

Technology Ethics for Attorneys



About Matt



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- CEO of Tali (www.telltali.com), a next-gen timekeeping platform powered by voice technology like Amazon Alexa
- Wisconsin native (go Pack go!) and Berkeley MBA now living in Portland, Oregon
- Married to a lawyer, father of two boys

About Emma



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- Affinity Programs Manager at Clio (www.clio.com), a comprehensive cloud-based practice management platform for the legal industry
- Joined Clio as part of Lexicata acquisition
- University of Texas at Austin, BA
- University of Houston Law Center, JD
- Worked for an international estate planning firm & Ed-Tech Startup
- Founded a Legal Recruiting Company
- Based in Los Angeles, CA

Agenda

1. General Housekeeping Info
2. Review of Ethics Rules Related to Technology
3. Due Diligence Considerations for Evaluating Technology
 - a. Questions for Cloud Service Providers
4. How the Latest Tech Helps Law Firms
5. Q&A

Technology Ethics

Relevant Rules & Ethics Opinions

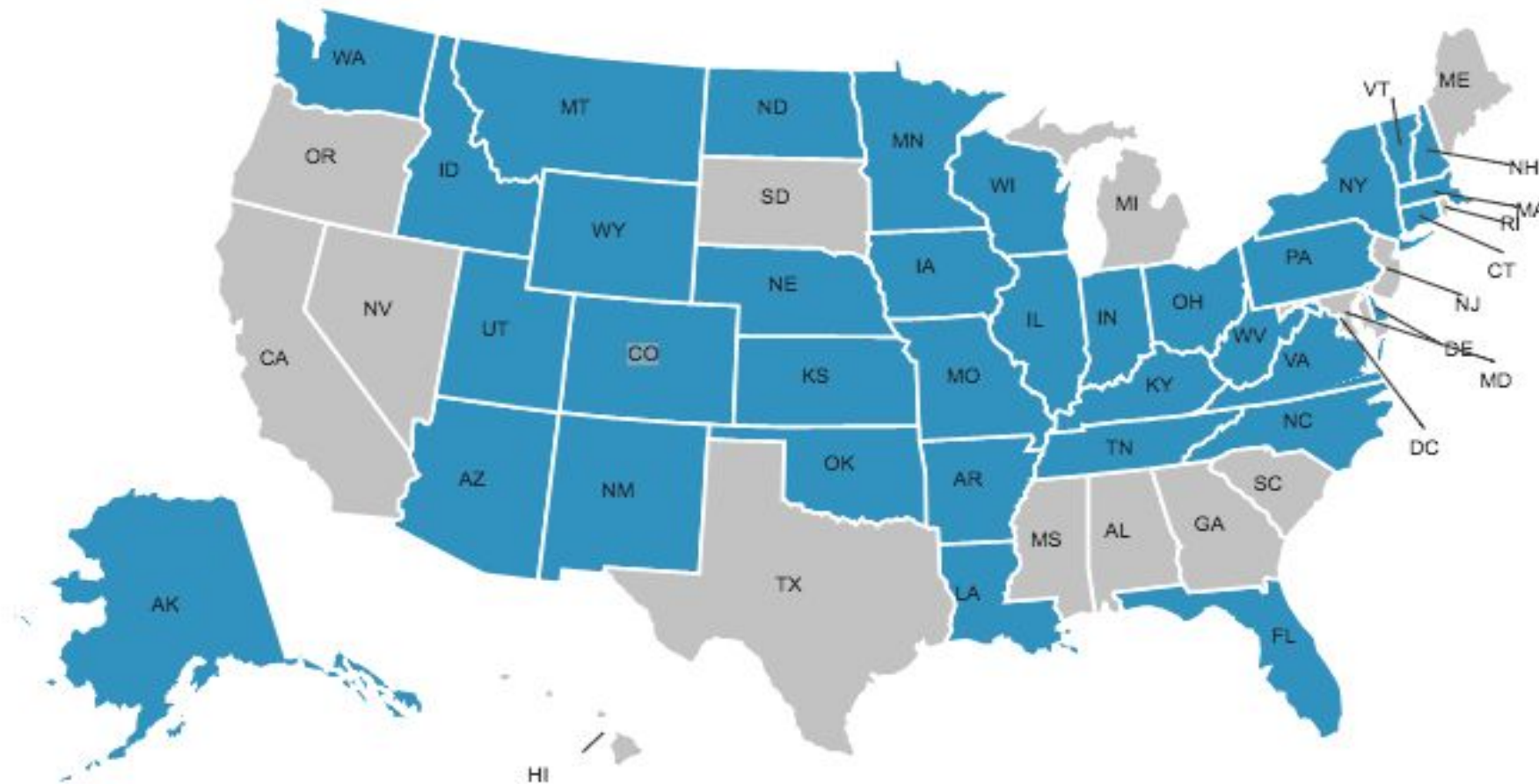
	ABA Model Rules	Florida Rules of Professional Conduct
Duty of Competence	1.1	4-1.1
Duty of Confidentiality	1.6	4-1.6
Duty to Supervise	5.1 and 5.3	4-5.1 and 4-5.3
Duty to Communicate	4.1	4-1.4
Ethic Opinions	Formal Opinion 477	Florida Opinion 12-3

Model Rule 1.1 [8]

COMPETENCE

[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, engage in continuing study and education and comply with all continuing legal education requirements to which the lawyer is subject.

State Adoption of Technology Competency



35 States Have Adopted the Duty of Technology Competence

[LawSites - Tech Competence](#)

Florida Rule 4-1.1

COMPETENCE

[Comment] To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, engage in continuing study and education, including an understanding of the benefits and risks associated with the use of technology, and comply with all continuing legal education requirements to which the lawyer is subject

[Comment] Competent representation may also involve the association or retention of a non-lawyer advisor of established technological competence in the field in question. Competent representation also involves safeguarding confidential information relating to the representation, including, but not limited to, electronic transmissions and communications.

Model Rule 1.6

CONFIDENTIALITY OF INFORMATION

(a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation...

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

Model Rule 1.6 [18]

ACTING COMPETENTLY TO PRESERVE CONFIDENTIALITY

[18] Paragraph (c) requires a lawyer to act competently to safeguard information relating to the representation of a client against:

- unauthorized access by third parties and
- inadvertent or unauthorized disclosure by the lawyer or
- inadvertent or unauthorized disclosure by other persons who are participating in the representation of the client or who are subject to the lawyer's supervision. See *Rules 1.1, 5.1 and 5.3*.

Model Rule 1.6 [18] Cont'd

[18]...inadvertent or unauthorized disclosure of information relating to the representation of a client does not constitute a violation if the lawyer has made reasonable efforts to prevent the access or disclosure.

Factors to be considered in determining the reasonableness of the lawyer's efforts include, but are not limited to,

- the sensitivity of the information,
- the likelihood of disclosure if additional safeguards are not employed,
- the cost of employing additional safeguards,
- the difficulty of implementing the safeguards, and
- the extent to which the safeguards adversely affect the lawyer's ability to represent clients (e.g., by making a device or important piece of software excessively difficult to use).

Florida Rule 4-1.6

CONFIDENTIALITY OF INFORMATION

Lawyers have an obligation to maintain as confidential all information that relates to a client's representation, regardless of the source. A lawyer may not voluntarily disclose any information relating to a client's representation without either application of an exception to the confidentiality rule or the client's informed consent

(e) Inadvertent Disclosure of Information. A lawyer must make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client.

Model Rule 5.3

RESPONSIBILITIES REGARDING NONLAWYER ASSISTANCE

(a) a partner, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer;

(b) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer...

Model Rule 5.3 [3]

NONLAWYERS OUTSIDE THE FIRM

[3] A lawyer may use nonlawyers outside the firm to assist the lawyer in rendering legal services to the client...When using such services outside the firm, a lawyer must make reasonable efforts to ensure that the services are provided in a manner that is compatible with the lawyer's professional obligations. The extent of this obligation depends upon the circumstances, including:

- education, experience and reputation of the nonlawyer;
- the nature of the services involved;
- terms of any arrangements concerning the protection of client information; and
- the legal and ethical environments of the jurisdictions in which the services will be performed, particularly with regard to confidentiality."

Florida Rule 4-5.3

RESPONSIBILITIES REGARDING NONLAWYER ASSISTANCE

(b) With respect to a nonlawyer employed or retained by or associated with a lawyer or an authorized business entity as defined elsewhere in these Rules Regulating The Florida Bar:

(1) a partner, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm, must make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer;

(2) a lawyer having direct supervisory authority over the nonlawyer must make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and...

Florida Bar Ethics Opinion 12-3

- Lawyers may use cloud computing if they take reasonable precautions to ensure that confidentiality of client information is maintained, that the service provider maintains adequate security, and that the lawyer has adequate access to the information stored remotely.
- The lawyer should research the service provider to be used.

<https://www.floridabar.org/etopinions/etopinion-12-3/>

ABA Formal Opinion 477

SECURING COMMUNICATION OF PROTECTED CLIENT INFORMATION

“A lawyer generally may transmit information relating to the representation of a client over the internet without violating the Model Rules of Professional Conduct where the lawyer has undertaken reasonable efforts to prevent inadvertent or unauthorized access. However, a lawyer may be required to take special security precautions to protect against the inadvertent or unauthorized disclosure of client information when required by an agreement with the client or by law, or when the nature of the information requires a higher degree of security.”

ABA Formal Opinion 477 Cont'd

“REASONABLE EFFORTS” CONSIDERATIONS

1. Understanding the Nature of the Threat
2. Understand How Client Confidential Information is Transmitted and Where It Is Stored.
3. Understand and Use Reasonable Electronic Security Measures.
4. Determine How Electronic Communications About Clients Matters Should Be Protected.
5. Label Client Confidential Information.
6. Train Lawyers and Nonlawyer Assistants in Technology and Information Security.
7. Conduct Due Diligence on Vendors Providing Communication Technology.

Model Rule 1.4

COMMUNICATIONS

(a) A lawyer shall:

1. promptly *inform the client of any decision or circumstance with respect to which the client's informed consent...*;
2. *reasonably consult with the client about the means by which the client's objectives are to be accomplished*;
3. keep the client reasonably informed about the status of the matter;
4. promptly comply with reasonable requests for information; and
5. consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.

How does the duty of reasonable care apply to the technology you use?

Lack of technological competency
leaves law firms vulnerable to
inadvertent disclosures.

Most firms will use some form of cloud computing in their firms.

Lawyers may use cloud computing if they take reasonable precautions to ensure that confidentiality of client information is maintained, that the service provider maintains adequate security, and that the lawyer has adequate access to the information stored remotely. The lawyer should research the service provider to be used.

Due Diligence with Service Providers

- Ensuring that the online data storage provider has an enforceable obligation to preserve confidentiality and security, and that the provider will notify the lawyer if served with process requiring the production of client information;
- Investigating the online data storage provider's security measures, policies, recoverability methods, and other procedures to determine if they are adequate under the circumstances;
- Employing available technology to guard against reasonably foreseeable attempts to infiltrate the data that is stored.

Other Important Considerations for Service Providers

- The reputation and location of the service provider
- Forum clause for disputes in service agreement
- Whether the service agreement limits the service provider's liability
- Whether the agreement creates “any proprietary or user rights” over the data the lawyer stores with the service provider
- Whether the information is password protected and encrypted
- Whether the lawyer will have the ability to further encrypt the information if additional security measures are required because of the special nature of a particular matter or piece of information.
- Access to data in the event lawyer cannot access the cloud

Due Diligence Considerations for Evaluating Cloud Service Providers

1. Vendor References
2. Data Security & Encryption
3. Terms of Service
4. Access Controls and User Permissions

[Legalfuel Guide “Due Diligence Considerations for Lawyers Evaluating Cloud Computing Service Providers”](#)

Secure Cloud Services Examples

- 256-bit SSL Encryption
- SOC II-Certified Data Center
- Geo-redundancy
- 3rd Party Monitoring of Security Settings
- User-level Permissions and Access Control
- Encrypted Communication with Clients via Client Portal

1. Vendor References: Vetting Legal Technology Services

- Bar Association Member Benefits
- Legal Technology Consultants
- Legal-Specific Publications
- Software Review Websites
- Industry / Tech Surveys

Bar Association Member Benefits

Florida Bar Member Benefits Program: Practice Resources

Tali

Florida Bar members receive a
10% subscription discount +
Free Echo Dot!



[Click here to redeem!](#)

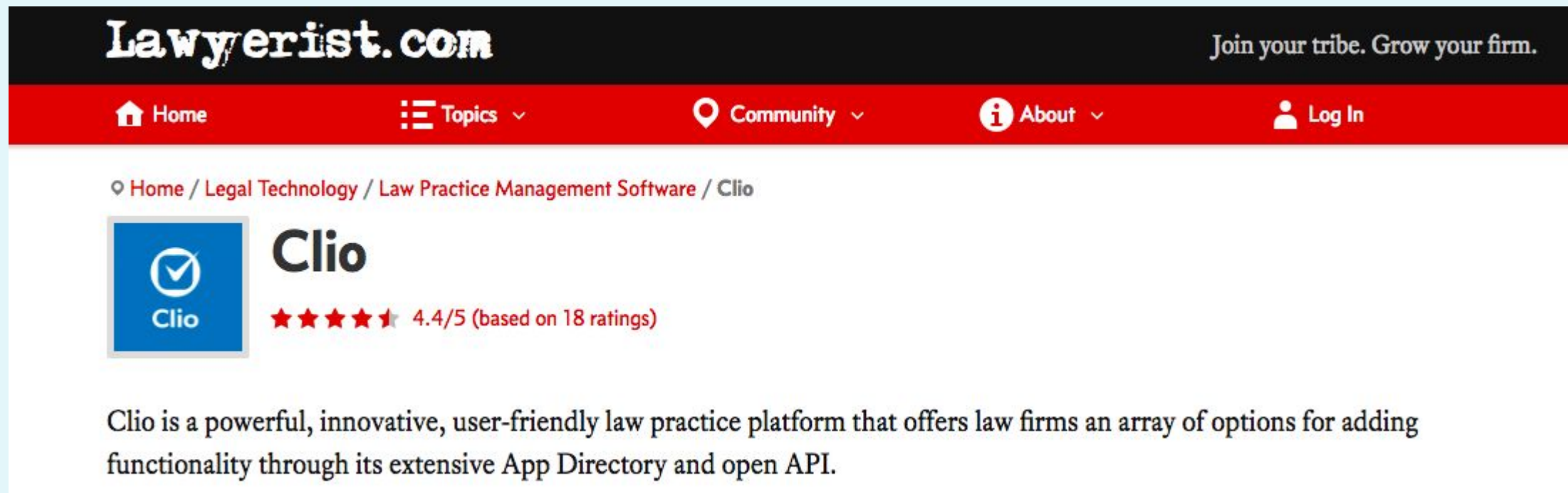
Clio

Florida Bar members receive a
10% lifetime discount on Clio!

[Click here to redeem!](#)

Legal-Specific Publications

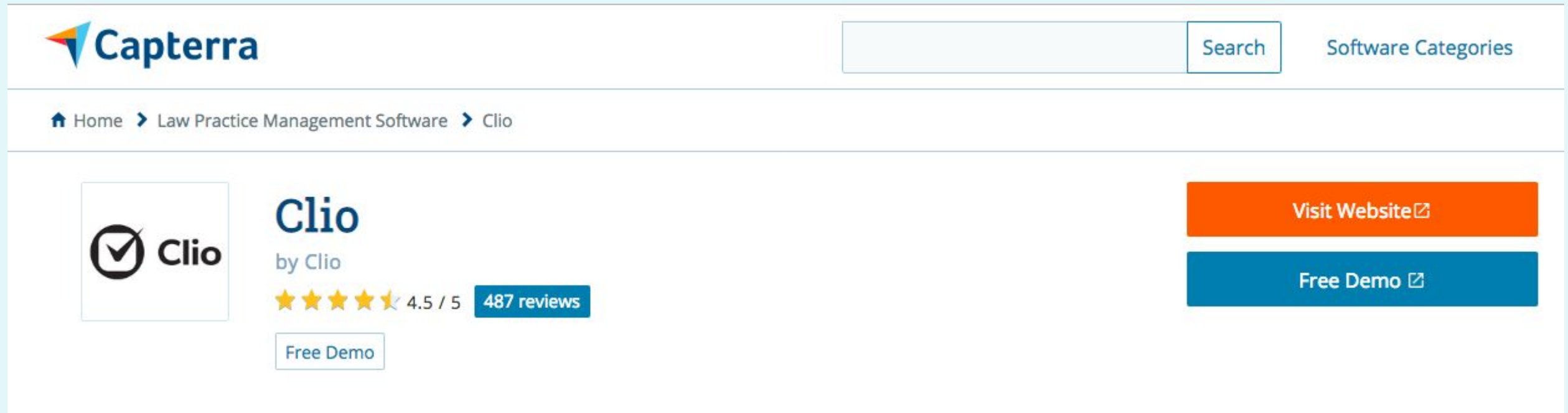
[Lawyerist.com](https://www.lawyerist.com):



The screenshot shows the Lawyerist.com website. The header is black with the Lawyerist.com logo on the left and the text "Join your tribe. Grow your firm." on the right. Below the header is a red navigation bar with links for Home, Topics, Community, About, and Log In. The main content area is white and features a breadcrumb trail: Home / Legal Technology / Law Practice Management Software / Clio. Below the breadcrumb trail is the Clio logo, which is a blue square with a white checkmark and the word "Clio" below it. To the right of the logo is the word "Clio" in a large, bold, black font. Below the word "Clio" is a rating of 4.4/5 (based on 18 ratings), represented by four full stars and one partial star. Below the rating is a paragraph of text: "Clio is a powerful, innovative, user-friendly law practice platform that offers law firms an array of options for adding functionality through its extensive App Directory and open API."

Software Review Websites

Capterra:




The screenshot displays the Capterra website interface. At the top left is the Capterra logo. To its right is a search bar with a 'Search' button and a link to 'Software Categories'. Below the header is a breadcrumb trail: 'Home > Law Practice Management Software > Clio'. The main content area features the Clio software listing. On the left is the Clio logo. To its right, the text 'Clio by Clio' is displayed. Below this is a star rating of 4.5 / 5, represented by five stars with the last one partially filled, and a blue button labeled '487 reviews'. A 'Free Demo' button is positioned below the rating. On the right side of the listing, there are two prominent buttons: an orange 'Visit Website' button with an external link icon, and a blue 'Free Demo' button with an external link icon.

Capterra

Search Software Categories

Home > Law Practice Management Software > Clio

 **Clio**
by Clio
★★★★★ 4.5 / 5 **487 reviews**
[Free Demo](#)

[Visit Website](#)

[Free Demo](#)

Surveys

ABA Legal Technology Survey Report:

2017 ABA Legal Technology Survey Report

Law Office Technology

(Questions 20-26 are based on respondents who answered “Yes” when asked if they had ever used a cloud computing solution in Question 19)

20. Which technology provider(s) have you used for cloud computing solutions for law related tasks?

		NUMBER OF LAWYERS AT ALL LOCATIONS					
	Total	Solo	2-9	10-49	50-99	100-499	500 or more
Dropbox	59.1%	58.3%	70.4%	45.8%	68.8%	53.6%	47.4%
Google Docs	37.8%	43.7%	41.8%	28.8%	37.5%	25.0%	31.6%
iCloud	32.2%	42.7%	28.6%	23.7%	43.8%	17.9%	31.6%
Evernote	18.3%	20.4%	26.5%	11.9%	12.5%	7.1%	5.3%
Clio	12.4%	18.4%	15.3%	10.2%	—	—	—
Box	10.8%	5.8%	11.2%	5.1%	31.3%	7.1%	42.1%
NetDocuments	4.3%	1.0%	2.0%	10.2%	12.5%	7.1%	5.3%

2. Data Security & Encryption Protocols

Physical & Environmental Safeguards

- Data Storage Location
- Geo-redundancy
- Certificates

Data Integrity Measure

- Encryption & Secure Wifi
- Security Audits / Testing
- Client Security & Limitations on 3rd party Access

Encryption & Secure Wifi

- How is the service provider encrypting your data while in transport and at rest?
- Look for SSL encryption on sites you use!


 <https://www.telitali.com>



Server Security: Security Audits / Testing

- A service provider's servers should be secured against hackers and other threats.
- Ask for evidence of a third-party audit for service providers you use.


Security Audits Example



Don't have an account? [Sign Up](#)

Security and Reliability


At Clio, the security and privacy of your data are our top priority. Accordingly, we've implemented multiple levels of security to ensure our customers' information is secure.



McAfee

We're audited every day by McAfee Secure to help ensure your data is protected from security vulnerabilities and other online threats.


[View certification »](#)



TRUSTe

Our privacy policy has been reviewed by TRUSTe for compliance with their program requirements, including transparency, accountability, and choice related to the collection and use of your Personal Information.

[View certification »](#)



DigiCert


Clio ensures that your data is protected while in transit by supporting the strongest industry-recognized cypher suites, including TLS 1.2 with AES 256 bit encryption. Clio has been verified by DigiCert, a trusted certificate authority.

[View certification »](#)

If you have any security concerns or questions feel free to contact us at support@clio.com.


<https://app.clio.com/security>

Certificates Example





Jan-20-2019 English


Clio
(Themis Solutions Inc.)
British Columbia, Canada
app.clio.com





Click an item below for more detail


 DigiCert EV SSL Certificate

 Registration Confirmed

 Address Confirmed

 Phone Number Confirmed

 Email Address Confirmed

 Domain Ownership Confirmed

Themis Solutions Inc. provides for the security of their users by enabling the encryption of data transmitted between Themis Solutions Inc. and your browser during an SSL/TLS encrypted session (look for the padlock). Themis Solutions Inc. holds a website identity assurance warranty of \$1,000,000 subject to the Relying Party Agreement.
[Relying Party Agreement](#)

NOTICE: YOU MUST READ AND AGREE TO THIS RELYING PARTY AGREEMENT BEFORE RELYING ON A DIGICERT-ISSUED CERTIFICATE OR SITE SEAL.

<https://app.clio.com/security>

Client Security

- Understand the dangers of email for sending confidential client information, like reply-all, BCCs, phishing scams, etc.
- How secure is the laptop or desktop computer you're using? Firewall, antivirus protection, latest security updates for your OS and browser
- Have you encrypted any devices where client data is stored? (mobile, desktop, laptop, backup disks)






3. Terms of Service

- Privacy Policy
- Confidentiality
- Ownership of Data

4. Access Controls & User Permissions

- User Permissions
- Log-in Tracking
- Adding & Deleting Data
- Export Controls
- Password Protection / End User Authentication

User Permissions: Control Access to Data

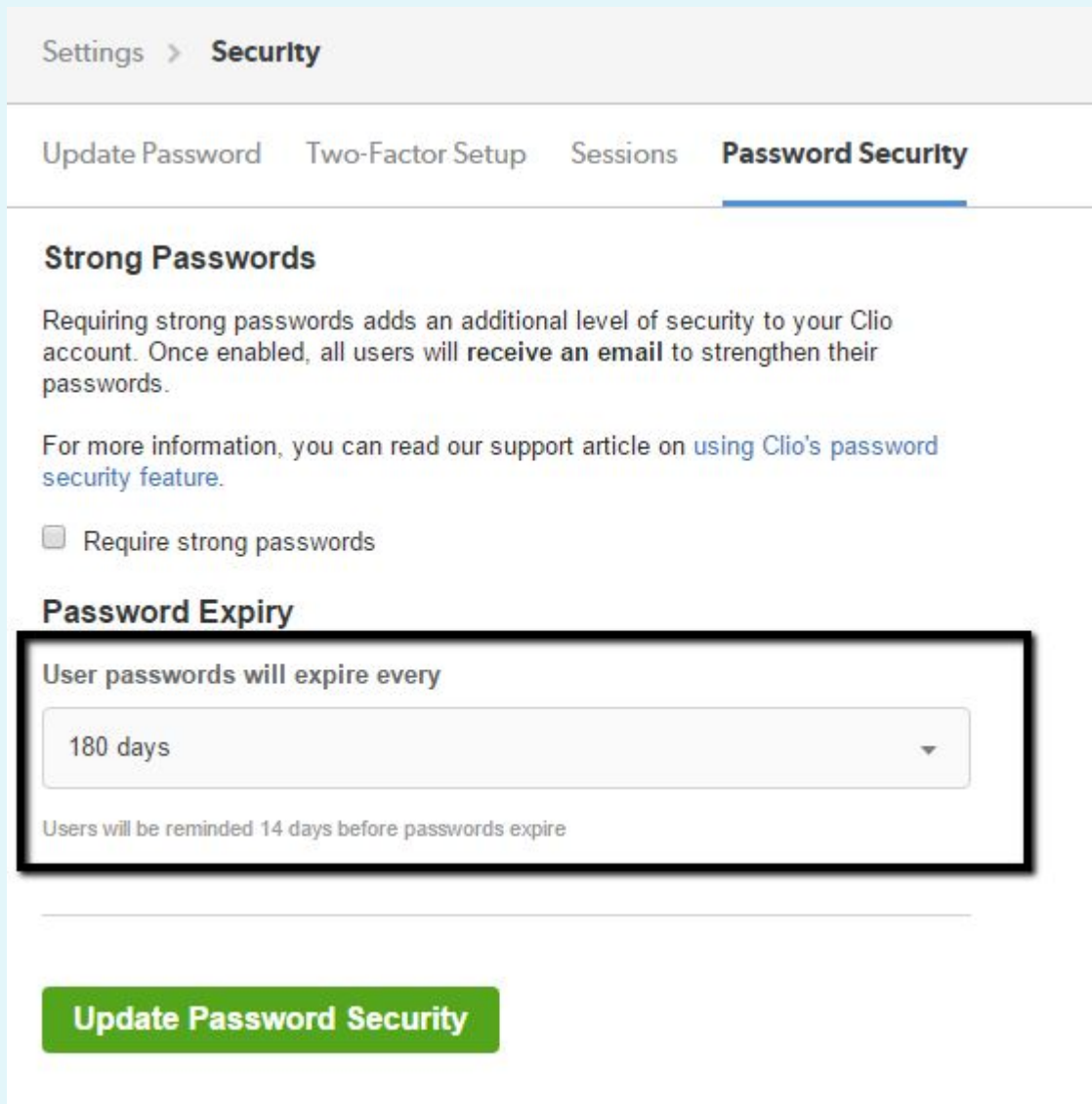
Manage Users					PRIVACY POLICY	ACTIONS ▾	ADD
					Filter ▾		
Name ▾	Login	Permissions	Billing Rate	Subscription Plan			
 <u>Pete Campbell</u>	pcampbell.draperlaw@gmail.com	-	\$220.00	Attorney			
Edit Edit Profile Picture Disable Force Password Change							
 <u>Don Draper</u>	DonD.draperlaw@gmail.com	Administrator	\$250.00	Attorney			
Edit Edit Profile Picture							
 <u>Joan Harris</u>	joanh.draperlaw@gmail.com	Accounts, Billing, Reports	\$220.00	Attorney			
Edit Edit Profile Picture Disable Force Password Change							
 <u>Peggy Olson</u>	peggy.draperlaw@gmail.com	Accounts, Billing, Reports	\$290.00	Attorney			
Edit Edit Profile Picture Disable Force Password Change							
 <u>Roger Sterling</u>	rogers.draperlaw@gmail.com	Administrator	\$300.00	Attorney			
Edit Edit Profile Picture Disable Force Password Change							

Password Security

- Choose a secure password for the sites you're using.
- Consider using a password manager tool (1Password, PasswordSafe, LastPass) to generate and store passwords.

Password Protection Examples

Strong Passwords:



Settings > Security

Update Password Two-Factor Setup Sessions **Password Security**

Strong Passwords

Requiring strong passwords adds an additional level of security to your Clio account. Once enabled, all users will **receive an email** to strengthen their passwords.

For more information, you can read our support article on [using Clio's password security feature](#).

☐ Require strong passwords

Password Expiry

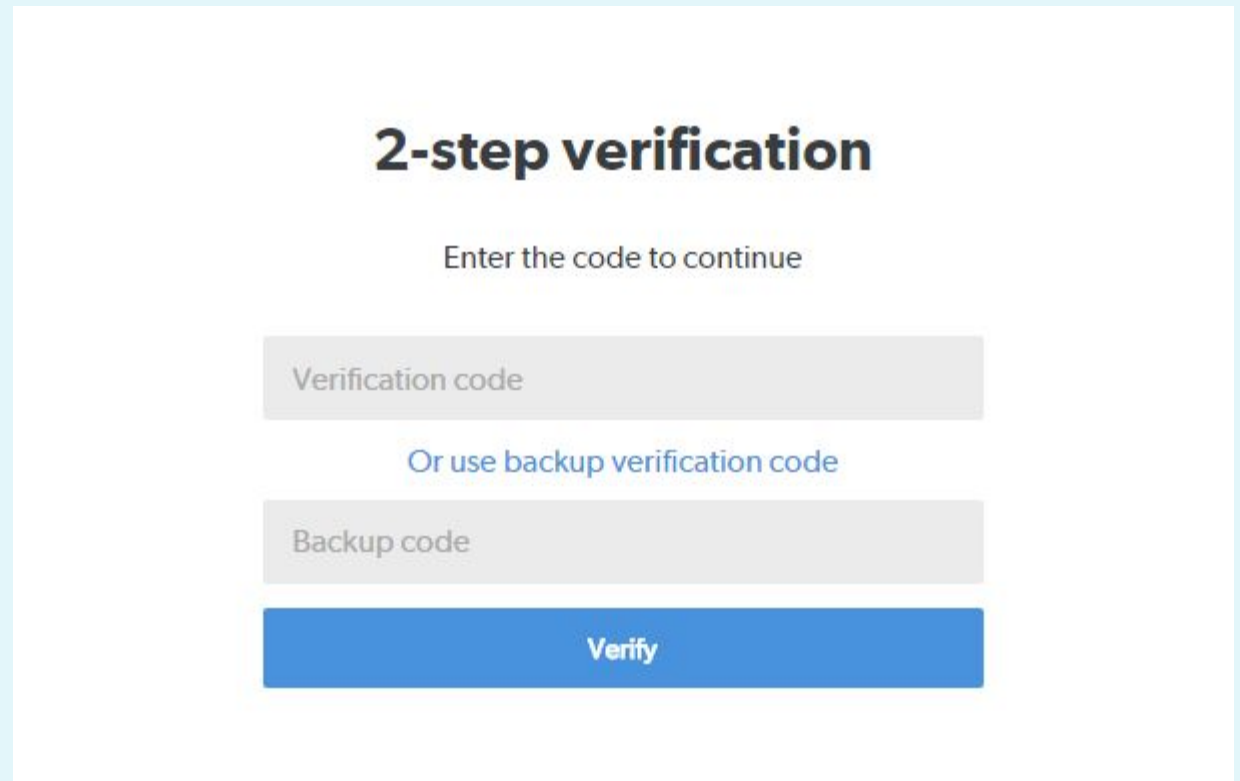
User passwords will expire every

180 days

Users will be reminded 14 days before passwords expire

Update Password Security

Two-Factor Authentication:



2-step verification

Enter the code to continue

Verification code

[Or use backup verification code](#)

Backup code

Verify

Security Action Plan - Going Forward

1. Create an encrypted backup;
2. Turn on 2-factor authentication and strong passwords;
3. Find the access logs for your software.
4. Map your current technology & data;
5. Read which data privacy laws apply to your practice area.

How the Latest Tech Helps Law Firms

- Streamline your intake process and firm marketing efforts
- Increased efficiency and productivity
- Secure communication and collaboration
- Capture more (hands-free) billable time
- Collect more money easily with credit card processing and ACH

Here's an example of the latest tech...

Tali is your timekeeping assistant

Say It

Tell Tali to track
your time



amazon alexa



Siri

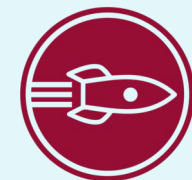
See It

Review your
time entries in
the web
dashboard



Send It

Sync with your
existing systems



rocket matter

Q&A

Contact Us

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- www.telltali.com



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Course #: 3239

Thank You!