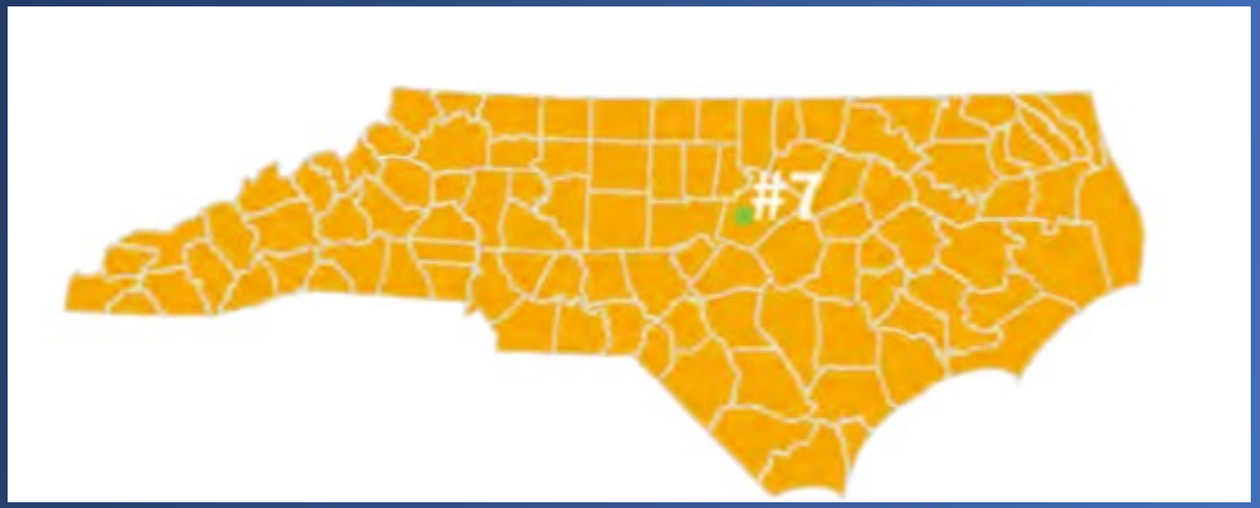
Ethical Issues for Municipal Lawyers in Evolving Organizations

IMLA 2021 Mid-Year Seminar

Lisa Glover

Cary, NC

- Population: 170,000
- Area: 60 square miles

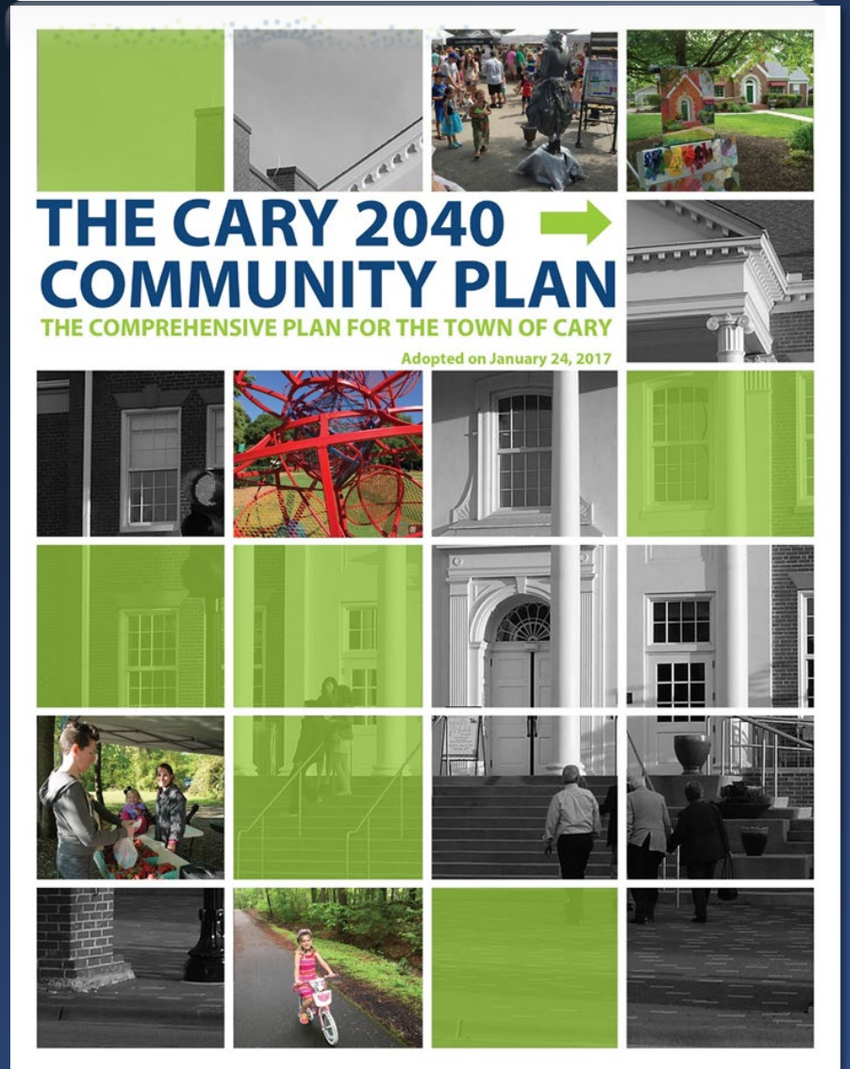


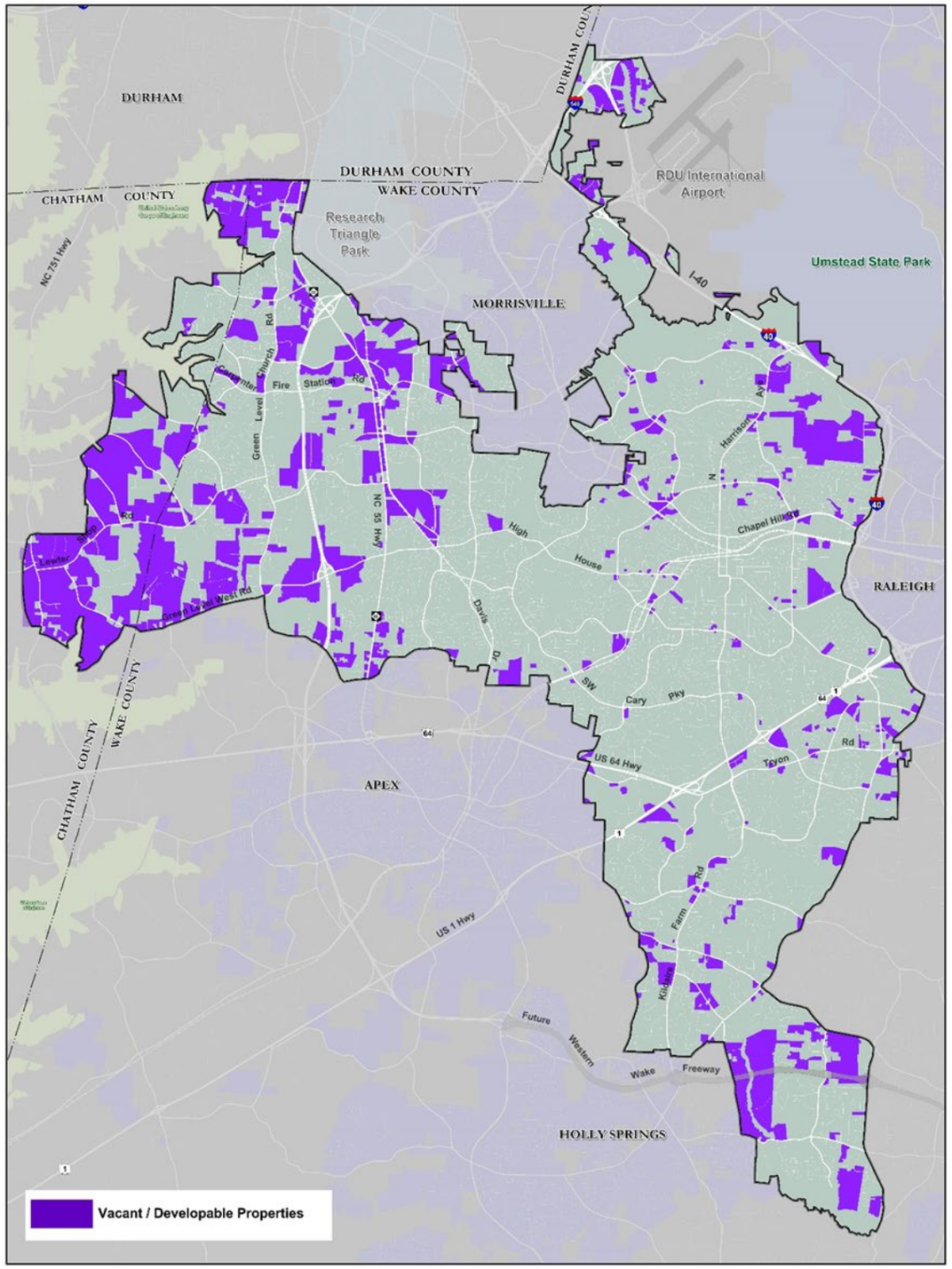




Remaining Developable Areas

imagine CARY
Your Voice ➧ Our Future







More Seniors

Cary residents over the age of 55 increased from 12% to 18% between 2000 and 2010.



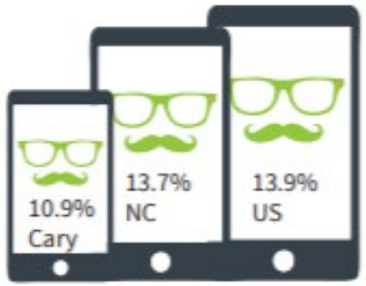
Smaller Households

Cary's average household size and family size decreased between 2000 and 2010



More Singles

Unmarried singles in Cary increased from 23.5% in 2000 to 28.2% in 2010



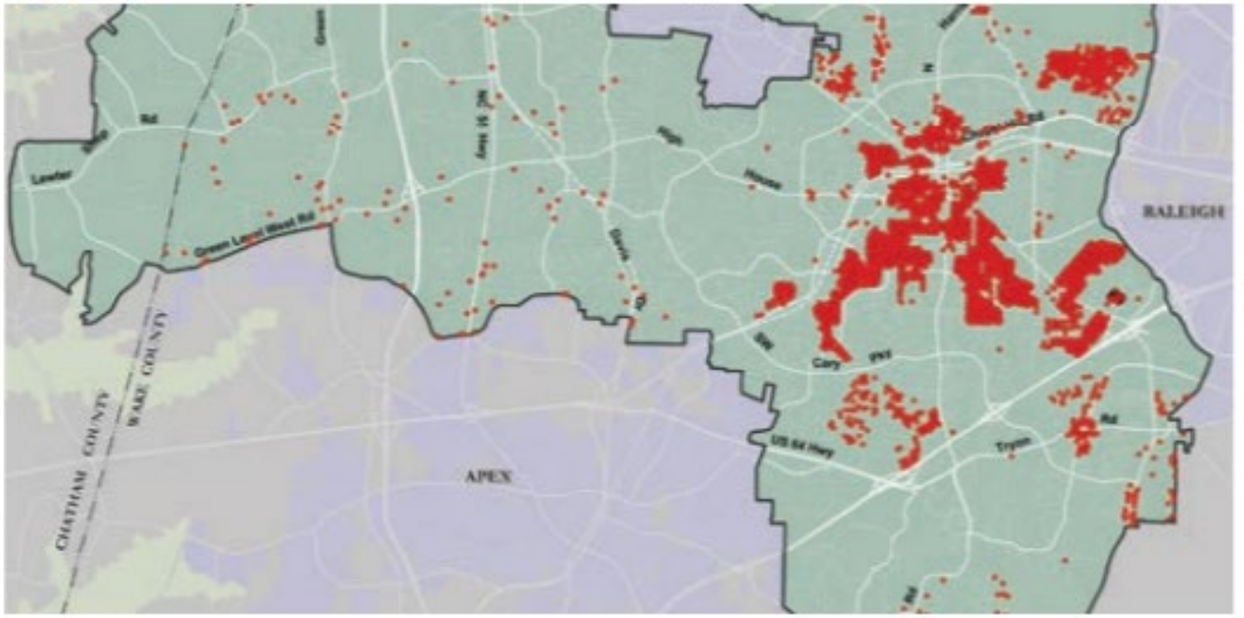
Fewer Millenials

The % of the Millennial aged population in Cary is lower than in NC and the US.

Source: U.S. Census Bureau

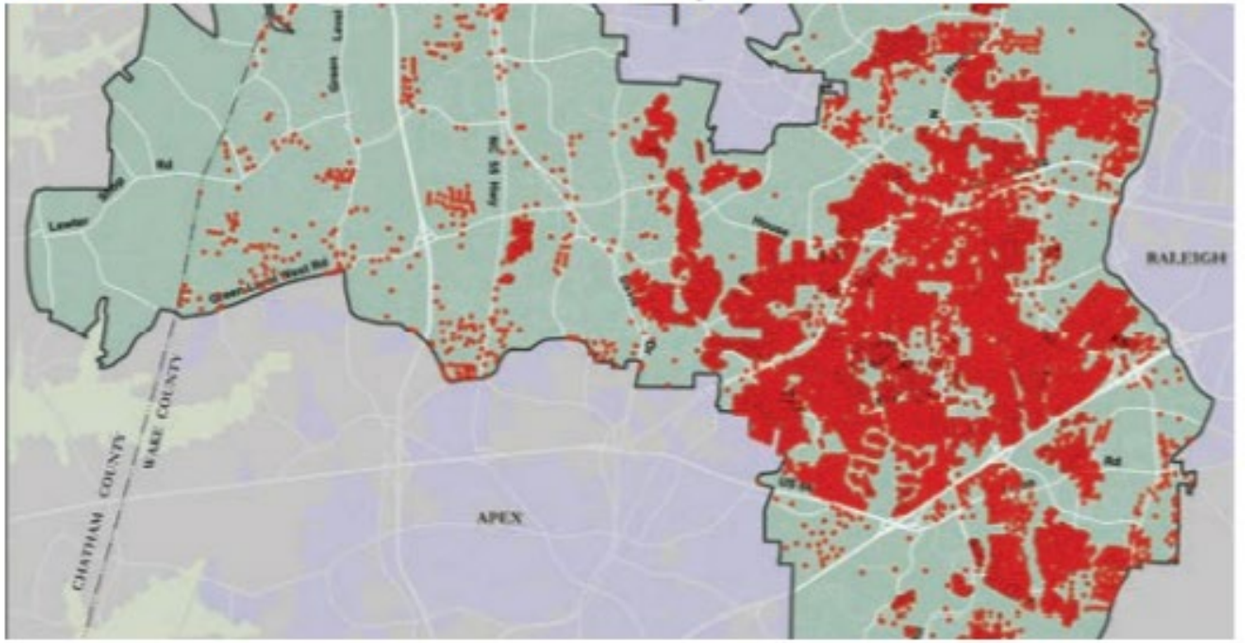
2012

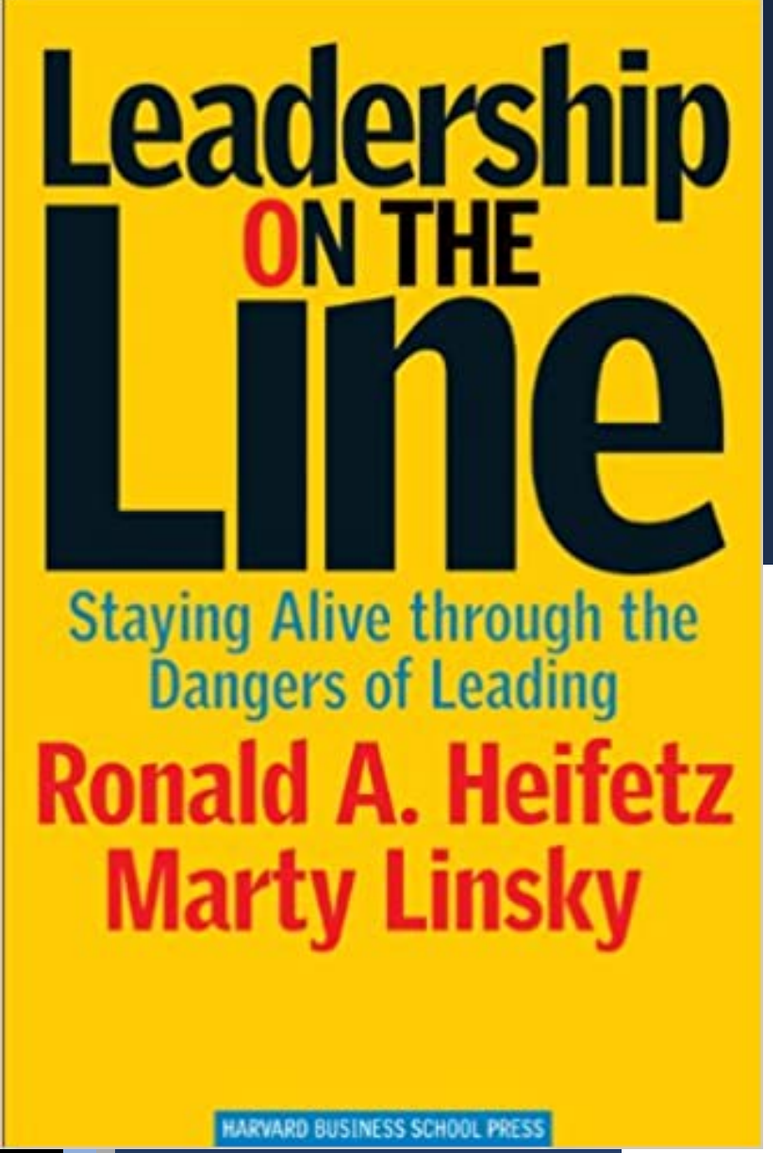
Cary's 40+ Year Old Homes in 2012



2032

Cary's 40+ Year Old Homes in 2032





Adaptive Leadership

Cambridge-leadership.com

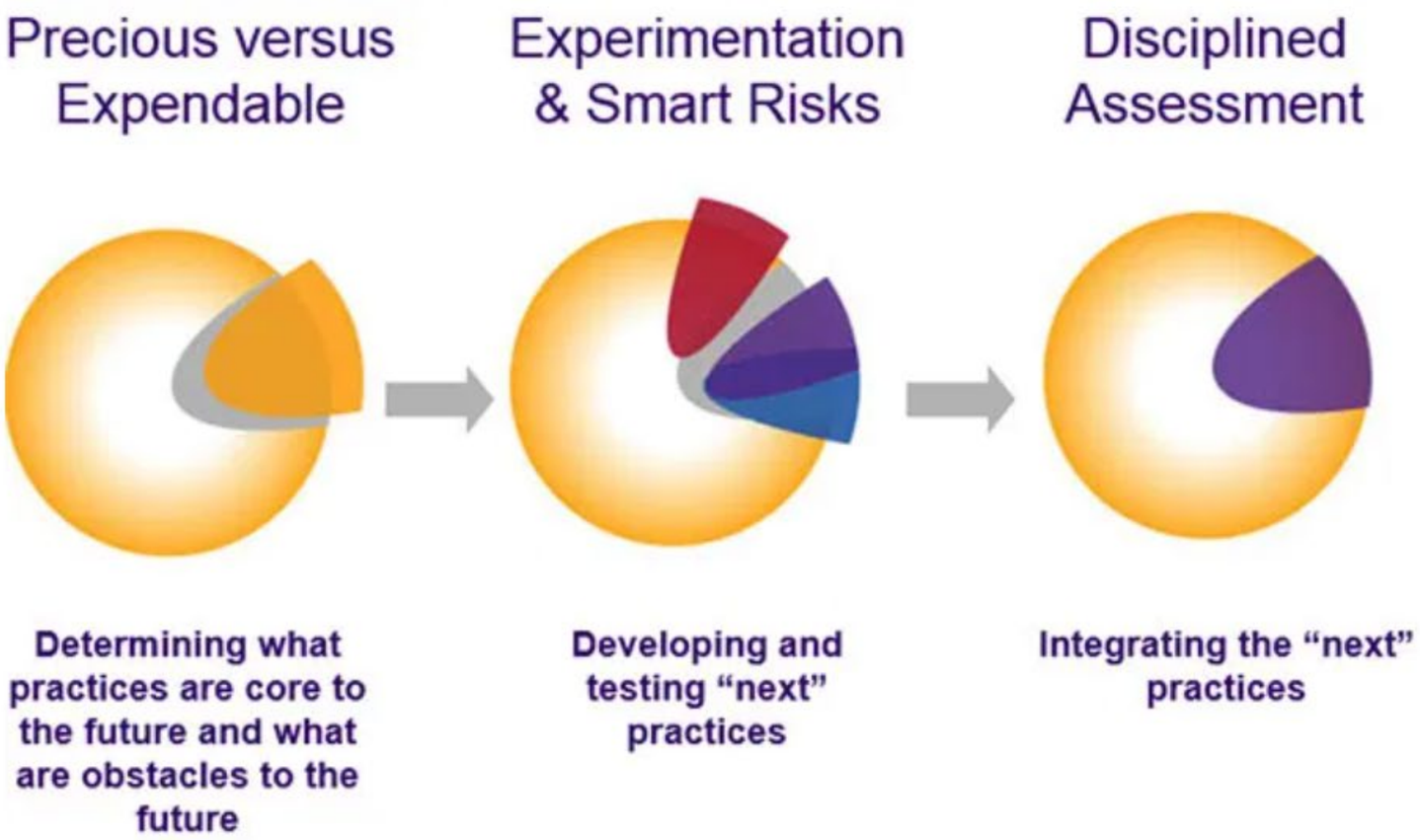
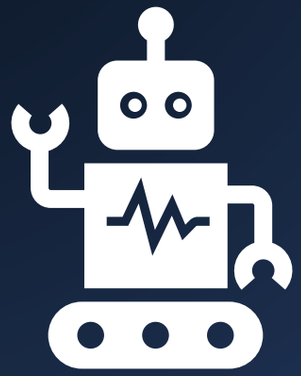




Image by David Mark from Pixabay

Challenges

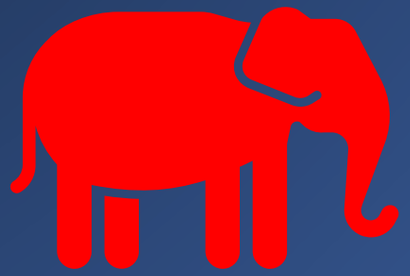






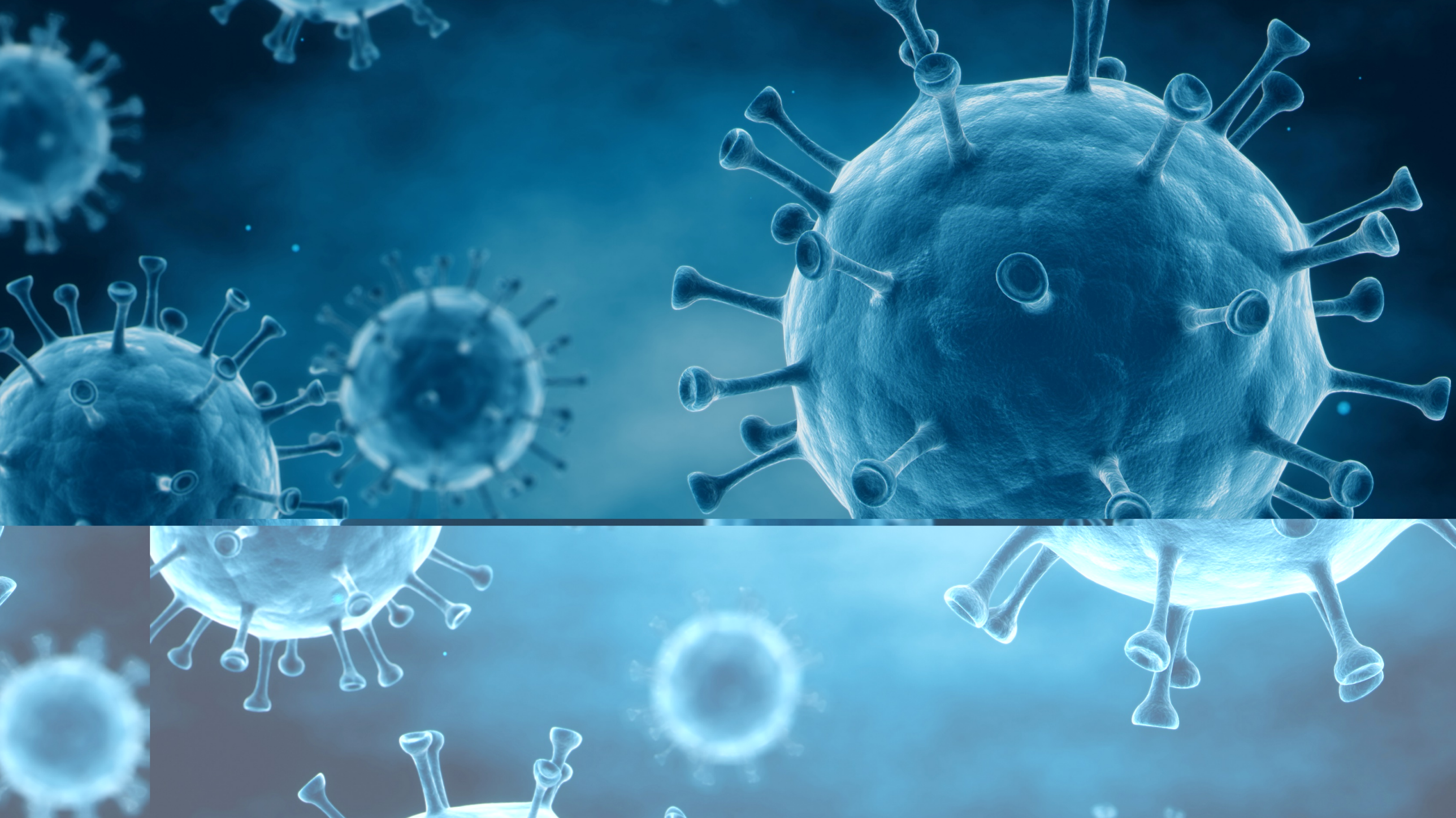













Diligence
Representation
Evolving
Flexible
Ethical
Advice
Ideas
Disruptive
Legal
Slack
New
Adaptive
Organization
Government
Silos
Duty
Cloud
Empower
Rule 1.13
Staff
Exciting
City
Client
Technology
Leadership
Aging

Role of the Municipal Attorney

Preamble

"As a representative of clients, a lawyer performs various functions."

- Advisor
- Advocate
- Negotiator
- Evaluator

Rule 2.1: Advisor

“In representing a client, a lawyer shall exercise independent professional judgment and render candid advice. In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social, and political factors, that may be relevant to the client's situation.”

Rule 2.1: Advisor

Comment 2: Narrow legal advice may be of little value

Comment 1: Must give candid advice even if "unpalatable"

Comment 5: Initiate advice if in the client's interest



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Rule 1.13: Organization as Client

(a) “A lawyer employed or retained by an organization represents the organization acting through its duly authorized constituents.”

(f) “In dealing with an organization’s . . . employees . . . or other constituents, a lawyer shall explain the identity of the client when the lawyer knows or reasonably should know that the organization's interests are adverse to those of the constituents with whom the lawyer is dealing.”

Stay Engaged with Organizational Change

- If you do not, trust and confidence is lost – staff may not turn to you for advice on their new endeavors
- Influence the changes
- Disaffected employees become plaintiffs

Duties of the Municipal Attorney

Rule 1.1: Competence

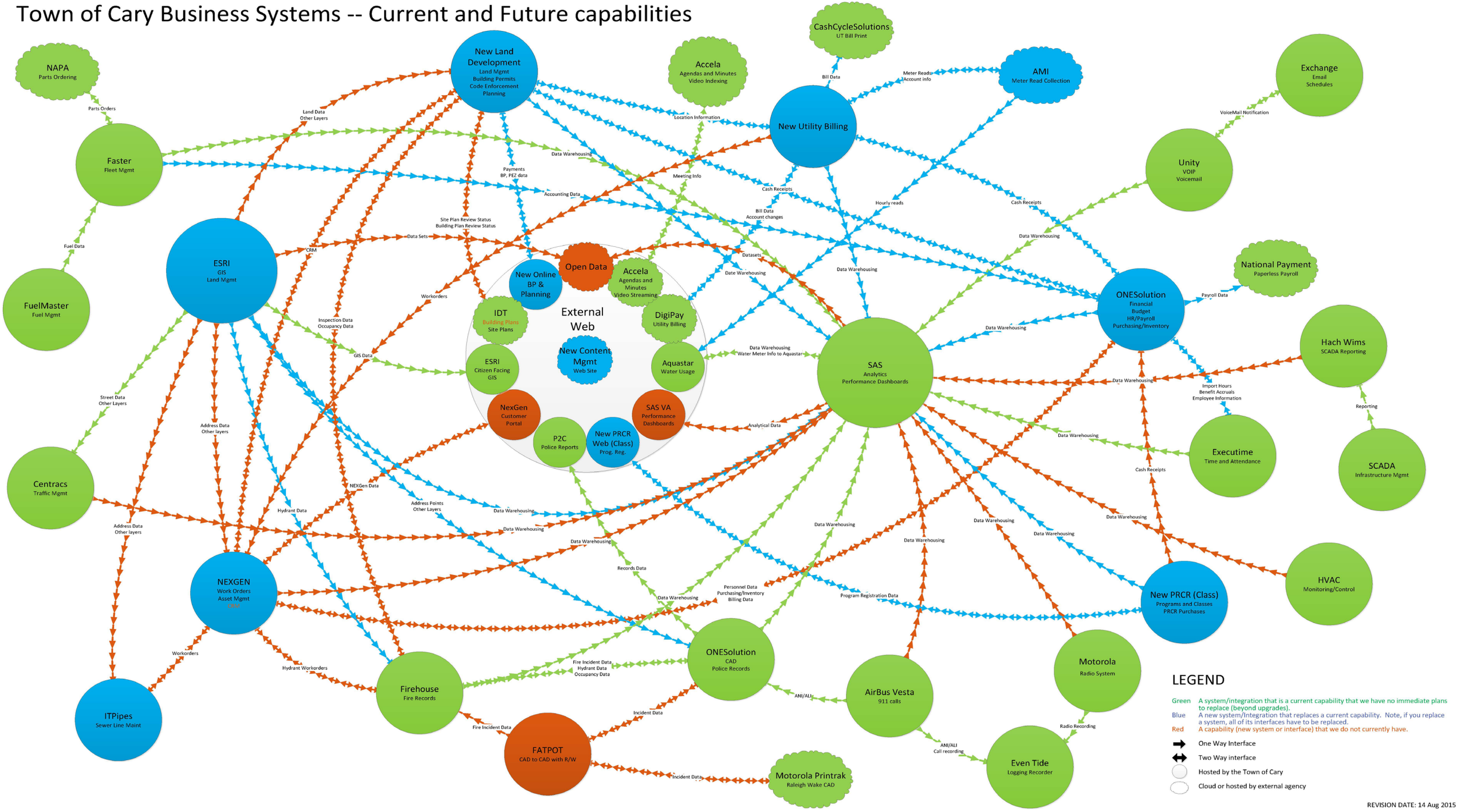
"A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation."

Rule 1.1: Competence

Comment 2: "A lawyer can provide adequate representation in a wholly novel field through necessary study."

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 . . ."

Town of Cary Business Systems -- Current and Future capabilities



Technology Considerations

- Has new tech been configured by municipal staff to comply with public records requirements (retention; segregation of confidential or protected records; ability to search)?
- What tech is the legal office using? Are you preserving client confidentiality (Rule 1.6) and safekeeping client property (Rule 1.15)?
- Check your State Bar Ethics Opinions!

North Carolina 2011 Formal Ethics Opinion 6

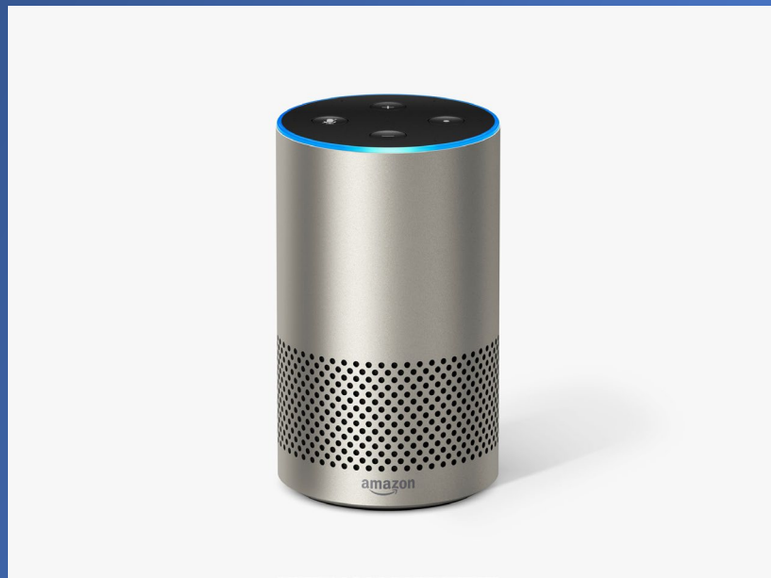
- Use of Software as a Service (SaaS) permissible
- Must minimize the risk of inadvertent or unauthorized disclosure of confidential client information and protect client's file from risk of loss
- Contract terms:
  - Detail how the vendor will handle confidential information
  - Require ability to retrieve data when contract ends; require vendor to delete after retrieval

ABA Formal Opinion 498: Virtual Practice

- Review the terms of service and any updates
- Be diligent in installing security updates
- Use strong passwords
- Use secure, password protected routers or VPNs
- Can you access client files if the “cloud” goes down?

ABA Formal Opinion 498: Virtual Practice

- Virtual meetings should be password protected
- Can other people – or devices – overhear you?
- Don’t forget Rule 5.1 – proper supervision
- Who’s checking the mail?



Rule 1.3: Diligence

"A lawyer shall act with reasonable diligence and promptness in representing a client."

Comment 2: "A lawyer's work load must be controlled so that each matter can be handled competently."

Rule 1.3: Diligence

Challenges:

- Pace of experimentation and change
- Staffing and budget limitations for outside counsel
- In-house attorneys can’t decline representation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