clients” bearing gifts
- Confirm the check has cleared
- Confirm the issuing bank issued the check or wait and confirm it has cleared there

RESPONDING TO NEGATIVE SOCIAL MEDIA CRITICISM

TROLL MAKE INTERNET MAD.
TROLL LIKE ANGER.
TROLL WANT PEOPLE AS
MISERABLE AS TROLL.

PoorEXcuses.com



HYPO

- You work tirelessly for your client to close a big property deal/prepare a complex estate plan/ etc.
- Two months later, after you and the client tussle over the reasonableness of your bill a colleague calls you to report that the client is savaging you on social media:

Lawyer Bill is a Hack

Lawyer Bill is Incompetent

Lawyer Bill overcharges

Lawyer Bill must have skipped property law in law school

Don't use Lawyer Bill for anything, not even a traffic ticket – you'll end up in jail

IN RESPONSE, YOU ...

- 1. Take to social media and tell the true story about your client and your work for the client
- 2. Take to social media and say “nuh uh!”
- 3. Keep Quiet and Carry On
- 4. Consider the benefits of going to inactive status

IN RESPONSE YOU ...

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RULE 16-106 NMRA



AND SPEAKING OF THE INTERNET

- **CYBERSECURITY THREATS**



WHAT IS CYBERSECURITY?

- Cybersecurity refers to the practice of protecting computer systems, networks, and data from malicious attacks, unauthorized access, potential theft and damage of sensitive data. It encompasses a range of strategies, processes, and technologies designed to safeguard the confidentiality, integrity, and availability of digital assets.



THE IMPORTANCE OF CYBERSECURITY

- As we become increasingly reliant on digital technology for various aspects of our lives, the risk of cyber threats rises dramatically.
- Cyber-attacks can result in financial losses, theft of personal information, disruption of critical services, and reputational damage to individuals and organizations alike.



COMMON CYBER THREATS

- **Malware:** Malicious software designed to damage or gain unauthorized access to systems.
- **Phishing:** Deceptive emails or messages to trick users into divulging sensitive information.
- **Ransomware:** Malware that encrypts data and demands a ransom for its release.
- **Data Breaches:** Unauthorized access to sensitive information, often for malicious purposes.
- **Denial of Service (DoS) Attacks:** Overwhelming a system to make it unavailable to users.

CYBERSECURITY CHALLENGES

- **Sophisticated Attacks:** Cybercriminals continuously develop advanced attack techniques.
- **Insider Threats:** Attacks from within an organization by employees or partners.
- **Internet of Things (IoT) Vulnerabilities:** The growing number of connected devices creates more entry points for attacks.
- **Lack of Awareness:** Users' lack of awareness about cybersecurity practices can lead to vulnerabilities.



SAFEGUARDING CYBERSECURITY

- **Use Very Strong Passwords:** Create unique, strong passwords (greater than 10 characters and enable multi-factor authentication).
- **Keep Software Updated:** Regularly update operating systems, applications, and security software.
- **Educate and Train:** Raise awareness about cybersecurity best practices among all users.
- **Regular Backups:** Back up critical data regularly to mitigate the impact of ransomware.
- **Secure Networks:** Use firewalls, VPNs, and encryption to secure network communication.
- **Cyber Insurance:** Insurance coverage designed to protect individuals and organizations from financial losses and liabilities resulting from cyber-related incidents.



CONCLUSION

- Cybersecurity Is Complex
 - **Break it Down:** Break it down into manageable chunks for you and your Organization.
 - **Understand:** Understanding the threats and where they come from is critical.
 - **Education:** Educate yourself and your team about the threats and ways to safeguard your data.
 - **Adoption:** Implement Best Practices for you and your staff.
 - Thank you for your time and attention. I am happy to answer any questions you may have.

THIRD PARTY PAYOR APPS



AND WHAT ABOUT CRYPTO?



IF I WAS TEMPTED TO TAKE CRYPTOCURRENCY IN PAYMENT FOR LEGAL SERVICES, I SHOULD CONSIDER

- 1 Whether I am doing business with a client and, therefore, have to comply with not only 16-105 but also 16-108(A)
- 2 Whether this is too risky and, therefore, something I should not do unless I really understand what I'm doing and all the ramifications of doing so
- 3 Having my head examined
- 4 Whether someone can explain to me exactly what cryptocurrency is and how it works



**NOTHING GOOD
COMES FROM
HITTING
“REPLY ALL”**

A MESSAGE FROM DIVISION OF LABOR

INCLUDING CLIENTS (CC) ON GROUP EMAILS TO OPPOSING COUNSEL

- 16-104 NMRA Does require you to communicate with clients
- And it's an “easy” way to do that is CC them on your emails to opposing counsel (and others)
 - It saves them \$ doesn't it?
 - It keeps them informed
- BUT ...

THE ISSUE - BY COPYING CLIENTS ON MY EMAILS TO OPPOSING COUNSEL I AM ...

- 1. Being damned efficient
- 2. Keeping my clients in the loop and meeting my duties under 16-104 to communicate
- 3. Possibly providing implied consent to opposing counsel to have direct contact with my client by “replying all.”



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RULE 16-402 NMRA– EX PARTE COMMUNICATION

- “Lawyers who initiate a group email and find it convenient to include their client should not then be able to claim an ethics violation if opposing counsel uses a “reply all” response. “Reply all” in a group email should not be an ethics trap for the unwary or a “gotcha” moment for opposing counsel.” Supreme Court of New Jersey Advisory Committee on Professional Ethics, ACPE Opinion 739 (March 10, 2021)



YOUR RESPONSIBILITY FOR OTHERS



HYPO - MY LEGAL ASSISTANT JUST GATHERED SOME GREAT INFORMATION FROM THE OPPOSING PARTY

- Did I mention that she pretended to be someone else so she could get beyond the “privacy” settings of the opposing party’s Facebook/Twitter/Instagram



DID YOU, THE SUPERVISING ATTORNEY, VIOLATE THE RULES OF PROFESSIONAL CONDUCT?

- 1. Of course not – I can't be responsible for what an adult does, even if it's a misguided attempt to help me.
- 2. Of course. I'm the boss and the buck stops with me.
- 3. Hmmm, maybe it depends on how I respond and what I try to do with the information.
- 4. Depends – I'll explain.



DID YOU, THE SUPERVISING ATTORNEY VIOLATE THE RULES OF PROFESSIONAL CONDUCT

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DID YOU ORDER OR RATIFY THE CONDUCT?

- Rule 16-804(A)
NMRA
- If you can't do it – you cannot get someone else to do it without violating the Rules.



16-503 NMRA (AND IF IT'S A LAWYER YOU SUPERVISE 16-501 NMRA)

- Are you a “partner” or do you have managerial authority?
- Alternatively are you a direct supervisor?
- Again, did you order or ratify the conduct?
- Did you learn of the conduct and take reasonable remedial steps to avoid or immediately mitigate?
- Did you have training/systems in place?





DATA

The image features a large iceberg floating in a deep blue ocean under a clear sky with scattered clouds. The iceberg's tip is above the water line, while its massive, jagged base is submerged. A horizontal line separates the sky from the water. The word 'DATA' is written in white, bold, sans-serif capital letters in the upper right area, and 'METADATA' is written in the same style in the lower right area. The entire scene is framed by a light gray border, and a wooden plank floor is visible at the bottom.

METADATA

DO YOU HAVE AN ETHICAL OBLIGATION TO MAKE A GOOD FAITH EFFORT TO PREVENT METADATA FROM BEING SHARED WITH OPPOSING COUNSEL/OTHERS?

- 1. Yes, of course
- 2. No, nobody should be “mining” or searching for such data and if they find it in a document they should return the document
- 3. Meta WHAT?



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EXAMPLES OF METADATA

- Document Author
- Date created
- Date(s) edited
- File size
- Keywords
- Edits

WHY SHOULD YOU CARE

- 16-106 NMRA – Client Confidentiality



AND WHAT TO DO IF YOU RECEIVE DOCUMENTS WITH METADATA?



RULE 16-404(B) NMRA

- **Inadvertently sent documents.** A lawyer who receives a document or electronically stored information relating to the representation of the lawyer's client and knows or reasonably should know that the document or electronically stored information was inadvertently sent shall **promptly notify the sender.**

HYPO – DISCLOSURE OF CLIENT ESTATE PLANNING DOCUMENTS - **AFTER THE CLIENT'S DEATH**

- You drafted a will for client – named best mate client's Personal Rep.
- Spouse is a named beneficiary
- Former spouse is a named beneficiary
- Grateful daughter is a named beneficiary
- Ungrateful son is disinherited

EVERYONE WANTS THE ESTATE PLANNING FILE. YOU CAN SHARE IT WITH ...

- 1. THE PERSONAL REPRESENTATIVE
- 2. THE SPOUSE
- 3. THE EX-SPOUSE
- 4. THE GRATEFUL DAUGHTER
- 5. THE UNGRATEFUL SON
- 6. NOBODY
- 7. THIS IS MAKING MY HEAD HURT



EVERYONE WANTS A COPY OF THE ESTATE PLANNING FILE.

YOU CAN SHARE IT WITH ...

- 1 THE PERSONAL REPRESENTATIVE
- 2 THE SPOUSE
- 3 THE EX-SPOUSE
- 4 THE GRATEFUL DAUGHTER
- 5 THE UNGRATEFUL SON
- 6 NOBODY
- 7 THIS IS MAKING MY HEAD HURT



THIS ONE IS, ADMITTEDLY, A POTENTIAL MINEFIELD



- How much and to who
- But think about 16-106 NMRA, including whether disclosure is impliedly authorized in order to carry out the representation
- Think about client education/consent

A PREVIEW OF COMING ATTRACTIONS

