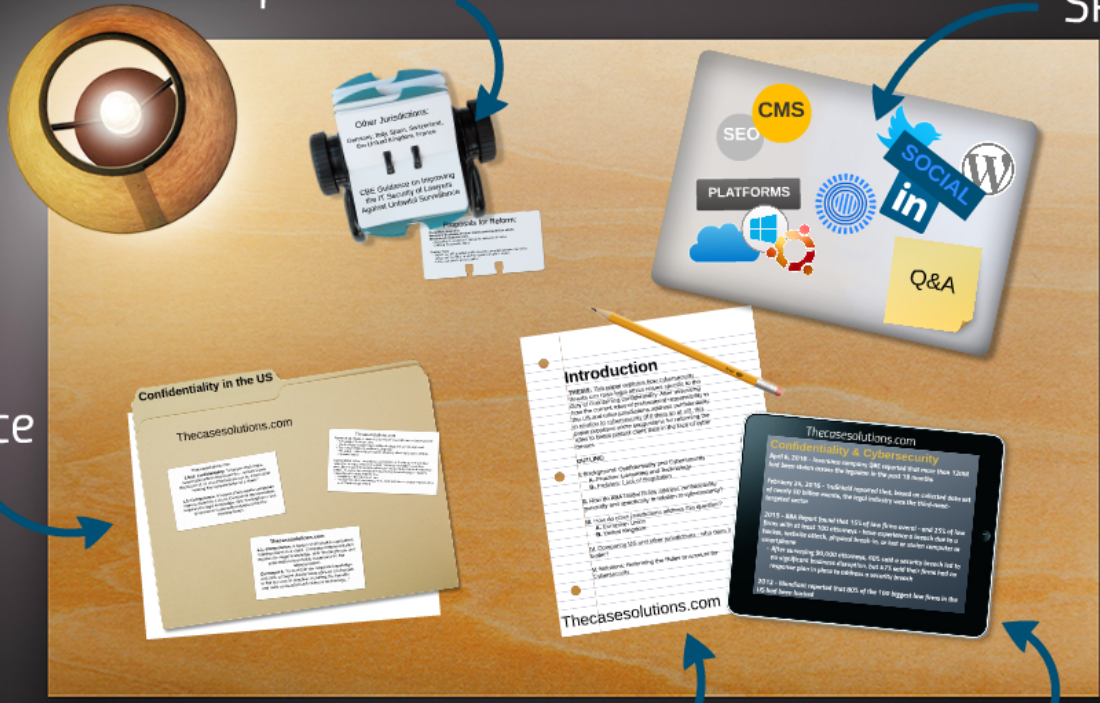


# The Elcer Products Transaction: Confidential Information for RubyFibre Enterprises, Spanish Version

References

Skills



Experience

Education

Interests

Maintaining Confidentiality In the Face Of  
**Cyber Threats**  
 Legal Ethics and Cybersecurity  
 Thecasesolutions.com  
 Legal Ethics · Natasha Babazadeh · March 23, 2017

Thecasesolutions.com

# The Elcer Products Transaction: Confidential Information for RubyFibre Enterprises, Spanish Version

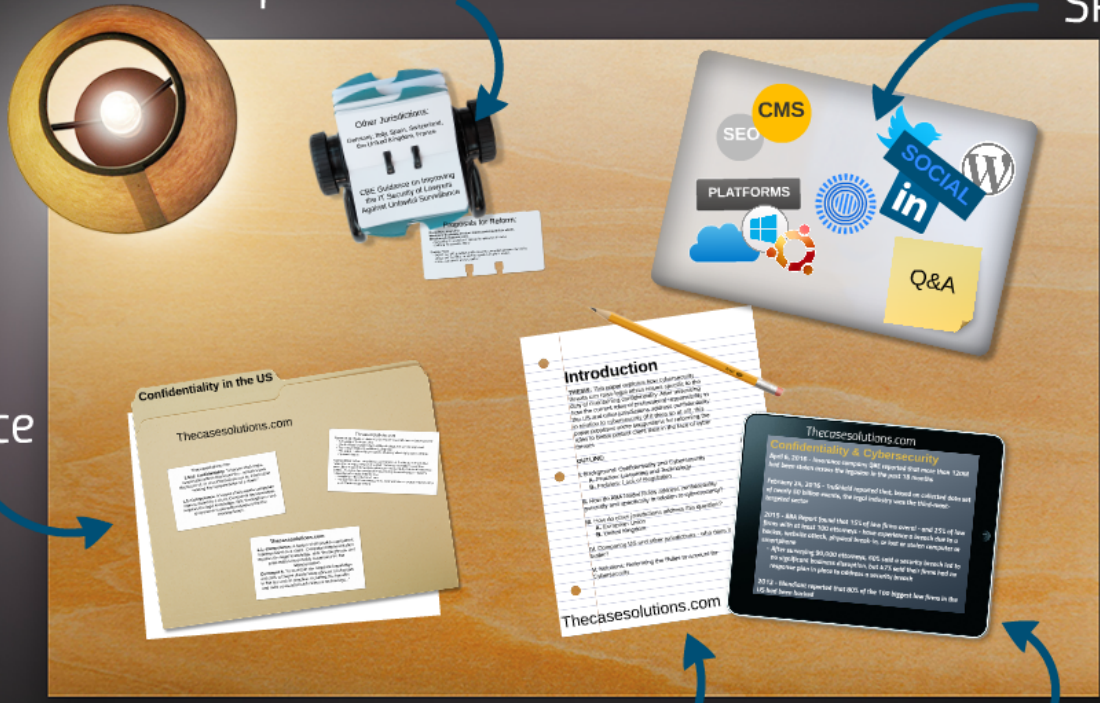
References

Skills

Experience

Education

Interests



Maintaining Confidentiality In the Face Of  
**Cyber Threats**

Legal Ethics and Cybersecurity

Thecasesolutions.com

Legal Ethics · Natasha Babazadeh · March 23, 2017

Thecasesolutions.com

# Maintaining Confidentiality In the Face Of **Cyber Threats**

Legal Ethics and Cybersecurity

[Thecasesolutions.com](http://Thecasesolutions.com)

Legal Ethics

· Natasha Babazadeh

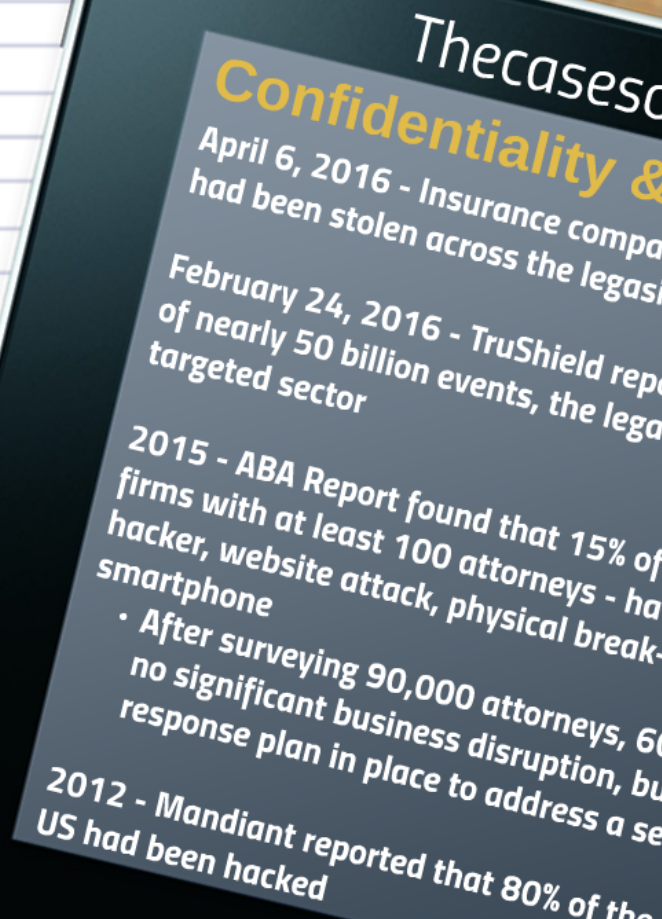

· March 23, 2017

# Introduction

**THESIS:** This paper explores how cybersecurity threats can raise legal ethics issues specific to the duty of maintaining confidentiality. After assessing how the current rules of professional responsibility in the US and other jurisdictions address confidentiality in relation to cybersecurity (if it does so at all), this paper proposes some suggestions for reforming the rules to better protect client data in the face of cyber threats

## OUTLINE:

- I. Background: Confidentiality and Cybersecurity
  - A. Practice: Lawyering and Technology
  - B. Problem: Lack of Regulation
- II. How do ABA Model Rules address confidentiality generally and specifically in relation to cybersecurity?
- III. How do other jurisdictions address this question?
  - A. European Union
  - B. United Kingdom
- IV. Comparing US and other jurisdictions - who does it better?
- V. Solutions: Reforming the Rules to account for Cybersecurity



Thecasesolutions.com

**Confidentiality &**

- April 6, 2016 - Insurance companies had been stolen across the legal sector
- February 24, 2016 - TruShield reported of nearly 50 billion events, the legal targeted sector
- 2015 - ABA Report found that 15% of firms with at least 100 attorneys - hacked, website attack, physical break-in, smartphone
  - After surveying 90,000 attorneys, 60% had no significant business disruption, but only 20% had a response plan in place to address a security breach
- 2012 - Mandiant reported that 80% of the US had been hacked

## Confidentiality & Cybersecurity

April 6, 2016 - Insurance company QBE reported that more than 120M had been stolen across the legasion in the past 18 months

February 24, 2016 - TruShield reported that, based on collected data set of nearly 50 billion events, the legal industry was the third-most-targeted sector

2015 - ABA Report found that 15% of law firms overal - and 25% of law firms with at least 100 attorneys - have experience a breach due to a hacker, website attack, physical break-in, or lost or stolen computer or smartphone

- After surveying 90,000 attorneys, 60% said a security breach led to no significant business disruption, but 47% said their firms had no response plan in place to address a security breach

2012 - Mandiant reported that 80% of the 100 biggest law firms in the US had been hacked

# Confidentiality in the US

## Thecasesolutions.com

Thecasesolutions.com

**1.6(c): Confidentiality.** "A lawyer shall make reasonable efforts to prevent the...unauthorized disclosure of, or unauthorized access to, information relating the representation of a client."

**1.1: Competence.** A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

Thecasesolutions.com

**Comment 18:** Illustrative factors to determine reasonableness efforts to prevent

- Sensitivity of the information
- The likelihood of disclosure if additional safeguards are not employed
- The cost of employing additional safeguards
- The extent to which the safeguards adversely affect the lawyers' ability to represent clients

**Comment 19:** "When transmitting a communication that includes information relating to the representation of a client, the lawyer must take reasonable precautions to prevent the information from coming into the hands of unintended parties...Factors to be considered in determining reasonableness of lawyer's expectation of confidentiality include:

- Sensitivity of the information, and
- The extent to which the privacy of the communication is protected by law or by a confidentiality agreement

Thecasesolutions.com

**1.1: Competence.** A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

**Comment 8:** "to maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology..."

Thecasesolutions.com

**1.6(c): Confidentiality.** "A lawyer shall make reasonable efforts to prevent the...unauthorized disclosure of, or unauthorized access to, information relating the representation of a client."

**1.1: Competence.** A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

## Thecasesolutions.com

**Comment 18:** Illustrative factors to determine reasonableness efforts to prevent

- Sensitivity of the information
- The likelihood of disclosure if additional safeguards are not employed
- The cost of employing additional safeguards
- The extent to which the safeguards adversely affect the lawyers' ability to represent clients

**Comment 19:** "When transmitting a communication that includes information relating to the representation of a client, the lawyer must take reasonable precautions to prevent the information from coming into the hands of unintended parties...Factors to be considered in determining reasonableness of lawyer's expectation of confidentiality include:

- Sensitivity of the information, and
- The extent to which the privacy of the communication is protected by law or by a confidentiality agreement



# Thecasesolutions.com

**1.1: Competence.** A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

**Comment 8:** "to maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology..."