

**Legal Services for Online Students:
Client Consultations and Ethical Issues**

Gene Roberts, JD

(Licensed by the State Bar of Texas and
Admitted to Practice before the U.S. Fifth Circuit Court of Appeals
and the U.S. District Courts for the
Northern, Western, Southern, and Eastern Districts of Texas)

Attorney | Mediator
Director, Student Legal & Mediation Services
Sam Houston State University
Huntsville, Texas

University Student Legal Services Association-Western Region
Annual Legal Conference

Las Vegas, Nevada

January 3, 2018

10:30 am - Noon

Gene Roberts

B.S. (cum laude) Lamar University

M.A. University of Houston

J.D. Southern Methodist University (Articles Editor, SMU Law Review; President of the Student Bar Association; Outstanding Male Graduate)

Mediation Training: University of Texas School of Law, Center for Public Policy Dispute Resolution; Pepperdine University School of Law, Straus Institute for Dispute Resolution; Austin Dispute Resolution Center; Texas Council on Family Violence

Gene Roberts is the Director of the Office of Student Legal & Mediation Services at Sam Houston State University. He is starting his twentieth year as an attorney. Gene's philosophy—as a private attorney and as the full-time Director of SLMS—is to help individuals understand their rights and responsibilities, comprehend the complexities of the legal system, and develop a proactive and productive strategy for the situation they face.

Gene was selected for inclusion in Super Lawyers—Rising Stars Edition in the area of business litigation and Avvo.com rates his legal background as “superb.” Gene is also a member of the College of the State Bar of Texas, an honorary society of lawyers who are among the best trained attorneys in Texas. He is authorized to practice law in all Texas state courts, the United States Court of Appeals for the Fifth Circuit and the United States District Courts for the Northern, Eastern, Western, and Southern Districts of Texas.

The Association of Attorney Mediators identified Gene as a “New Master of Mediation.” Gene is a Past-Chair of the Dallas Bar Association's Alternative Dispute Resolution Section after serving as its Secretary for three years. During his time as chair, the DBA Board of Directors recognized Gene with the Special Section Award. Gene served the Dallas Chapter of the Association for Conflict Resolution as a member of its Board of Directors, President-elect and President. He was a member of the Board of Directors for the Texas Association of Mediators, Co-Chair of the 2013 Annual Conference and a past President. He is also a Council Member of the State Bar of Texas' Alternative Dispute Resolution Section, where he currently serves as secretary.

Prior to joining SHSU, Gene practiced civil litigation at a boutique law firm and then an international law firm, both based in Dallas, Texas.

Legal Services to Online Students¹

Outline

- I. History of Legal Communications and the Associated Ethical Concerns
 - a. Letter
 - b. Fax
 - c. Email
 - d. ABA Model Rule 1.1, comment 8 on maintaining technological competence
 - e. ABA Opinion 477—Confidentiality of Information
 - f. 2014 ABA resolution on cybersecurity
- II. What Attorneys are Doing with Technology
 - a. 2016 ABA Legal Technology Survey Report
 - b. Client portals and communication
- III. Security Issues
 - a. Security Breaches—Equifax, US Office Personnel Administration
 - b. Video Conferencing
 - c. Document Sharing
- IV. Laws on Hacking and Intercepting Electronic Communications
 - a. Electronic Communications Privacy Act (18 USC § 2701)
 - b. 18 USC 2511 (interception of electronic communication)
 - c. 18 USC 2517 (communications don't lose privileged character if intercepted)
 - d. 18 USC 1030 (Computer Fraud & Abuse Act)
 - e. State Laws
- V. Ethical Pronouncements by the ABA and States
 - a. ABA Model Rule 1.6(c)
 - b. NY State Bar Association Opinion 749 (2001)
 - c. NY County Lawyers Association Professional Ethics Committee Formal Opinion 749 (2017)

¹ Thanks to Samantha Ward, JD, for her work on this project. Samantha works at Student Legal & Mediation Services at Sam Houston State University.

- d. Rules Regulating the Florida Bar Rule 6-10.3(b) (2017)
 - e. The State of California Standing Committee on Professional Responsibility and Conduct Formal Opinion No. 2015-193
 - f. The Professional Ethics Committee for the State Bar of Texas Opinion No. 648 (2015)
- VI. Are You Practicing Law in Another State?
- a. What is the definition of the unauthorized practice of law?
 - b. What is advertising in another jurisdiction?
 - c. Appropriate use of disclaimers
- VII. Access to Justice and Advertising
- a. Allows underrepresented populations access to legal services
 - b. ABA Model Rules 7.1-7.3
 - c. What are your state rules?
- VIII. Conclusion
- a. What should be “best practices?”

References

- Aresty, J. (2015, January). *Third Party Ethics in the Age of the Fourth Party*. Paper presented at the Alternative Dispute Resolution Section Course by the State Bar of Texas, Austin, TX.
- Banola, S. (2013, May). *Ethical Guidelines for Practicing in a Virtual Law Office*. Retrieved from <http://cclawyer.cccba.org/2013/05/ethical-guidelines-for-practicing-in-a-virtual-law-office/>.
- Bone, A. (2015, April). *The Final Frontier: Ethics Challenges to Conquer in a Virtual Practice*. Paper presented at the Advanced Elder Law Course by the State Bar of Texas, Houston, TX.
- Browning, J. (2014, August). *Social Media—As It Impacts the Attorney*. Paper presented at the 40th Annual Advanced Family Law Course by the State Bar of Texas, San Antonio, TX.
- Burton, C. (2012, September/October). How Real are Virtual Law Firms. Retrieved from https://www.americanbar.org/publications/gp_solo/2012/september_october/how_real_are_virtual_law_firms.html
- Burton, C. (2012, January/February). Launching a Virtual Law Firm. Retrieved from https://www.americanbar.org/publications/gp_solo/2014/january-february/launching_virtual_law_firm.html
- Committee on Professional Ethics, New York State Bar Association. (2014, September). Ethics Opinion 1025. Retrieved from <http://www.nysba.org/CustomTemplates/Content.aspx?id=52143>
- Committee on Professional Ethics, Washington Ethics Opinions. (2016, November). Advisory Opinion 2016-01. Retrieved from <http://mcle.mywsba.org/IO/print.aspx?ID=1686>
- Eder, E. (2001, January/February). *Ethical Use of Emerging Technologies in Law Practice*. Retrieved from https://www.americanbar.org/newsletter/publications/gp_solo_magazine_home/gp_solo_magazine_index/eder.html
- Epstein, L. (2004). The Technology Challenge: Lawyers Have Finally Entered the Race But Will Ethical Hurdles Slow the Pace. *Nova Law Review*. Retrieved from <http://nsuworks.nova.edu/nlr/vol28/iss3/11/>
- Haston, C. (2014). *Client Communication and Practice Management in the Digital Age*. Paper presented at the 37th Annual Marriage Dissolution Institute by the State Bar of Texas, Austin, TX.
- Hazelwood, K. (2014). *Technology and Client Communications: Preparing Law Students and New Lawyers to Make Choices that Comply with the Ethical Duties of Confidentiality, Competence, and Communication*. *Mississippi Law Journal*. Retrieved from https://uknowledge.uky.edu/law_facpub/293/
- Hernandez, G. (2017, March). The Evolution of the Virtual Law Firm. Retrieved from <http://www.lawjournalnewsletters.com/sites/lawjournalnewsletters/2017/03/01/the-evolution-of-the-virtual-law-firm-2/>

Hirsch, R. (2016, January). *What the Future of Your Practice May Look Like*. Paper presented at the 32nd Annual Litigation Update Institute by the State Bar of Texas, Austin, TX.

Indelicato, Jr., J. (2016, December). *Ethical Problems in Using Social Media*. Paper presented at the Family Law and Technology: Keeping Your Family Law Practice in Pace with the Latest Technological Advances Seminar by the State Bar of Texas, Austin, TX.

Katz, Steven (2004, September). *The Emerging Role of Online Communication between Patients and Their Providers*, Journal of General Internal Medicine. Retrieved from <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1492520/>

Kennedy-Mighell Report (2017, May). Why Video Conferencing Belongs in the Law Firm Retrieved from <http://www.lawtechnologytoday.org/2017/05/video-conferencing/>

Losey, R. (2017). Attorney's Duty of Confidentiality and the New ABA Ethics Opinion 477: 'Securing Communication of Protected Client Information'. Retrieved from <https://ediscoveryteam.com/2017/05/15/attorneys-duty-of-confidentiality-and-the-new-aba-ethics-opinion-477-securing-communication-of-protected-client-information/>

Lu, A. (2012). Attorneys May Just Dump Skype for Google Hangouts. Retrieved from <http://blogs.findlaw.com/technologist/2012/08/attorneys-may-just-dump-skype-for-google-hangouts.html>

Meuse, C. (2016, March). *Technology Competence and Update for Paralegals and Attorneys*. Paper presented at the 34th Annual Texas Forum Agenda by the State Bar of Texas, Austin, TX.

Moore, B. (2017, January). Going Virtual: The Modern-Day Law Firm is in the Cloud. Retrieved from <http://www.lawpracticetoday.org/article/going-virtual-modern-day-law-firm-cloud/>

Rice, R. (2013, January/February). Email Communications with Clients. Retrieved from https://www.americanbar.org/publications/law_practice_magazine/2013/january-february/ethics.html

Robertson, R. (2014, December). *Beam Me Up, Lawyer: Current & Trending Technology in the Family Law Practice—What Your Practice Will Need to Look Like to Survive in the Next Millennium*. Paper presented at the Family Law Technology 360: Everything You Need to Know for Your 21st Century Practice by the State Bar of Texas, Austin, TX.

Shely, L. (2014). The Ethics of Email. Retrieved from <http://shelylaw.com/the-ethics-of-email/>

Standing Committee on Ethics and Professional Responsibility, American Bar Association. (2017, May). *Securing Communication of Protected Client Information*. Formal Opinion 477. Retrieved from https://www.americanbar.org/content/dam/aba/administrative/law_national_security/ABA%20Formal%20Opinion%20477.authcheckdam.pdf

The State Bar of California Standing Committee on Professional Responsibility and Conduct. (2012). Formal Opinion No. 2012-184. Retrieved from <https://www.calbar.ca.gov/Portals/0/documents/ethics/Opinions/CAL%202012-184-ADA.pdf>

The Professional Ethics Committee for the State Bar of Texas (2015). Opinion No. 648. Retrieved from <https://www.legalethictexas.com/Ethics-Resources/Opinions/Opinion-648.aspx>

Thomas, P. (2014). *Online Legal Advice: Ethics in the Digital Age*, St. Mary's Law Journal. Retrieved from http://www.stmaryslawjournal.com/pdfs/11Thomas_Final_Germano_Clean.pdf

Whitaker, W. (2016, March). *Counseling: Driving a Client to Clarity*. Paper presented at the Essentials of Business Law Course by the State Bar of Texas, Houston, TX.