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March 10, 2014

Dwight Dinkla, J.D.
Executive Director
Iowa State Bar Association

Des Moines, IA 50309

RE: IA Ethics Op, 14-01 Computer Security

Dear Mr. Dinkla,

Microsoft Corporation has announced that as of 8 April 2014 it will no longer support the Windows XP operating system with the release of new security patches. The announcement has generated commentary in the legal press, Iowa Lawyer Weekly, November 6, 2013; Iowa Lawyer Weekly, February 26, 2014; ABA Journal, March 2014, which has resulted in debate regarding a lawyer's duty to protect client confidential information under Iowa Rule of Prof'l. C. 32:1.6. As a result, the Committee has been asked to give guidance to the bar.

A lawyer's ethical obligation to keep client information confidential and the use of information technology and cloud computing were addressed in IA Ethics Opinion. 11- 01. The opinion sought to apply the concepts embodied in Rule 32:1.6, comment 17 by establishing a rule of commercial reasonableness:

We believe the Rule establishes a reasonable and flexible approach to guide a lawyer's use of ever-changing technology. It recognizes that the

degree of protection to be afforded client information varies with the client, matter and information involved. But it places on the lawyer the obligation to perform due diligence to assess the degree of protection that will be needed and to act accordingly.

IA Ethics Opinion 11-01.

The opinion requires lawyers to engage in a due diligence process which assesses the realistic potential for risk, the damage which could be caused thereby and the estimated cost of remediation. It is beyond the province of this Committee to provide technical guidance regarding operating systems, system security or other aspects of the ever-changing world of technology. However a lawyer and law firm must be aware of the potential for misuse of the firm's systems. The security status change for this operating system highlights the fact that the duty of due diligence in assessing system security is an ongoing one; programs and procedures which were secure two years ago may not be secure now.

How those firms respond to the potential for a security breach will depend upon the result of their due diligence. Some may elect to modify their existing operating systems, others may determine that their existing systems can be patched or otherwise modified, yet others may determine that no modifications are necessary. Rule 32:1.6 and IA Ethics Opinion 11-01 require only a due diligence process, not a specific result.

For the Committee,



NICK CRITELLI, Chair
Iowa State Bar Association
Ethics and Practice Guidelines Committee