

# techEthics for Lawyers

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who is this guy?



isn't he from charlotte?







# Just Some Suggestions:

big

SMALL

town

CITY

Changing DAILY

Opportunity to Grow



YOU  
DO  
YOU



# Please:

- ✧ Ask Questions
- ✧ Make Suggestions
- ✧ Wealth of Experience
- ✧ HAVE FUN



## Tip #1: Spark Joy: Enhance Your Tech-Spertise





SEE THE

BIG

PICTURE





## Rule 1.1 Competence - Comment 8

To maintain requisite knowledge & skill, a lawyer should keep abreast of changes in the law & its practice, including the benefits & risks associated w/ technology relevant to the lawyer's practice



# TECHethics

- ✦ duty to understand big picture
- ✦ duty to understand how things work
- ✦ duty to understand our role in big picture
- ✦ duty to understand and seek to avoid pitfalls



# TECHethics

- ✦ applies to communications
- ✦ applies to datum protection
- ✦ applies to reputation management
- ✦ applies to marketing



## Tip #2: Advise Your Client

### 2014 FEO 5 - SOCIALS – ADVISING CLIENT

*Lawyer must advise civil litigation client re: legal ramifications of client's postings on social media as necessary to represent the client competently. Lawyer may advise client to remove postings on social media if removal is done in compliance w/rules & law on preservation & spoliation of evidence.*









## FAMILY LAW







1 hour ago •

Perfect way to end a hard day

## CRIMINAL DEFENSE





## Tip #3: Protect Digital Datum





Rule 1.6(c): Must make reasonable efforts to prevent inadvertent/unauthorized disclosure of, or unauthorized access to, info relating to representation of a client



2008 FEO 5

2011 FEO 6 Lawyers can use web-based data storage or other “software as a service” for law practice so long as reasonable, appropriate measures are taken to minimize the risk of inadvertent/unauthorized disclosure & to ensure client info is secure



## **SUGGESTIONS**

- Avoid free/public WiFi when using devices w/access to confidential info
- Use a Virtual Private Network (VPN) – monthly subscription that encrypts your online activity



## Tip #4: Comment Carefully



**Judge charged with DWI says independent analysis shows non-impairment**

**Former CEO of Blue Cross Blue Shield NC Found Guilty in DWI Case**



**Gaston mom accused of child abuse in DWI case**



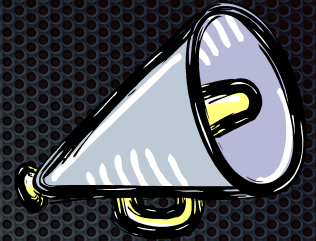
**BREAKING NEWS UPDATE**

**RALEIGH OFFICER ARRESTED FOR DWI & WEAPONS CHARGES**

**N.C. Man Stopped for DUI Said He Hadn't Been Drinking; Researchers Found His Body Produced Alcohol**



## Tip #4: Comment Carefully



- ◆ General Rule: No public comments that have a substantial likelihood of ***materially prejudicing*** adjudicative proceeding in the case.
- ◆ Certain Mundane Topics Are Always Safe
- ◆ Several Additional Topics Are Fair Game in Criminal Cases
- ◆ The Self-Defense Exception



### ◆ The Response Exception





## Tip #5: Respond to Reviews





# Negative Feedback







Keep Calm  
Be Polite  
Be Profesional  
Learn & Grow



2021 FEO 1

## RESPONDING TO NEGATIVE ONLINE REVIEWS



*Opinion rules that a lawyer is not permitted to include confidential information in a response to a client's negative online review but is not barred from responding in a professional and restrained manner.*



- *Because online reviews are so important to a lawyer's practice, online reputation management is crucial*
- *Therefore, it may be in the lawyer's best interest to respond to a negative review*



*The protection of client confidences is one of the most significant responsibilities imposed on a lawyer*



# Rule 1.6(a)

a lawyer may not reveal  
information acquired  
during the professional  
relationship with a client  
unless

- (1) the disclosure is  
impliedly authorized in  
order to carry out the  
representation
- (2) the client gives  
informed consent or
- (3) one of the exceptions  
set out in Rule 1.6(b)  
applies



# AND Rule 1.9(c)

generally prohibited from using or revealing  
confidential information of a former client



Responding to a negative online review is not necessary to “carry out the representation.”

Therefore, Lawyer may not reveal confidential information in response to the negative online review unless the former client consents or an exception set out in Rule 1.6(b) applies.

*See* [2018 FEO 1](#)



*No exception in Rule 1.6(b) allows  
Lawyer to reveal confidential  
information in response to a former  
client's negative review*



# Rule 1.6

## COMMENT

**It's  
your  
fault!**



Because online criticism, standing alone, does not constitute a “criminal charge,” “civil claim,” or “proceeding,” the remaining question is whether a negative online review creates a “controversy” between the lawyer and client as to which the lawyer may disclose otherwise protected client-related information in order “to establish a claim or defense.”



ABA Standing Committee on Ethics and Professional Responsibility concludes that, “alone, a negative online review, because of its informal nature, is not a ‘controversy between the lawyer and the client’ within the meaning of Rule 1.6(b)(5), and therefore does not allow disclosure of confidential information relating to a client’s matter.” [ABA Formal Op. 496 \(2021\)](#)

We agree with the analyses  
set out in these ethics  
opinions



Unflattering but less formal comments on the skills of lawyers, whether in hallway chatter, a newspaper account, or a website are an inevitable incident of the practice of a public profession.”

New York State Bar Ass’n Comm. on Prof’l  
Ethics Op. 1032 (2014)





Part of the Practice  
Expected  
Get Used to It



What if they were NOT a client?

Bye.

My



May Lawyer respond to the post by stating that he has never represented the individual?

- Yes, maybe, SORT OF
- Unless the client is entitled to the protections set out in RPC 1.18(a) for prospective clients
- Prospective clients are entitled to some of the protections afforded clients
- BE CAREFUL!



Lawyer may not confirm or deny his representation of a prospective client

Lawyer may, however, state that it is not possible for him to accept every prospective client's case

Lawyer may enumerate the various reasons that a prospective client's case may be declined



May Lawyer sue his former client for defamation and disclose confidential client information to establish the claim?

Yes. If there is a basis in law and fact for a defamation suit against the former client, the Rules of Professional Conduct do not prohibit Lawyer from filing such a suit

Lawyer may reveal information protected from disclosure by Rule 1.6(a) to the extent the lawyer reasonably believes necessary to establish the defamation claim.



ИМНО





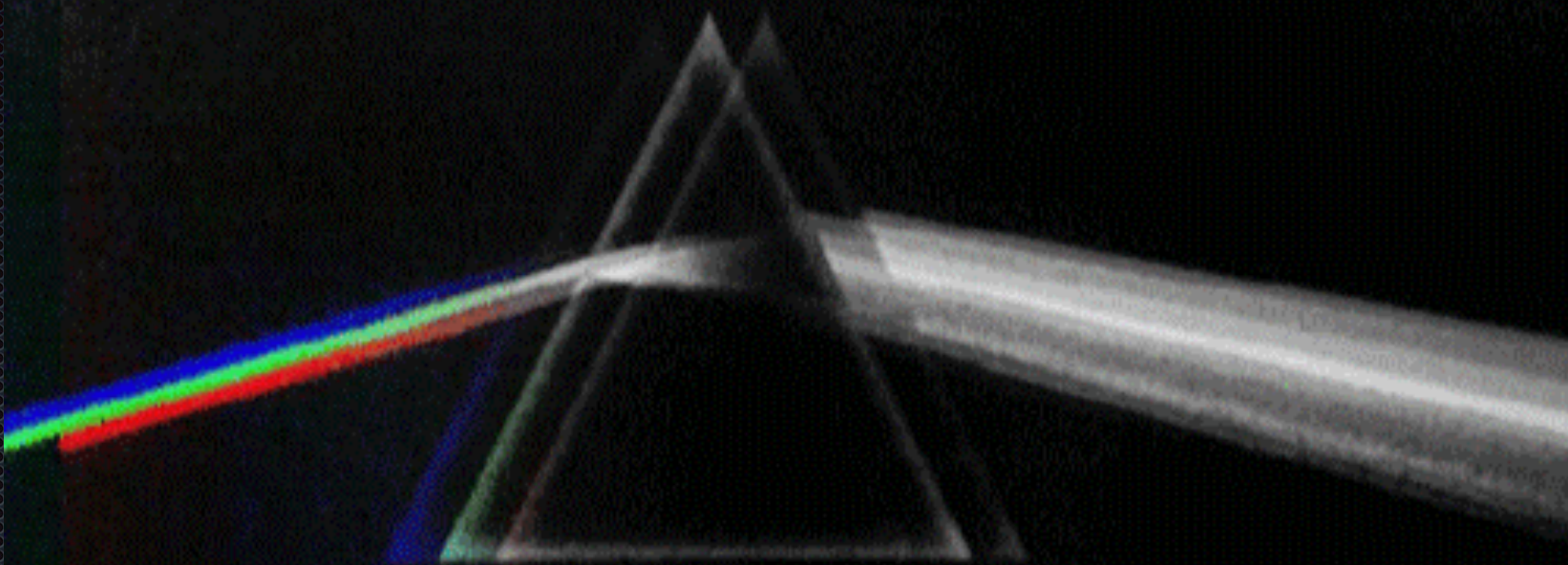


Tip #6: UBU

Shine On  
You  
Crazy  
Diamond



There's someone in my head but it's not me.





## Tip #7: Don't Encourage Unreasonable Expectations

there is a substantial likelihood that it will lead a reasonable person to formulate a specific conclusion about the lawyer or the lawyer's services for which there is no reasonable factual foundation



# unreasonable expectations

- ✦ RPC 7.1
- ✦ false or misleading communication about lawyer or services
- ✦ unjustified expectations / results
- ✦ comparison that cannot be factually substantiated
- ✦ utilizing an objective standard



# superlatives & other stuff

- ✦ BEST - INCOMPARABLE
- ✦ all cases result in HUGE recovery
- ✦ things YOU can control - what YOU write
- ✦ things you CANNOT control - avvo, google, yahoo, best lawyers - reviews
- ✦ include disclaimer language - LINK



*For more information. . .*


- ✦ Selection Process and Criterion for Inclusion, see:
- ✦ [SuperLawyers.com](http://SuperLawyers.com)
- ✦ [BestLawyers.com](http://BestLawyers.com)



## Tip #8: It's OK to Participate in Self-Laudatory Organizations

ncbar.gov/for-lawyers/ethics/adopted-opinions/2018-formal-ethics-opinion-8/?opinionSearchTerm=SUPERLATIVES







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Home ▶ For Lawyers ▶ Ethics/Rules of Professional Conduct ▶ Adopted Opinions ▶ Advertising Inclusion in Self-Laudatory List or Organization

### 2018 FORMAL ETHICS OPINION 8

[« Return to search results](#)

[« Previous Opinion](#) [Next Opinion »](#)

#### ADVERTISING INCLUSION IN SELF-LAUDATORY LIST OR ORGANIZATION

*Adopted: October 25, 2019*

*Opinion rules that a lawyer may advertise the lawyer's inclusion in a list or membership in an organization that bestows a laudatory designation on the lawyer subject to certain conditions.*

Editor's Note: 2007 FEO 14, Advertising Inclusion in List in North Carolina Super Lawyers and Other Similar Publications, was withdrawn by the State Bar Council on October 25, 2019 upon adoption by the Council of the opinion below.

**Inquiry:**

Numerous companies and organizations provide lawyers with the opportunity to be included in a list or to become members of a group that describes itself with self-laudatory terms and/or bestows self-provided accolades to its members. Examples of such lists or groups are those that describe their included lawyers as "best," "super," and "distinction." Lawyers then advertise their inclusion in these groups or lists to



no compensation may be paid by the lawyer  
*to be included*

may pay the reasonable costs of  
advertisements as a result of inclusion



*the lawyer must ascertain that the organization conferring the award is a bona fide organization that made adequate and individualized inquiry into the lawyer's qualifications for the inclusion or award*



any advertisement by the lawyer of his inclusion in a self-laudatory group or list must also contain an explanation of the standards for inclusion or provide the consumer with information on how to obtain the inclusion standards



# Quick Tips

- ✦ Do you pay to “belong?”
- ✦ Is it a Legit Group?
- ✦ Link to Qualification
- ✦ Maybe Ask?
- ✦ READ THE FEO



**Tip #9: Lawyer Advertising - It's OK to Have Fun**

It's also OK to  
have a  
personality















## Tip #10: Am I Twittering?









# big picture

- ✦ is Google an advertisement?
- ✦ are Socials advertisements?
- ✦ is an auto-generated Profile you?
- ✦ are you responsible?



# u·biq·ui·tous

/yōō' bikwədəs/

*adjective*

adjective: **ubiquitous**

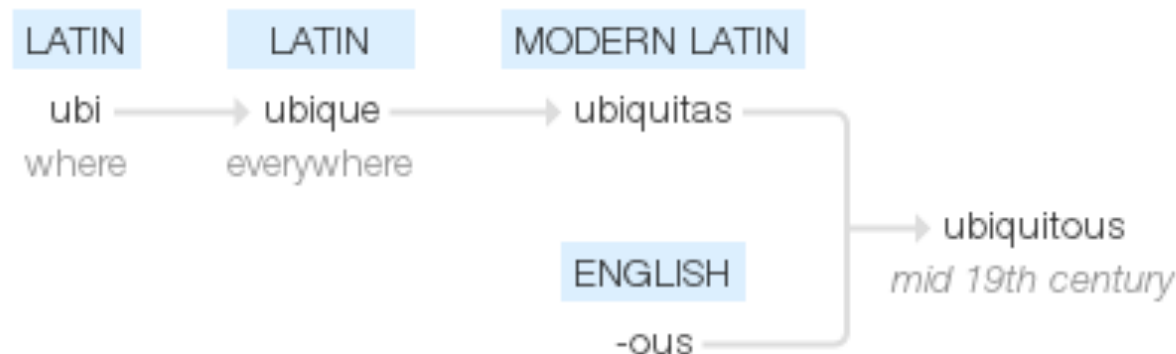
present, appearing, or found everywhere.

"his ubiquitous influence was felt by all the family"

*synonyms:* omnipresent, ever-present, everywhere, all over the place, pervasive, universal, worldwide, global; More

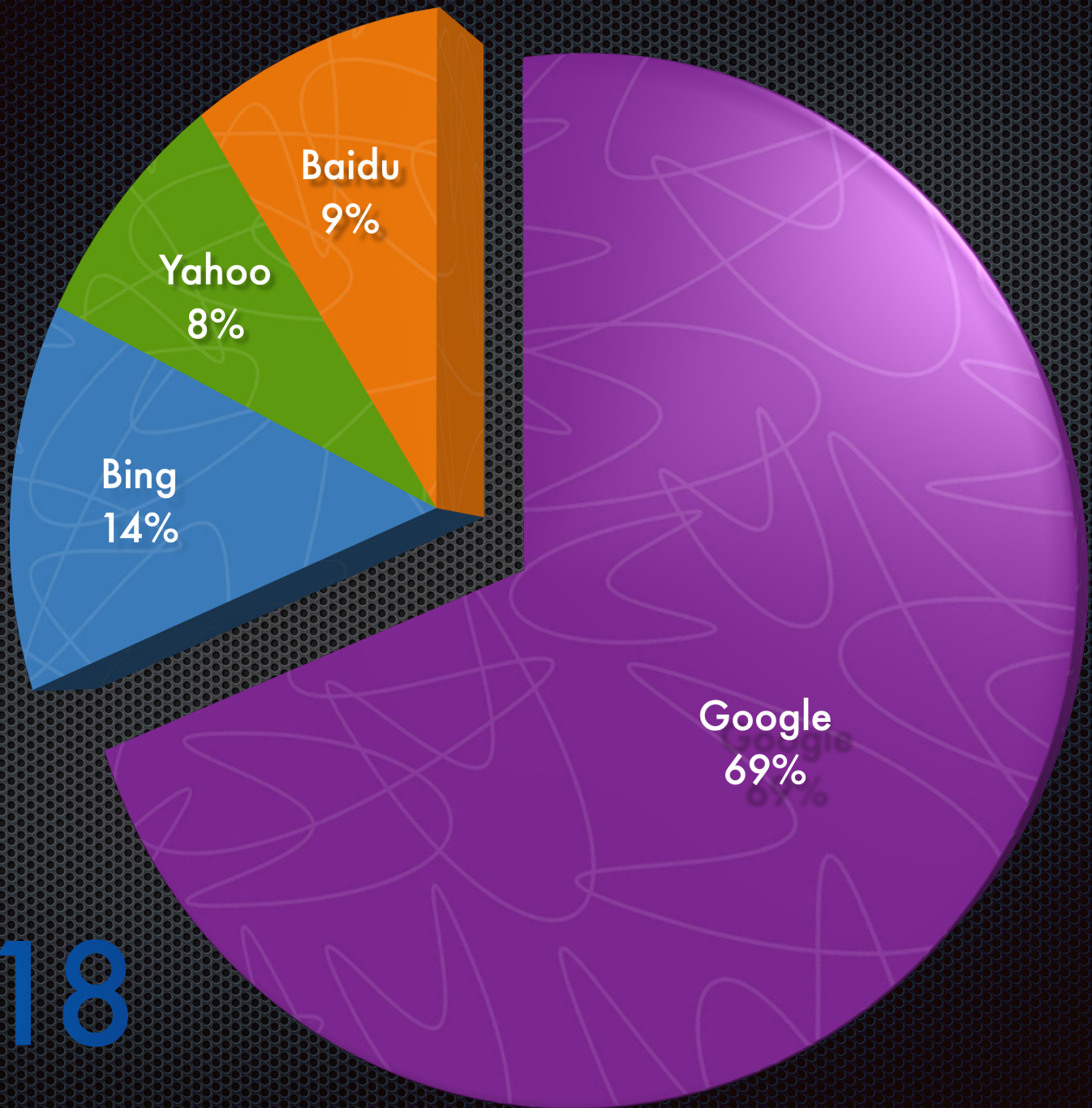
*antonyms:* rare

## Origin



mid 19th century: from modern Latin *ubiquitas* (from Latin *ubique* 'everywhere,' from *ubi* 'where') + *-ous*.





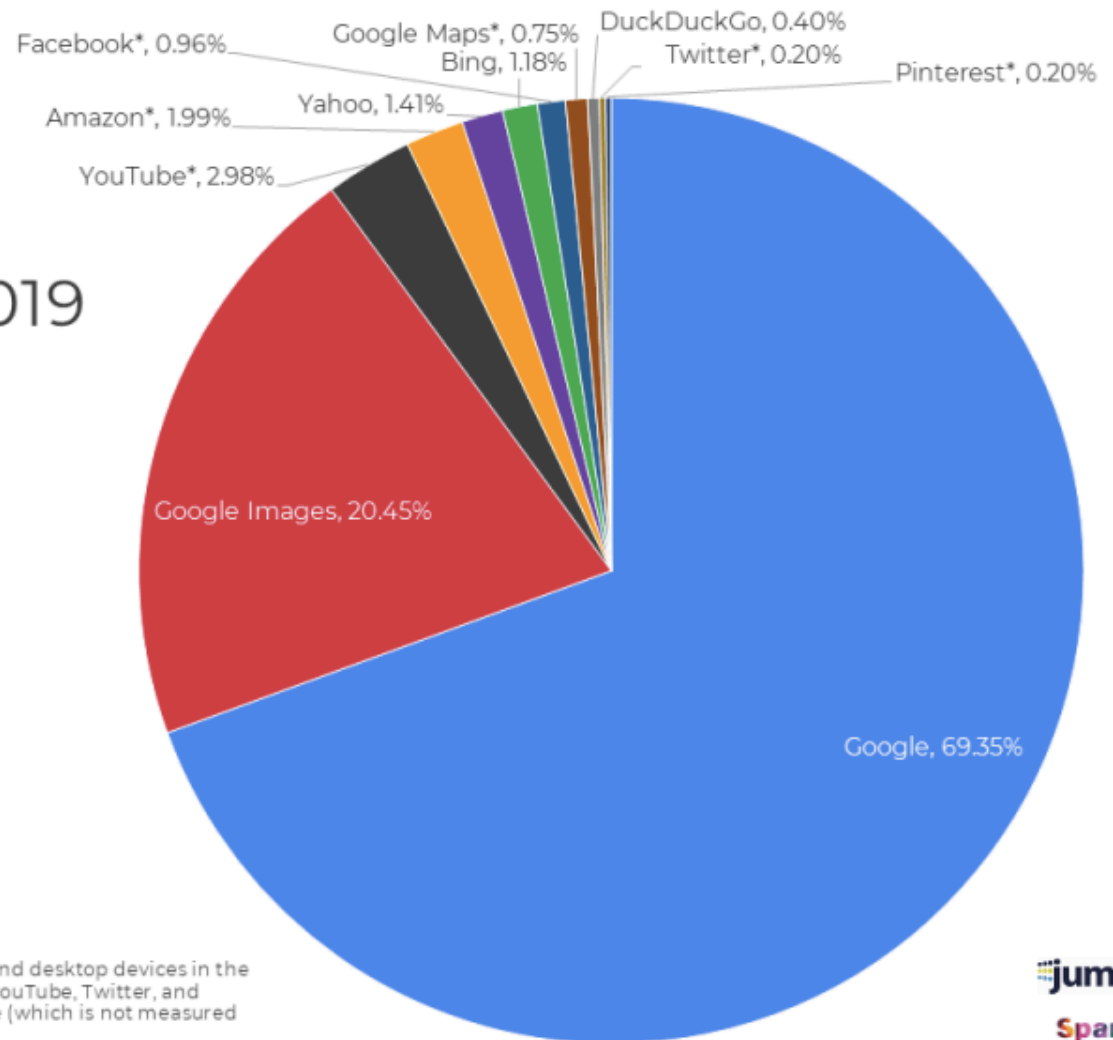
2018



# Search Engine Market Share Q2 2019

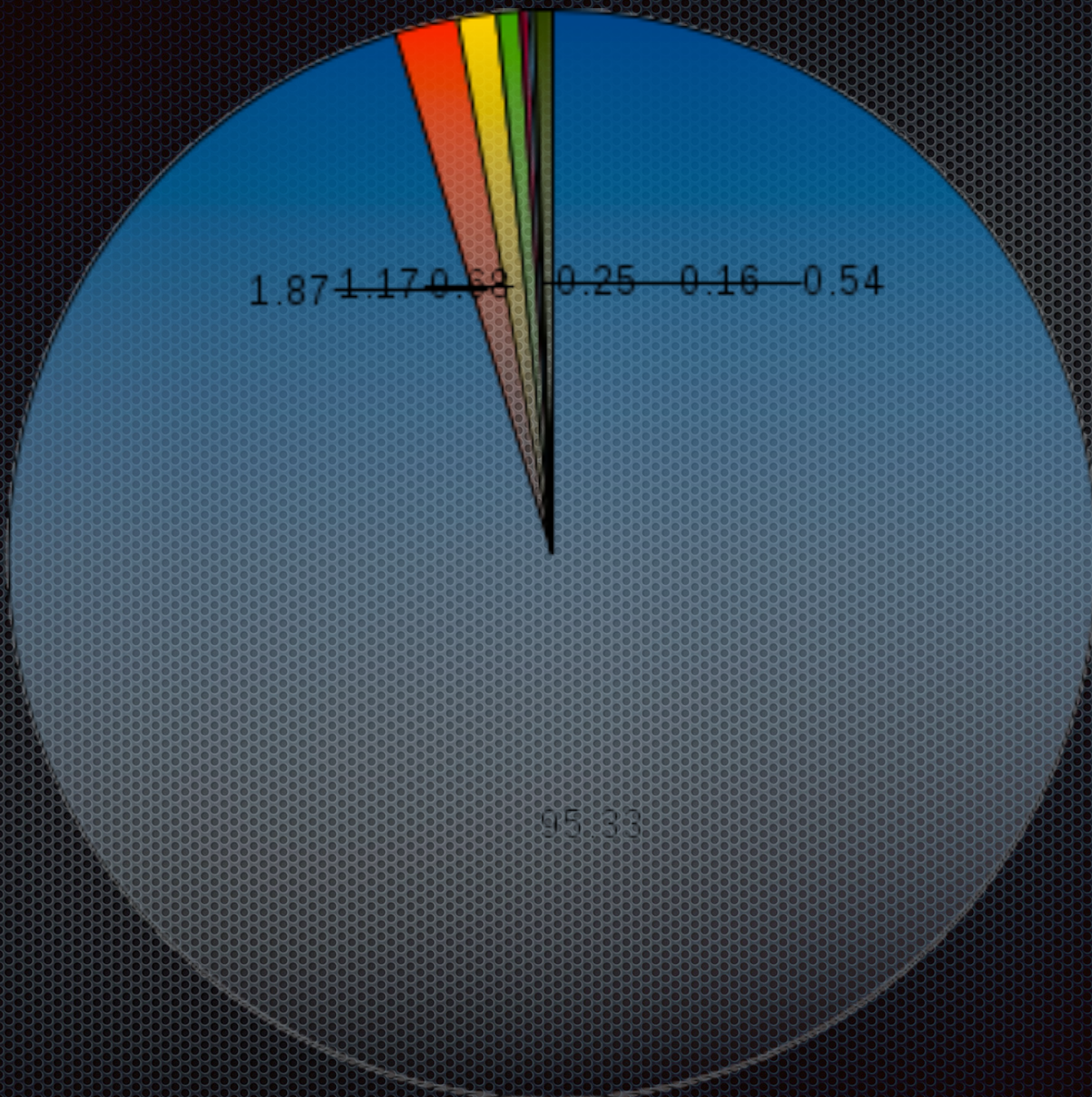
## 94%

of all searches happen  
on a Google property



\* Data from 230B+ browser-based searches on millions of mobile and desktop devices in the United States. Search share on Google Maps, Facebook, Amazon, YouTube, Twitter, and Pinterest are likely underrepresented due to heavy mobile app use (which is not measured by Jumpshot's browser-based panel)





- Google
- Baidu
- Yahoo!
- bing
- YANDEX
- Shenma
- Other

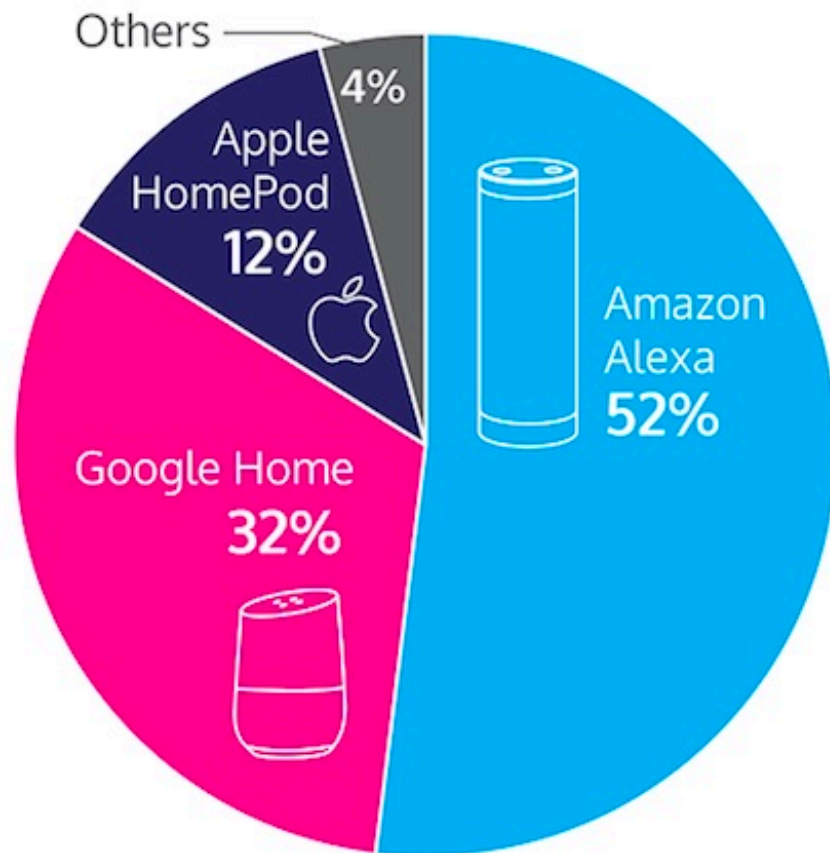


98%+

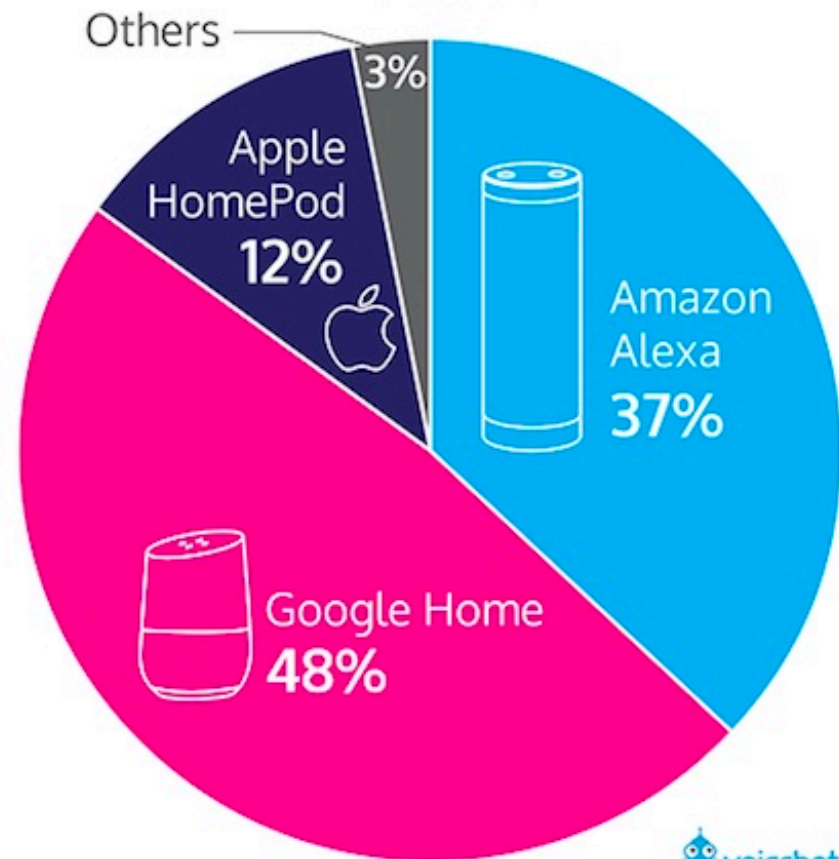


# GLOBAL SMART SPEAKER MARKET SHARE

**2018**



**2022**









# Need to Knows

- ✦ What are Keywords?
- ✦ What is a Long Tail Inquiry?
- ✦ What is SERP?
- ✦ What does “Local” Mean?
- ✦ What is an LSA?
- ✦ Am I Twittering?







# time to grow

- simple
- necessary
- proactive
- protect reputation
- professional id theft





# claim yourself

- firm profile
- personal
- personal professional





# but be careful

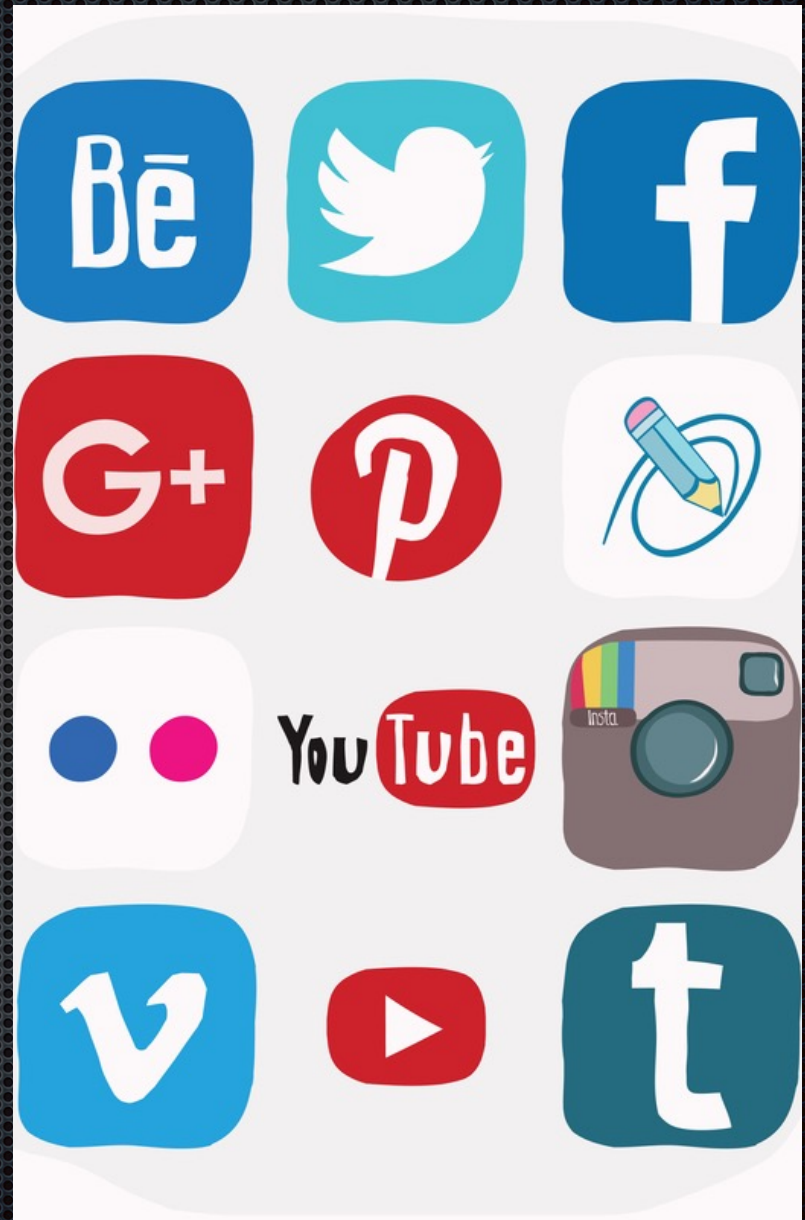
google remembers  
google punishes  
google refuses to change  
google will not forgive





# there is a difference

Google  
Google Local  
Google Earth  
Google Maps  
Google Drive  
and  
EVERYTHING ELSE





# why bother?

Google Serves 2 Purposes  
for Attorneys:

## Reputation Marketing





Google Owns YouTube &  
Video Works







Here are some Basic Terms




All News Maps Images Shopping More Tools


About 205,000 results (0.66 seconds)

GOOGLE SCREENED | DUI Lawyers nearby


Sponsored



**Vasquez Law Firm, PLLC**  
4.6 ★★★★★ (54)  
10 years in business  
Open now until 2 PM



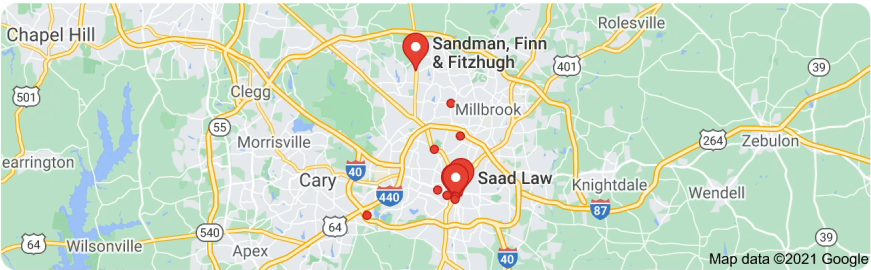
**Law Offices of J.M. Kotzker, P.C.**  
4.6 ★★★★★ (147)  
11 years in business  
Open now until 3:30 PM



**Hiltzheimer Law Office, PLLC**  
5.0 ★★★★★ (36)  
10 years in business  
Open now until 5 PM

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# Organic

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durham dwi lawyer



# AdWords

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## DWI Defense Attorney | Free Consultations Provided

We Will Work Tirelessly in Order to Craft the Strongest Defense Possible. You Are Innocent Until Proven Guilty. Let Us Serve as Your Powerful Voice in the Courtroom. Aggressive Defense. Personalized Defense. Trusted & Recommended. Results-Driven.

### Arrested?

You Must Act Fast to Protect Your  
Rights & Future - Call Our Firm Now

### Facing Criminal Charges?

You Must Act Immediately to Protect  
Your Rights & Future. Call Us Now.



## Tip #11: Avoid LSAs





Call 1-833-272-1444 to set up your ads today.

Available Mon-Fri, 6am-5pm PT. Average wait time: less than 30 seconds.

Google Local Services Ads

Overview

How it works

Cost

FAQ

Contact

1-833-272-1444

Sign in

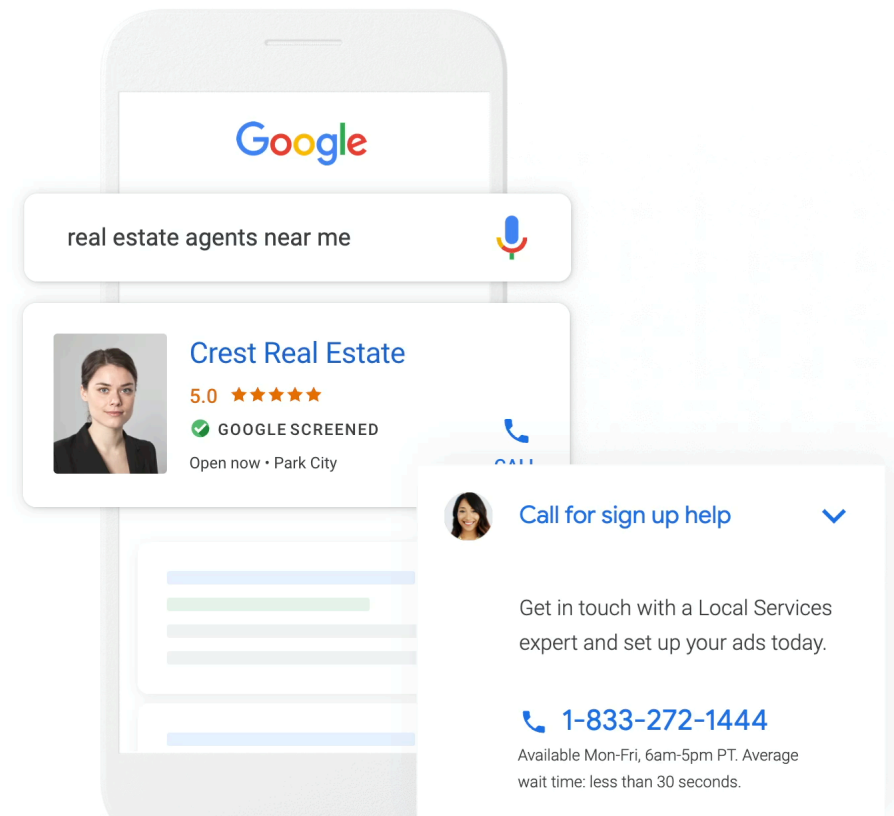
Get started

# Get more leads and grow your business

Local Services ads help you connect with people who search on Google for the services you offer. Your ads will show up for customers in your service area, and you only pay if a customer calls or messages you directly through the ad.

Get started

Call to get set up by a Google specialist





ADVOCATUS CAVE



# Local Service Ads - LSA

- NC State Bar
- May Attorney?
- “NO”
- Proposed 2021 FEO 5





**Proposed 2021 Formal Ethics Opinion 5**  
**Lawyer Participating in Pay-Per-Lead Advertising Program**  
**July 15, 2021**

*Proposed opinion rules that lawyer may not participate in pay-per-lead advertising program that records communications between lawyer and client.*

A search engine company (“company”) offers service providers pay-per-lead local service advertisements (LSAs) designed to connect consumers to service providers in their immediate area.<sup>1</sup> For example, a search with the key word phrase “family lawyer near me” would trigger the display of LSAs from family lawyers close to the consumer’s geographic location. LSAs appear above all other paid advertisements and only three LSAs are displayed at a time. When there are more firms with relevant LSAs than there are spots to display them, the company rotates the displayed advertisements based on a rankings algorithm that considers factors such as proximity to the consumer, business operating hours, online reputation, and responsiveness to customer inquiries. In order to participate in the LSA program, service providers must complete a screening and verification process. For lawyers, the process includes a background check, license check and insurance verification. LSAs appear at the top of a relevant search results page under the heading “Company Screened” with a green checkmark. LSAs generally display the lawyer’s name, photograph, search engine rating, years of experience, hours of operation and a “call button.”



## Tip #12: Consider Your Communications with Judges





# Rules of Professional Conduct

## Rule 3.5(a)

## 2019 PROPOSED FORMAL ETHICS

## OPINION 4



## PSST – HEY JUDGE – NC BAR SUZANNE LEVER

### Proposed 2019 Formal Ethics Opinion 4

Communications with Judicial Officials

October 22, 2020

*Proposed opinion discusses the permissibility of various types of communications between lawyers and judges.*

*In connection with the adoption by the council of the opinion below on \_\_\_\_\_, the following prior ethics opinions were withdrawn: RPC 237, 97 FEO 3, 97 FEO 5, 98 FEO 12, 98 FEO 13, 2001 FEO 15, 2003 FEO 17.*

Lawyers communicate with judges on a daily basis. Communicating with members of the judiciary is required for the effective representation of clients and the administration of justice. These communications range from formal pleadings and arguments during public proceedings to informal communications about scheduling dilemmas.

Over the years, the Ethics Committee has issued a number of opinions interpreting and applying the Rules of Professional Conduct to various lawyer-judge communications. See RPC 237, 97 FEO 3, 97 FEO 5, 98 FEO 12, 98 FEO 13, 2001 FEO 15, 2003 FEO 17. However, these opinions—spanning 30 years—were based upon different iterations of the Rules of Professional Conduct. This opinion addresses and clarifies a lawyer's responsibilities under the current Rules of Professional Conduct in communicating with a member of the judiciary while acting in a representative capacity. As a result, upon adoption of the present opinion, the State Bar Council withdrew the aforementioned opinions.

In general, to ensure fair access to the courts and to avoid the appearance of impropriety, a lawyer is



## Tip #13: Set Policies and Train Your Staff





## Tip #13: POLICIES PLANS & PROTOCOLS

### Rule 5.1

### Rule 5.3

- Managing/supervising lawyers must make “reasonable efforts” to ensure firm has in effect “measures giving reasonable assurance” that subordinate lawyers & nonlawyer-staff's conduct is compatible with the Rules of Professional Conduct;
- Lawyer w/direct supervisory authority over other lawyers or nonlawyer staff must make reasonable efforts to ensure that supervisee's conduct is compatible w/ professional obligations of the lawyer.



## Tip #14 – Put Down the Dang Cell







**Look  
Around**

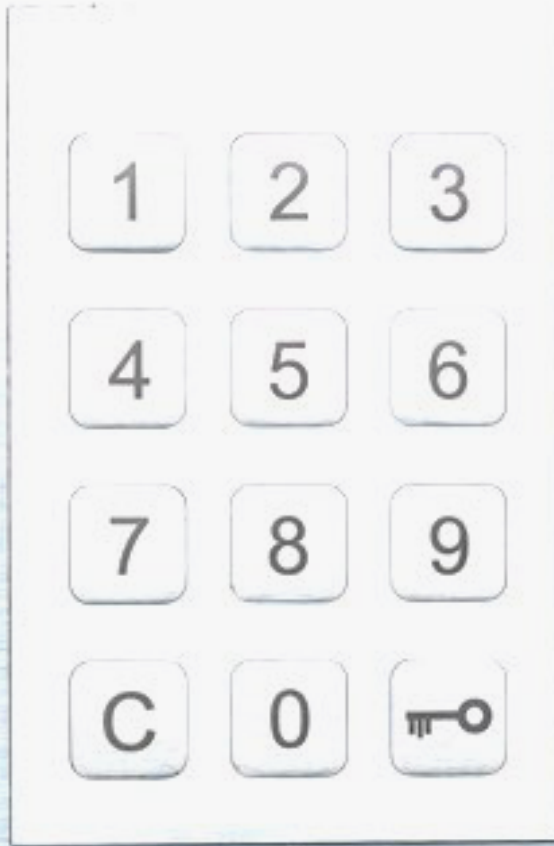





review  
security  
protocols



# DELETE OLD CODES





A yellow sticky note is placed on a dark background. The word "PASSWORD" is written on the note in a casual, handwritten style. The background features a circular scale with numbers from 180 to 260 and some faint circular patterns.

PASSWORD

**BAN POST-IT**



The end.

