

# The 2016 Annual WSBA Solo and Small Firm Conference: Plan, Promote, Propel Your Practice

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Friday, July 22 - Saturday, July 23, 2016, Seattle, WA

*Presented by WSBA CLE*

*in partnership with the Solo and Small Practice Section*

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# Steering Committee and Faculty

## A Special Thank You to Our Program Steering Committee and Faculty!

Those who have planned and will present at this WSBA CLE seminar are volunteers. Their generous contributions of time, talent, and energy have made this program possible. We appreciate their work and their service to the legal profession.

### Program Steering Committee

Angel Base — *Angel M. Base, Attorney at Law, Spokane, WA*

Steve Crossland — *Crossland Law Offices, Cashmere, WA*

Ann M. Guinn — *G&P Associates, Kent, WA and Reno, NV*

Marijean E. Moschetto — *Moschetto & Koplinc Inc PS, Bellevue*

Gil Price — *Price Mgmt Group, Seattle, WA*

John Redenbaugh — *Seattle, WA*

Jennifer R. Willner — *Halvorson Losie Willner, PLLC, Bellingham, WA*

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Mark Bassingthwaite — *ALPS Corporation, Billings, MT*

Jessica Beck — *Krueger Beck, PLLC, Kirkland, WA*

Jennifer Coates — *Jenny Coates Law, PLLC, Bainbridge Island, WA*

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Julie K. Fowler — *Attorney at Law, Bellevue, WA*

Ann M. Guinn — *G&P Associates, Kent, WA and Reno, NV*

Barron Henley — *Affinity Consulting Group, Columbus, OH*

Professor Brooks R. Holland — *Gonzaga University School of Law, Spokane, WA*

Kristina T. Larry — *Sassy Litigations, LLC, Seattle, WA*

Rajeev D. Majumdar — *Law Office of Roger L. Ellingson PS, Blaine, WA*

Leslie Meagley — *Meagley Strategic Marketing LLC, Seattle, WA*

Dainen Penta — *Leahy Fjelstad Peryea, Seattle, WA*

Frances Schopick, JD, MSW — *Seattle, WA*

Janet L. Smith — *Northwest Elder Law Group, PLLC, Seattle, WA*

Paul Taylor — *Byrnes Keller Cromwell LLP, Seattle, WA*

Dana Twight — *Twight Financial Education, Seattle, WA*

Jennifer R. Willner — *Halvorson Losie Willner, PLLC, Bellingham, WA*



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# Program Schedule

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## The 2016 Annual WSBA Solo and Small Firm Conference: Plan, Promote, Propel Your Practice

Friday, July 22 - Saturday, July 23, 2016

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- DAY 1 -

- 8:00 a.m. Onsite Registration Opens • Coffee and Pastry Service**
- 8:30 a.m. Webcast Opens**
- 8:45 a.m. Welcome and Introductions**  
*Jennifer R. Willner, Halvorson Losie Willner, PLLC, Bellingham*
- 9:00 a.m. Speech Recognition - Using Dragon Naturally Speaking in a Legal Practice**  
You talk, and the PC types exactly what you're saying. This technology can also be used to transcribe your dictation in Word or WordPerfect without involving support staff. Lawyers are using it to draft emails, documents and even create time entries in their accounting systems. Speech recognition technology seems to be everywhere these days, in our cars, on the phone and most definitely on our computers. The technology has definitely arrived, and this seminar shows you how it works and what you need to do it yourself. We'll focus on the popular Dragon NaturallySpeaking and you will be surprised how quickly the software can be set up and trained to provide extremely high recognition rates.  
*Barron Henley, Affinity Consulting Group, Columbus*
- 10:00 a.m. BREAK • Networking • Refreshments • Exhibitor Hall Open**
- 10:15 a.m. Technology Demo: MyCase 101**  
*The Washington State Bar Association does not recommend or endorse any products or services discussed or demonstrated during the course of this seminar.*

*Schedule continued on next page*

*Program Schedule (cont.)*

### 10:30 a.m. (Concurrent Sessions)

#### **Taxes: What You Need to Know\***

Taxes, taxes, taxes! Just as client decisions, actions and transactions can have significant tax implications for them, choices you make about how to structure and operate your law practice can, likewise, affect how you are taxed. Decisions such as the type of entity you choose for your business, whether or not to have partners and/or employees, how you work with other professionals and how you structure fees, among others, can impact the tax treatment of you and your business. It is a different landscape from simply reporting and paying tax on employee salary! In this seminar, we'll explore important aspects of the solo/small practice tax landscape together.

*Jennifer Coates, Jenny Coates Law, PLLC, Bainbridge Island*

**\*not available for webcast**

#### **Getting The Help You Need to Run Your Practice: Using Temporary Employees and Independent Contractors Effectively and Legally**

You've worked hard to build your practice and now you're busy. It's not the best use of your time to try and do everything yourself. Your valuable time is best spent either doing the work in the pipeline or generating the business that creates the pipeline. It may be time to delegate work to others with a lower dollar value/cost, either in the short run or in a long term capacity. This presentation gives an overview of short and long term solutions for the busy practitioner and provides a brief primer in the employment laws that affect lawyer employers, even if you have just one employee.

*Jennifer R. Willner, Halvorson Losie Willner, PLLC, Bellingham*

#### **11:15 a.m. Essential Web Services for Lawyers - Cloud Computing Ethics, Security and Options**

Simply stated, cloud computing is the use of software and services delivered via the Internet. Email, electronic case filing and online legal research make it nearly impossible to avoid the cloud when practicing law today. However, there are many additional ways lawyers can use the cloud in their practices. Online file storage, backup systems, legal case management and accounting systems are now prevalent. Even office phone systems now utilize the internet (all VoIP systems). Of course, storing or transmitting client information in the cloud is not without risks; and interested practitioners must first address the inherent ethical and security issues. In this seminar you'll learn what those issues are and your due diligence obligations under the Rules of Professional Conduct. We'll also cover the best cloud services lawyers can use to manage their practices, improve customer service and stay connected.

*Barron Henley, Affinity Consulting Group, Columbus*

#### **12:30 p.m. LUNCH • Exhibitor Hall Open**

#### **1:30 p.m. Champagne Technology on a Beer Budget!**

Believe it or not, you can get great technology on a tight budget. Whether you're ready to start a firm or overhaul your firm's existing technology, this seminar gives you a complete legal technology road map with a focus on keeping the costs as low as possible. We will also cover the law firm technology hierarchy of needs to help you prioritize your purchases. From buying strategies to computer configurations to cloud services; from VOIP phone systems to online faxing to low cost printing, you literally can't afford to miss this seminar.

*Barron Henley, Affinity Consulting Group, Columbus*

*Schedule continued on next page*

*Program Schedule (cont.)*

**2:15 p.m. BREAK**

**2:30 p.m. (Concurrent Sessions)**

**Marketing on a Shoestring/Effective Marketing Strategies for a Small Firm**

How legal services are delivered and marketed is changing radically and quickly. And, small and solo firms are on the front line. When you're marketing on a shoe string you need to maximize how you spend your time, effort and dollars. This session will look at offline and online strategies that are the keys to developing a thriving practice.

*Leslie Meagley, Meagley Strategic Marketing LLC, Seattle*

**It's Time For a Change – Better Methods for Drafting Complex Documents\***

Most lawyers draft new documents by finding old documents and modifying them to work for the next case or client (by either direct modification or dictation/transcription). While that approach might be better than starting from a blank page, it has an unacceptably high margin for error and is slower than alternative methods. It's simply too easy to miss a required change, leave something in that should have been removed, or forget to add something missing from the original. Further, if the document one starts with was previously negotiated with opposing counsel, it's going to be full of compromised language that is difficult to spot. There are many superior alternatives to this approach. In this seminar, we'll show you how to find and consolidate the best of your intellectual capital in a way that increases drafting speed and accuracy while avoiding the aforementioned risks. Finally, you'll see the spectrum of automation tools from the amazing things your word processor is already capable of, to document assembly applications like HotDocs. For document-intensive and transactional areas of practice, improved drafting methods directly impact the bottom line and improve client satisfaction. Prepare to be amazed at the possibilities.

*Barron Henley, Affinity Consulting Group, Columbus*

**\*not available for webcast**

**3:15 p.m. BREAK • Networking • Refreshments • Exhibitor Hall Open**

**3:45 p.m. Technology Demo: Lexicata**

*The Washington State Bar Association does not recommend or endorse any products or services discussed or demonstrated during the course of this seminar.*

**4:00 p.m. Malpractice Avoidance II – More Common Missteps Lawyers Make**

This 1-hour program will identify common malpractice missteps lawyers make and discuss practical ways that a lawyer can avoid each area of concern. Participants will learn how problems can arise by taking shortcuts, running with assumptions, and failing to take advantage of learning opportunities just for starters.

*Mark Bassingthwaighe, ALPS Corporation, Billings*

**5:00 p.m. Adjourn • Welcoming Reception**

**6:00 p.m. Dine Around with “Moderator Guides” for Groups**

*Schedule continued on next page*



*Program Schedule (cont.)*

**- DAY 2 -**

- 8:00 a.m. Onsite Registration Opens • Coffee and Pastry Service**
- 8:30 a.m. Webcast Opens**
- 8:45 a.m. Welcome and Review of Day 1 Highlights**  
*Ann M. Guinn, G&P Associates, Kent and Reno*
- 9:00 a.m. Being More Effective by Managing Stress**  
Stress management is the key to living a healthy life. This is especially true while we practice law. Our jobs as lawyers put us at risk for higher levels of use, abuse, and dependence on alcohol, drugs, and other addictive processes. Stress management skills and self-care can help us make better decisions about which battles are worth fighting as well as how to best expend our energies for our clients.  
*Frances Schopick JD, MSW, Seattle*
- 9:45 a.m. Professionalism in Practice**  
This session will address professionalism in all aspects: whether on the phone, at a deposition, or in the courtroom. Presenters will discuss common faux pas and courteous alternative approaches, as well as the reasons to choose the high road.  
*Judge Susan Craighead, King County Superior Court, Seattle*  
*Paul Taylor, Byrnes Keller Cromwell LLP, Seattle*
- 10:45 a.m. BREAK • Networking • Exhibitor Hall Open**
- 11:15 a.m. Dealing Effectively with Difficult People**  
It's never too soon or too late to learn more about dealing with difficult people – whether you encounter them among clients or colleagues. This workshop will provide insights and increase skills for understanding how to spot difficult behaviors from the start, how to extricate yourself ASAP if so desired or, if you choose to hang in, how to optimize your energies for the long haul.  
*Frances Schopick, JD, MSW, Seattle*
- 12:00 p.m. LUNCH • Exhibitor Hall Open**
- 1:00 p.m. 7 Secrets to Running Your Firm Like a Business**  
Your law practice is a business, plain and simple, and successful business owners have a plan, constantly monitor and adjust for the cost of doing business, maximize the use of resources to increase efficiencies, monitor trends impacting their customers, and continually look for ways to improve the business. Do you? Learn how to identify new business opportunities, uncover the numbers that most impact profitability and develop systems to free up time.  
*Ann M. Guinn, G&P Associates, Kent and Reno*
- 1:45 p.m. When Will You Stop Working?**  
An overview of retirement plan choices and how to choose the right one for your practice. How to create a flexible retirement plan that can meet your personal and professional goals. How much is enough?  
*Dana Twight, Twight Financial Education, Seattle*

*Schedule continued on next page*

*Program Schedule (cont.)*

**2:30 p.m. BREAK • Networking • Refreshments • Exhibitor Hall Open**

**3:00 p.m. (Concurrent Sessions)**

**Cocktail Law**

*Jessica Beck, Krueger Beck, PLLC, Kirkland  
Janet L. Smith, Northwest Elder Law Group, PLLC, Seattle  
Rajeev D. Majumdar, Law Office of Roger L. Ellingson PS, Blaine*

**What I Wish I Had Known in My First 5 Years of Practice\***

*Julie K. Fowler, Attorney at Law, Bellevue  
Kristina T. Larry, Sassy Litigations, LLC, Seattle  
Dainen Penta, Leahy Fjelstad Peryea, Seattle*

**\*not available for webcast**

**4:00 p.m. Ethics in the 21st Century Practice**

This session will highlight the ethical implications of technology on solo and small firm law practice. Topics will include social media and lawyer advertising, client representation, and witness and juror investigations; lawyer review and rating sites; and “virtual” law practices.

*Professor Brooks R. Holland, Gonzaga University School of Law, Spokane*

**5:00 p.m. Closing Remarks**

*Ann M. Guinn, G&P Associates, Kent and Reno*

**5:15 p.m. Adjourn • Complete Evaluation Forms**

# Steering Committee Biographies

## Angel Base

Angel Base is a sole practitioner in Spokane, WA, practicing primarily in family law litigation and as a guardian ad litem in family law and child dependency. Before attending law school, Angel obtained her Bachelor's and Master's Degrees in Social Work at Walla Walla University and subsequently worked in child counseling and juvenile detention. Angel has an extensive history with public service, serving in paid and unpaid public service roles with Red Cross, Navy-Marine Corps Relief Society, DSHS Child and Family Services, Washington Children's Home Society, youth service clubs, and school boards at the elementary and secondary levels. Before graduating from Gonzaga University School of Law, Angel worked at University Legal Assistance and served as a Rule 9 Legal Intern with the Washington Attorney General's Office. Prior to licensure as an attorney in Washington, Angel began serving as a Guardian Ad Litem in Spokane County under Title 26, representing the best interests of children in family law matters. Angel now also serves as a dependency GAL under RCW Title 13 as well. Currently Angel is active with the Volunteer Lawyer's Program (VLP) in Spokane and is an active member of the Spokane County Bar Association's CLE Committee, Diversity Committee, Superior Court Liaison Committee, Family Law Section, and is the current Chair of the SCBA Solo and Small Practice Section. Angel is also a member of the Washington State Bar Association's Solo and Small Practice Section Executive Committee. Angel was honored with the VLP New Lawyer Award for 2011 and the VLP Status Conference Advice Clinic Attorney of the Year for 2015, and has been listed for several years in the Spokane/Coeur d'Alene Living Magazine's feature of Spokane's Top 100 Lawyers. In her spare time, Angel enjoys all manner of outdoor recreation and is an active member of a local running club and a women's cycling club.

## Steve Crossland

Steve Crossland has been practicing law as a small town sole practitioner for over 40 years. He is a 1969 graduate of Stanford University with a degree in Political Science. Lewis and Clark College, Northwestern School of Law in Oregon conferred a JD in 1973. The Washington State Supreme Court appointed Steve to Chair the Limited License Legal Technician Board in December 2012. Steve was President of the Washington State Bar Association (WSBA) in 2011 and also served on the WSBA Board of Governors from 1995 -1998. In 2002 he received the Award of Merit from the WSBA, which is the highest award conferred upon a lawyer in the association. Evolving over the years, his practice now focuses on real estate, estate planning and business law. Over the past 25 years, he has served on a variety of committees and task forces dealing with the unauthorized practice of law, access to justice, succession planning and related subjects.

## Ann M. Guinn

Ann M. Guinn, success strategist to solo and small law firms, teaches attorneys what they didn't learn in law school about how to run a profitable and satisfying law practice. She helps her clients identify what's working and fix what's not working in their businesses, with a particular focus on firm finances, business development, staffing issues, and growth opportunities. Ann has served is on the Executive Committee of the WA State Bar's Solo & Small Practice Section since 1994, and is in her 11th year on the steering committee for the WA State Bar Association's Solo & Small Firm Conference.

*Biographies continued on next page*

*Co-Chair Biographies (cont.)*

### **Guinn (con't)**

She is a member of the advisory board for the LexisNexis Firm Manager® program, and is a frequent speaker and author of white papers on behalf of LexisNexis. Ann has been a featured speaker at NY Legal Tech, ABA meetings and conferences, and solo/small firm conferences across the U.S. Her book entitled *Minding Your Own Business: The Solo and Small Firm Lawyer's Guide to a Profitable Practice* is available through the ABA webstore at [www.americanbar.org](http://www.americanbar.org). To receive her free management tips newsletter, please e-mail her at [ann@annguinnconsulting.com](mailto:ann@annguinnconsulting.com).

### **Marijean E. Moschetto**

Marijean E. Moschetto is a partner in the Bellevue law firm of Moschetto & Koplin Inc., P.S. Marijean was born and educated in Seattle, obtained her J.D. from McGeorge School of Law in Sacramento in 1978 and returned to Seattle to practice with her father. After her father's passing, Joe Koplin and Marijean formed their firm in 1989 and have been having fun practicing law together ever since. Marijean's long-term practice focuses primarily on Family Law.

A peripatetic "Bar Fly", Marijean began her bar association service as a member of the East King County Bar Association Board of Trustees in the early 1990's and served as President of the Eastside Legal Assistance Program in 1994-95. She has been an active member of several Washington State Bar Association organizations including the Board of Governors (1996-1999), the WSBA Professionalism Committee (chair, 2001-2002), the WSBA Family Law Section (chair, 2004-2005), faculty and board member for the Washington Leadership Institute (2004-2010, co-chair 2009), member of WSBA CLE Committee (chair, 2012-2013), the WSBA Solo & Small Practice Section (chair, 2013-2014). She is a member of the King County Bar Association and currently serves on the CLE Committee. She is a frequent presenter at CLE's on topics ranging from client interview techniques to leadership for lawyers to family law topics. She has been named a Super Lawyer many times, and in 2006 was voted one of Washington Law & Politics Top 25 Family Law Super Lawyers. In 2013 she was named as one of the Top 100 Attorneys in Washington as published in the Seattle Met Magazine, which included a featured interview in the July, 2013 issue.

Of equal importance, Marijean's world class baking skill is a welcome addition to her legal expertise and make her a sought-after committee member for groups who recognize that lawyers cannot survive on jurisprudence alone. She is the lead baker for the 4 M's, a group of women involved in the legal profession who recognize the integral nature of good relationships and good food. When not doing everything else in her life, she enjoys relaxing with science fiction, studying her Italian, or trying a good cookbook.

### **Gil Price**

Gil is the principal of Price Management Group (PMG). PMG provides business development and management services to sole practitioners and law firms of all sizes. PMG's business is to "manage your business so you can practice law!" PMG's services include Business Development, Marketing, Finance & Accounting, Human Resources, Facilities & Operations and IT Development.

*Biographies continued on next page*

*Co-Chair Biographies (cont.)*

### **Price (con't)**

Prior to starting PMG in 2010, Gil served for more than six years as legal executive director for a boutique litigation law firm operating in Seattle and Portland. While living in Germany, the Principality of Liechtenstein and Austria from 1986 to 2003, Gil's career included banking, and providing wealth management advisory services to ultra-high net worth families. PMG clients benefit from Gil's experience providing both financial and business management services.

Gil is active in the Puget Sound Association of Legal Administrators (PSALA). Gil is the PSALA Liaison to the WSBA Executive Committee of the Solo & Small Practice Section. He is the past president (2008) and an active volunteer of the Washington State Community Associations Institute (WSCAI). Gil has a Master of Science in Business Administration from Boston University and a Bachelor of Arts in Political Science, with a minor in Global Studies, from Seattle University. Gil enjoys spending time with family and friends, the arts, skiing the Austrian Alps, and world travel.

### **John Redenbaugh**

Prior to his 2011 retirement from working at the WSBA for 30 years, most recently as Senior Conference and Seminar Development Specialist for WSBA-CLE, John had responsibility for overseeing development and presentation of many of the largest continuing legal education programs presented by the Washington State Bar Association, including the Annual Estate Planning Seminar - the premiere estate planning conference in the Pacific Northwest, and the Solo and Small Firm (SSF) Conferences. Since retirement, he has served on the 2012-2016 SSF Conference Steering Committees and he currently serves as an Advisor to the Executive Committee of the WSBA Solo and Small Practice Section. He also served as Managing Editor for, and indexed, the Washington Partnership Law and Practice Handbook (WSBA 1984). John served a term as an ACLEA Director-at-Large and his materials on "Our Marketplace \* A Megacourse Snapshot \* Developing and Nurturing Your Relationship with Exhibitors and Sponsors" were included in The Best of ACLEA 2000 publication. In 1997 John received the Award of Merit for Outstanding Service from the Estate Planning Council of Seattle and in 2012 he received the Professional of the Year Award from the Washington State Bar Association's Family Law Section. He received his B.A. from Stanford University and his J.D. (cum laude) from Gonzaga University School of Law. He practiced law in Vancouver, Washington for two years prior to joining the WSBA CLE staff.

### **Jennifer R. Willner**

Jennifer R. Willner is a principal in Halvorson Losie Willner PLLC, which has offices in Bellevue and Bellingham, Washington. The firm's attorneys have over 75 years combined experience representing employers throughout the Northwest in all labor and employment law matters. Jennifer is a past Chair of the Washington State Bar Association, Solo & Small Firm Section and a past Chair of the Continuing Legal Education Committee. She holds leadership positions in the General Practice, Solo and Small Firm Division of the American Bar Association. A frequent speaker to human resources and other industry groups, Jennifer is a member of the Mt. Baker Chapter of the Society for Human Resource Management and the Building Industry Association of Whatcom County. She received her B.A. in Psychology from Reed College and her J.D. cum laude from Seattle University School of Law.

Under MCLE Rules, we report hours of course attendance. Our report is based on you confirming your attendance with our CLE representative as you arrive, and the receipt of the form below from anyone who chooses to attend only part of the seminar.

We ask that you complete this form and turn-in to our representative if you leave before the end of the program.  
Thank you, WSBA-CLE

**The purpose of this form is to notify the sponsor listed below if you have earned less than the available credits while attending this CLE course.** You can fax your completed form to WSBA-CLE: (206) 727-8324.

*Under Washington State MCLE Rules (APR 11(j)(3)), sponsors must report attendance at each CLE course. The sponsor's report is based on confirming your attendance as you arrive and the receipt of this form as you leave if you choose to attend only part of the CLE course.*

- If this form is not returned, the sponsor will presume that you have attended the entire CLE course and earned full credit.
- If you did not attend the full CLE course, this form must be returned to the sponsor.

**How to calculate L&LP/Ethics/Other credits:**

One credit is equivalent to one hour (60 minutes) of instruction time at an approved CLE course. Credits can be obtained in quarter-hour increments: 15 minutes of instruction equal .25 credits. No credit is given for breaks. Contact the sponsor if you have questions about which sections of the program, if any, have been approved for ethics credit.

For information, see the following website or contact the WSBA Service Center.

<http://www.wsba.org/Licensing-and-Lawyer-Conduct/MCLE/Members/Member-Online-MCLE-FAQs> - [questions@wsba.org](mailto:questions@wsba.org)

<b>Seminar Sponsor:</b>	<u>WSBA-CLE</u>									
<b>Seminar Name:</b>	The 2016 Annual WSBA Solo and Small Firm Conference (16555SEA/WEB)									
<b>Seminar Date:</b>	July 22 - 23, 2016									
<b>Approved Credits:</b>	<u>11.5</u> CLE Credits for Washington Attorneys ( <u>1.0</u> Law & Legal Procedure, <u>4.0</u> Ethics and <u>6.5</u> Other)									
<b>Hours of Attendance:</b>	<table border="1" style="width: 100%; border-collapse: collapse; text-align: center;"> <thead> <tr> <th style="width: 50%;">TIME OF ARRIVAL</th> <th style="width: 50%;">TIME OF DEPARTURE</th> </tr> </thead> <tbody> <tr><td> </td><td> </td></tr> <tr><td> </td><td> </td></tr> <tr><td> </td><td> </td></tr> </tbody> </table>		TIME OF ARRIVAL	TIME OF DEPARTURE						
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<b>I hereby certify that I have earned the number of L&amp;LP/Ethics/Other credits inserted above on the Credits Earned line.</b>										
<b>Signature:</b>	_____	<b>Date:</b> _____								

## CHAPTER ONE

**SPEECH RECOGNITION –  
USING DRAGON NATURALLY SPEAKING IN A LEGAL PRACTICE**

July 2016

**Barron Henley  
Affinity Consulting Group**Phone: (614) 340-3444  
Email: [bhenley@affinityconsulting.com](mailto:bhenley@affinityconsulting.com)

**BARRON HENLEY, ESQ.**, is one of the founding partners of Affinity Consulting Group, a legal technology consulting firm focused on automating and streamlining law firms and legal departments. He earned his B.S./B.A. (marketing and economics) and J.D. from The Ohio State University and is a member of the American, Ohio and Columbus Bar Associations, and the Worthington Estate Planning Council. He is a member of the ABA Law Practice Management Section, a Board Member for the ABA TECHSHOW, and is the former Chair of the Ohio State Bar Association Law Office Automation & Technology Committee. Mr. Henley heads Affinity's document assembly/automation and software training departments; he is a renowned expert on Microsoft Word, Adobe Acrobat and HotDocs document assembly software; and has authored legal-specific manuals on HotDocs, Adobe Acrobat, and Microsoft Word, Excel & Outlook. Barron is also an expert in launching new law firms, overhauling existing firms and documenting and re-engineering law firm processes. Finally, Barron teaches continuing legal education (CLE) classes throughout the U.S. and Canada covering a wide variety of topics related to law practice management, technology and ethics.

## I. INTRODUCTION:

- A. Speech Recognition v. Voice Recognition:** Depending on whom you talk to, you may get different definitions for these terms. Voice recognition is sometimes defined as recognition of individual words or a particular person's voice. Speech recognition is usually somewhat more advanced, and refers to software that picks up speech patterns in order to distinguish between words that sound the same (like two, too, and to).
- B. How Speech Recognition Works:** All of the speech recognition programs require three parts to work.
1. **Acoustic Model** - this is a model of your voice and is involved in the process of converting your voice to a digital form that the computer can analyze.
  2. **Vocabulary** - list of words that the computer will recognize. Remember, if the word is not in the vocabulary, the program will not know what it is you are trying to say.
  3. **Language model** - the language models are statistical models of the way we speak. The models typically use unigrams, bigrams and trigrams.
    - a. Unigram - probability of a particular word appearing.
    - b. Bigram - probability of two words appearing in a particular order.
    - c. Trigram - probability of three words appearing in a particular order. Trigrams improve accuracy. In 300,000,000 words analyzed in the Wall Street Journal there were 65,000,000 Trigrams that occurred only once.

## II. SOFTWARE:

- A. Available speech recognition software:** There are several software products currently available for speech recognition.
1. **Dragon NaturallySpeaking (DNS):** Dragon NaturallySpeaking is owned by Nuance (see [www.nuance.com](http://www.nuance.com)). Nuance sells the software direct, but you can get a better deal by shopping around a bit.
    - a. **Available Versions:**
      - i. **PC Versions and List Prices:**
        - (1) **Dragon Home** (for home and student use): \$75 - Have fun and get more done on your PC using your



voice. From students who are looking to complete homework assignments or struggle with writing, individuals who want to write their personal blog or complete everyday to-dos, Dragon Home captures your thoughts as quickly as you can speak them.

- (2) **Dragon Premium** (for personal productivity): \$175 - If you are looking for more flexible features, like the ability to dictate using a Bluetooth headset, Dragon Premium will let you get through computer tasks with greater freedom and flexibility. Dictate documents, your to-dos, send email or surf the web to get more done in your busy day by voice instead of typing.
- (3) **Dragon Professional Individual** (for professional productivity and small business): \$300 - With powerful customization features, Dragon Professional Individual is ideal for professional individuals or small business owners. Create and transcribe documents, use simple voice commands to short-cut repetitive steps, like inserting your signature, or customize the vocabulary. Synchronize with Dragon Anywhere professional-grade mobile dictation, and get paperwork done anywhere.
- (4) **Dragon Legal Individual** (for legal professionals and small practices): \$500 - With a specialized legal vocabulary, Dragon Legal Individual is the fastest way to streamline legal documentation and improve costs, simply by speaking. Whether buying for individual use or your small practice, legal professionals can save time creating contracts, briefs and other legal documents, reduce transcription costs, and improve overall practice productivity—all by voice.

ii. **Mac Versions and List Prices:**

- (1) **Dragon Anywhere** (FREE): Continue creating and editing documents—even when work takes you away from the office. With Dragon Anywhere professional-grade mobile dictation, dictate documents of any length on your iOS or Android

device. Synchronize preferences with Dragon desktop for seamless productivity.

(2) **Dragon for Mac:** \$175 - Whether you're creating documents, spreadsheets or presentations, sending emails, or filling out forms, the all-new Dragon for Mac drives productivity at work. Dictate and transcribe documents with a fully customizable experience that's 15% more accurate and optimized for accuracy.

(3) **Dragon for Mac Medical:** \$1,000 - Dragon for Mac Medical, version 5, is a flexible speech recognition solution that enables the clinician to capture comprehensive clinical documentation into the EHR—quickly and accurately—to improve clinical documentation and productivity. Supports OS X Mavericks, OS X Yosemite or OS X El Capitan.

b. **Recommended Version:** If you want to dictate to your computer and only want basic functionality, Dragon Premium would work but you miss out on a lot of features that lawyers find useful. If you want to be able to control your computer with your voice, you want to invest in the Professional version. Dragon Legal & Medical are both the Professional version bundled with a specialized legal or medical vocabulary. If you use a lot of case citations in your drafting, then it might be worth getting the Legal edition, but otherwise, I don't think it's worth the extra \$200 for the Legal Edition. You can easily teach Dragon whatever legal words you use that the Professional version doesn't understand out of the box.

c. **Canadian Users:** Speakeasy Solutions<sup>1</sup> offers Canadian vocabulary add-ins for NaturallySpeaking Professional and Legal version 13.

### III. HARDWARE:

A. **Computer Requirements:** In order to use speech recognition software effectively, you will need some advanced hardware. Completely ignore the system requirements on Nuance's website. If your computer only satisfies their minimum requirements, you will be incredibly frustrated with your experience. We recommend a 4<sup>th</sup> gen or more recent Intel i5 or i7 processor, and at least 8 GB of RAM.

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<sup>1</sup> See [www.speakeasysolutions.com](http://www.speakeasysolutions.com)

- B. **Microphones:** Of course, Dragon comes with a headset microphone which is pretty good. The higher-end versions of Dragon (Professional, Legal & Medical editions) include better microphones (Plantronics Audio-610). If you want something higher quality or more convenient to use, consider any of the following: Furthermore, go to <http://support.nuance.com/compatibility/default.asp> and Nuance (the company that makes Dragon) has a full list of pre-tested microphones and other recording devices. Just choose Dragon NaturallySpeaking as your product.
- C. **Digital Voice Recorder:** There are many digital voice recorders on the market. The Olympus DS-7000, and Philips DPM8000 are good generally recognized as the best choices, and each has a slide switch that works similar to a handheld tape recorder. Digital voice recorders have many different types of controls. Try before you buy, and make sure that their software integrates with Dragon Naturally Speaking.
- D. **Sound Card:** The sound card is a component inside the computer that provides audio input and output capabilities. Most sound cards have at least one analog line input and one stereo line output connection.<sup>2</sup> The sound cards in laptops and most desktops are not sufficient for speech recognition. A USB sound pod is a dedicated sound card that plugs into the USB port of a computer and works well with speech recognition. There are several to choose from: Andrea USB Sound Pod, Andrea Pure Audio USB-SA, VXI USB Sound Pod, and the VXI Full Duplex Sound Pod (\$40-\$50). The Andrea and VXI USB Sound Pods only record, they do not play (they have a pass through cable that hooks to your soundcard for playback). The Andrea Pure Audio USB-SA is full duplex (will record and play).
- E. **Upgraded Microphone and Sound Pod Sources:** A couple of good sources for upgraded headset microphones and sound pods (or cards) are [www.emicrophones.com](http://www.emicrophones.com), [www.knowbrainer.com](http://www.knowbrainer.com) and [www.startstop.com](http://www.startstop.com).

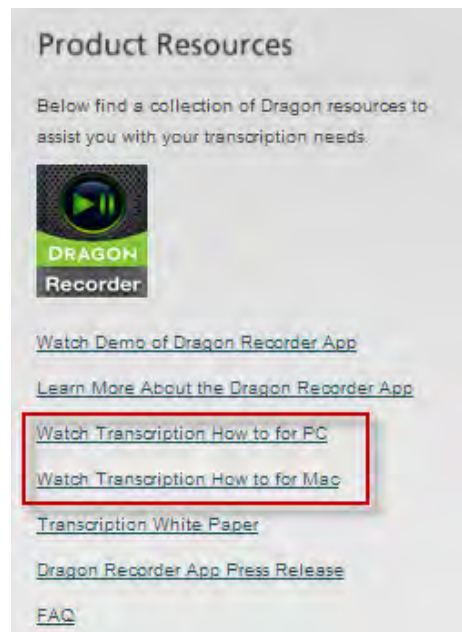
IV. **WHAT YOU CAN DO WITH DRAGON:** People often think that speech recognition is fairly limited in its capabilities. However, here are all of the things you can do:

- A. **You Talk - It Types:** Most people think speech recognition is limited to this functionality. The Premium edition is limited to your word processor, but the Professional and higher versions allow you speak into almost any program that will accept text. Think time-entries, emails and the like.
- B. **Control Your Computer:** For example, you can open programs, control them once opened, browse the Internet and perform many other functions you would otherwise need a mouse and keyboard to perform.

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<sup>2</sup> See <http://www.techterms.com/definition/soundcard>

- C. **Transcription:** You can dictate using the following methods and Dragon will transcribe it for you.
1. **Using an App:** Dragon Remote Microphone App for iOS and now Android: Dragon lets you go wireless with an iOS or Android device and the free Dragon Remote Microphone App. Turn your compatible iPhone, iPod touch (4th gen), iPad or Android device into a wireless microphone for use with Dragon over a WiFi network.
  2. **Using a Digital Voice Recorder:** For a list of compatible voice recorders, see [Nuance Voice Recorders](#). For a video on how this works, go here (<http://www.nuance.com/dragon/transcription-solutions/index.htm>) and click on the transcription videos shown below.



- V. **DRAGON - LEARNING TO DICTATE:** If you want your documents to be perfect, then you have to learn to dictate perfectly. There are a few things you need to keep in mind:
- A. **Try To Speak Naturally:** Dragon NaturallySpeaking knows many words. Do not wait for them to appear on the screen. Just keep dictating in a steady, normal voice.
  - B. **Enunciate! Enunciate! Enunciate!** If you do not enunciate, the computer will misinterpret the dictation:  
  
"Two Thousand Two" = "Two Dozen Two"  
  
"and" = "in"

**C. Pauses Are Significant:** You will achieve the best results when you dictate in complete phrases or sentences without pauses. (Remember Dragon's recognition is based on bigrams and trigrams). However, pauses are very significant. They can signify the end of dictation and the beginning of a command. They also mark the beginning and the end of a phrase that can be edited with your voice using the word "that".

1. **Example "that" commands:**

- a. "Scratch that" - delete the last dictation between pauses.
- b. "Spell that" - spell out the last dictation between pauses.
- c. "Cap that" - capitalize the last dictation between pauses.
- d. "Bold that" - bold the last dictation between pauses.
- e. "All caps that" - capitalize all letters in the last dictation between pauses.
- f. "Select that" - select the last dictation between pauses.

2. **Example dictation using pauses:**

Dictation: "I have to scratch that itch"  
Result: I have to scratch that itch

Dictation: I have to <pause> scratch that <pause> itch  
Result: itch

Dictation: I have to <pause> scratch that itch  
Result: I have to scratch that itch

Dictation: "This is very important <pause> bold that"  
Result: **This is very important**

Dictation: "This is very <pause> important <pause> bold that"  
Result: This is very **important**

3. **Different Modes:** Dragon has 5 different modes:

- a. Normal Mode. The default mode. Switches automatically between dictation and commands. Distinguishes dictation from commands by analyzing what you say between pauses

- b. Dictation Mode. Will interpret all speech as words, and will not execute any commands.
- c. Command Mode. Will interpret all speech as commands, and will not interpret any speech as words.
- d. Numbers Mode. Will interpret all speech as numbers.
- e. Spell Mode. Use to dictate letters, digits or symbols.

4. **Switching Between Modes:**

- a. Normal Mode On / Normal Mode Off
- b. Start Normal Mode / Stop Normal Mode
- c. Dictation Mode On / Dictation Mode Off
- d. Start Dictation Mode / Stop Dictation Mode
- e. Command Mode On / Command Mode Off
- f. Start Command Mode / Stop Command Mode
- g. Spell Mode On / Spell Mode Off
- h. Start Spell Mode / Stop Spell Mode
- i. Numbers Mode On / Numbers Mode Off
- j. Start Numbers Mode / Stop Numbers Mode

**D. Punctuation:** Some common punctuation and symbol commands:

- . period
- ( open paren
- ) close paren
- " open quote
- " close quote
- ' open single quote
- ' close single quote
- , comma
- @ at sign
- ? question mark
- ! exclamation mark (or exclamation point)
- : colon
- hyphen

§	section sign
;	semi colon
'	apostrophe
's	apostrophe-ess
\$	dollar sign
&	"ampersand" or "and sign"
%	percent sign
©	copyright sign
™	trademark sign

- E. Capitalization:** Dragon will automatically capitalize the first letter of every sentence (unless that feature is turned off), and will capitalize many proper nouns that are already in its vocabulary. For every other situation, use the "cap" command. Using cap before a word will capitalize that word:

Dictate: "liberty mutual insurance company"

Result: liberty mutual insurance Co.

Dictate: cap liberty cap mutual cap insurance cap company

Result: Liberty Mutual Insurance Co.

Dictate: <pause> liberty mutual insurance company <pause> cap that

Result: Liberty Mutual Insurance Co.

(Of course, a better solution would be to just add Liberty Mutual Insurance Company to the vocabulary so that it is capitalized correctly every time)

- F. Proper Names:** Proper names can be one of the most frustrating things to dictate to a computer. If the name is fairly common, just say it normally and see if Dragon already has it in its vocabulary. Otherwise you will have to spell it. Depending on how you spell it, it may or may not be added to your vocabulary. Usually, you should just have to spell it once, and then Dragon will type it correctly thereafter.

There are several ways to spell a name:

Dictate: "<pause>spell"

This brings up the spelling window and lets you spell the word by voice. When you are done, say "click ok", and the proper name will be added to the vocabulary

Dictate: "<pause> <proper name> <pause> spell that"

This will bring up the spelling window and lets you spell the word by voice. When you are done, say "click ok", and the proper name will be added to the vocabulary.

Dictate: "Spell mode on" <spell the name> "Spell mode off"

This will let you spell the word, but it will not add it to the vocabulary.

**Note on spelling.** Our alphabet has many letters that rhyme or sound the same. For example

b c d e g p t v; a k j; i y; s f; m n; etc.

Dragon knows and responds to the "international alphabet" which can eliminate spelling errors from letters that sound the same. It is worth learning and memorizing these:

alpha	Juliet	sierra
bravo	kilo	tango
Charlie	lima	uniform
delta	Mike	Victor
echo	November	whiskey
foxtrot	Oscar	xray
golf	papa	yankee
hotel	Quebec	zulu
India	Romeo	

- G. Legal Citations:** If you imported the authorities into the vocabulary, case citations may be dictated directly (with the possible exception of the actual case name, which may have to be spelled):

Dictate: "Ohio Revised Code Section Thirty Nine Thirty Seven Point One Eight"

Result: Ohio R.C. § 3937.18

Dictate: "Two Thousand Two Hyphen Ohio Hyphen Two Zero One Four" or "Two Thousand Two Hyphen Ohio Hyphen Two Thousand Fourteen"

Result: 2002-Ohio-2014

Older versions of Dragon have had trouble with the "v." in case citations. A solution to this is to add a "v." to the vocabulary with the pronunciation "veedot". You will have to train this word.

Dictate: "State Veedot Smith Open Paren Nineteen Ninety Eight Close Paren Comma Eighty Six Ohio State Third Two Forty Eight Comma Seven Ten North East Second Four Four Four Four"

Result: State v. Smith (1998), 86 Ohio St.3d 248, 710 N.E.2d 4444.



(This trick is not necessary in Dragon 11 Legal Edition)

Another solution is the following, more lengthy pronunciation:

Dictate: "State <pause> space <pause> Spell Victor Period <pause> Smith  
Open Paren Nineteen Ninety Eight Close Paren Comma Eighty Six  
Ohio State Third Two Forty Eight Comma Seven Ten North East  
Second Four Four Four Four"

Result: State v. Smith (1998), 86 Ohio St.3d 248, 710 N.E.2d 4444.

Note the use of the spell command to spell out the "v." in the case name. The reason is that usually Dragon anticipates that an individual letter with a period should be capitalized. For example:

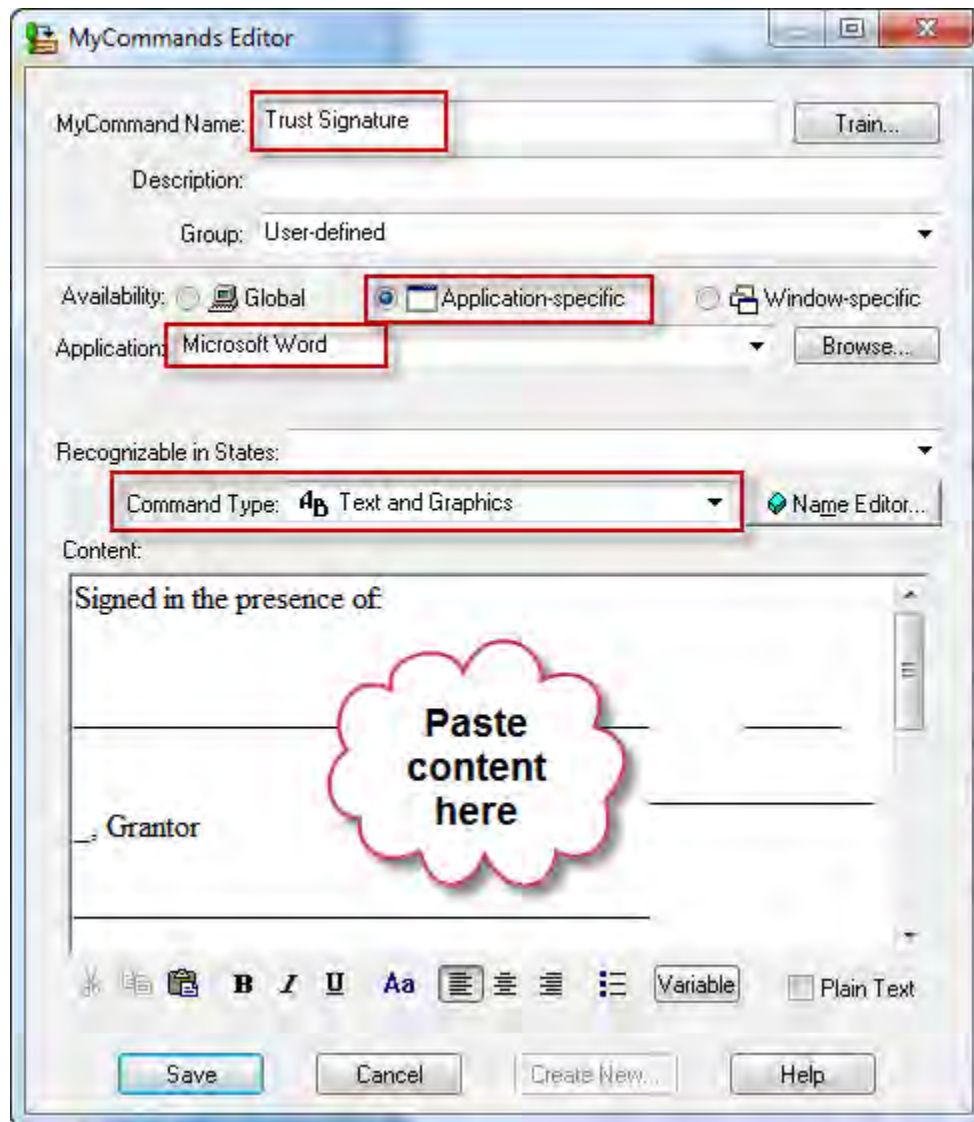
"State Vee Period Smith" = State V. Smith

**H. Turn "On" or "Off" Formatting:**

Bold on	Bold off
Caps on	Caps off
All caps on	All caps off
Italics on	Italics off
Underline on	Underline off

**I. Proofread Your Document:** Do not rely on your word processor's spell check feature to find errors in your document. Speech recognition software does not misspell any words. However, it may type the wrong word. Be careful!!

**J. Voice Macros:** Dragon can insert boilerplate text into a document on command. To set this up, first type out the text that you would like to have Dragon insert and copy it. Go to Tools ► Add New Command and paste the text into the content window:



Next give the command a name and click “Save”. Whenever you state the name of the new command, Dragon will insert the content.

Make sure the command name is something you would not normally say in dictation.

## VI. DRAGON COMMON COMMANDS:

### A. Punctuation:

.	period (or dot or point)	?	question mark	*	asterisk
(	open paren	!	exclamation mark (or	_	underscore
)	close paren		exclamation point)	-	hyphen (or minus sign)
{	open brace	:	colon	+	plus sign
}	close brace	\$	section sign	=	equal sign
[	open bracket	;	semi colon	©	copyright sign
]	close bracket	'	apostrophe	™	trademark sign
<	open angle bracket (or	's	apostrophe-ess	\	backslash
	less than)	@	at sign	/	forward slash
>	close angle bracket (or	#	pound sign (or number	...	ellipsis
	greater than)		sign)	°	degree sign
"	open quote	\$	dollar sign	~	tilde
"	close quote	%	percent sign	€	euro sign or euro or
'	open single quote	^	caret		euros
'	close single quote	&	ampersand (or and	£	pound sterling sign
,	comma		sign)	¥	yen sign or yen

left/right may be substituted for open/close except for single quote

### B. Formatting:

Bold on/Bold off /Bold That/Format that Bold  
Italics on/Italics off/Italicize that/Format that Italics  
Underline on/Underline off/Underline that/Format  
that Underline  
Format that Plain Text

Format that Left Aligned/Left Align that  
Format that Right Aligned/Right Align that  
Format that Centered/Center that  
New Line           1 Enter/Return  
New Paragraph     2 Enter/Returns

Hyphenate that  
Compound that

Set Font Times  
Set Font Size 12 Points  
Format That Courier 18 Points Bold  
Format That Arial 12 Points

#### Initial Caps (Title Case)

Cap <word>  
Caps on/Caps off/Cap that/Format that Caps

#### Uppercase

All Caps <word>  
All Caps on/All Caps off/All caps that/Format that  
Uppercase

#### Lowercase

No Caps <word>  
No Caps on/No Caps off/No Caps that/Format that  
Lowercase

#### No spaces

No Space <word>  
No Space on/No Space off

unbreakable space or no break space  
or nonbreakable space

**C. Spelling:** There are several ways to spell a name or word:

Dictate: "spell <letters>"

This will spell the letters but will not add the word to your vocabulary. Good for dictating non-words like product numbers or license plates.

Dictate: "<pause>spell<pause>"

This brings up the spelling window and lets you spell the word by voice. When you are done, say "click ok", and the proper name will be added to the vocabulary

Dictate: "<pause> <word or proper name> <pause> spell that"

Dictate: "<pause> <work or proper name> <pause> correct that"

This will bring up the spelling window and lets you spell the word by voice. When you are done, say "click ok", and the proper name will be added to the vocabulary.

Dictate: "Spell mode on" <letters> "Spell mode off"

This will let you spell the word, but it will not add it to the vocabulary.

**International Alphabet**

alpha	Juliet	sierra
bravo	kilo	tango
Charlie	lima	uniform
delta	Mike	Victor
echo	November	whiskey
foxtrot	Oscar	xray
golf	papa	yankee
hotel	Quebec	zulu
India	Romeo	

**D. Numbers:**

Numbers Mode on/Numbers Mode off

Start Numbers Mode/Stop Numbers Mode

Numeral <numbers>

Examples:

4	"four" or "numeral four"	555-5200	"nine six five fifty two hundred"
23	"twenty three"	617-555-5200	"six one seven nine six five five two hundred"
179	"one hundred seventy nine," "one hundred and seventy nine," or "one seventy nine"	\$45	"forty five dollars"
5423	"five thousand four hundred twenty three"	\$99.50	"ninety nine dollars and fifty cents"
5,423	"five comma thousand four twenty three"	€1.7 billion	"One point seven billion Euros"
142,015	"one hundred forty two thousand and fifteen"	8:30 p.m.	"eight thirty pm"
127,400,042	"one hundred twenty seven million four-hundred thousand forty-two"	200 kg	"200 kilograms"
127 billion	"one hundred twenty seven billion"	50 meters	"50 meters"
0.03	"zero point zero three" or "oh point oh three"	May 15, 2003	"May fifteen comma two thousand three" (note: saying "comma" is optional)
2 ¾	"two and three fourths"	MMIV	"Roman numeral two thousand four"
11/32	"eleven over thirty two"	iii (lowercase Roman)	"Roman numeral three" "No Caps That"
		Boston, MA 02460	"Boston Massachusetts 02460"
		Oakland, CA 99077	"Oakland California 99077"

Format that Number - Changes "twenty-fifth" to "25th" or "5 million" to "5,000,000"

Format that Spelled Out - Changes "5 million" to "five million" or "25" to "twenty-five"

**E. Hotkeys:**

- |    |                     |                        |
|----|---------------------|------------------------|
| 1. | + on numeric keypad | Turn microphone on/off |
| 2. | - on numeric keypad | Opens correction menu  |
| 3. | CRTL key            | Force command mode     |
| 4. | SHIFT key           | Force dictation mode   |

**F. Dictation Box:**

1. Show Dictation Box
2. Tools->Dictation Box

3. CTRL+SHIFT+D

**G. General Commands:**

1. Scratch that: Deletes last phrase
2. Select that or Select <word or phrase>: Selects word or phrase
3. Select Again: Selects next instance of previously selected word or phrase
4. Undo that or Undo Last Action : Undo (sends CTRL+z to program)
5. Choose <number>: Select item in correction dialog box
6. Click OK: Clicks OK in a dialog box
7. Move Left/Right/Forward/Back <1-20> <Words or Characters>
8. Move Up/Down <1-20> <Lines or Paragraphs>
9. Insert Before <text>
10. Insert After <text>
11. Go to/Move To            Top/Bottom  
Top of Document/Bottom of Document  
Start of Document/End of Document  
Beginning of Line  
Start of Line/End of Line
12. Press/Type <key>: Press a key on the keyboard
13. Start Normal Mode/Normal Mode On
14. Start Dictation Mode/Dictation Mode On/Dictation Mode Off
15. Start Command Mode/Command Mode On/Command Mode Off
16. Start Spell Mode/Spell Mode On/Spell Mode Off
17. Start Numbers Mode/Numbers Mode On/Numbers Mode Off

## H. Microsoft Word Commands:

<b>Creating, opening, and closing a document</b>	
Create a new document	"Create New File" or "Open New File"
Open an existing document	"Open File" "<file name> dot <file extension>", for example, "My Document Dot Doc" "Press Enter"
Close a document	"Close File" or "Close Document"
<b>Saving a Document</b>	
Save a document as a .doc file	"Save Changes" Dictate a file name (only needed if this is the first time the file has been saved) "Click Save"
Save a document with a new file name and file type	"Save Document As" Dictate a file name "File Type <file type from list>", for example, "RTF" "Click Save"
Save a document in HTML format	"Save Document as Web Page" "Click Save" If a dialog box appears warning of a text format loss, "Click Continue"
Save as document template	"Save the Page Settings as Default"
<b>Page Setup</b>	
Set the page orientation	"Set Page Orientation to Landscape" "Set Page Orientation to Portrait"
Set the size	"Set Page Width to <number> Inches/Centimeters", for example, "Set Page Width to Eight Inches" "Set Page Height to <number> Inches/Centimeters", for example, "Set Page Height to Eleven Inches"
	"Set Left/Right Margin to <number> Inches/Centimeters", for example, "Set Left Margin to Two Inches" "Set Top/Bottom Margin to <number> Inches/Centimeters", for example, "Set Bottom Margin to Five Centimeters"
Number pages	"Add Page Numbers" "Create Page Numbers"
Create headers and footers	"Go To Header/Footer" Dictate text to appear in the header or footer "Close Header/Footer"
Add footnotes	Move the insertion point to the location where you want the footnote "Insert Footnote Here" Dictate the footnote text

	"Close Footnotes"
<b>Viewing the Document</b>	
View the document	"Preview the File" "View Master Document" "Preview Document as HTML" "Close the Preview" "Set View to Normal"
Enlarge or reduce the document view	"Zoom to <number> Percent", for example, "Zoom to Fifty Percent" "Set Zoom to Page Width/Height"
Change the display	"Show/Hide Headers and Footers" "Show/Hide the Ruler" "Show/Hide Paragraph Marks"
<b>Printing</b>	
Print a range of pages	"Print Pages <number> to <number>", for example, "Print Pages One to Three"
Print part of a page	"Select <First/Last> paragraph", for example, "Select the Last Paragraph" "Print the Paragraph" or "Print the Selection"
<b>Check Spelling and Grammar</b>	
Check spelling	"Check Spelling" "Click Change" or "Click Ignore" depending on how you want to respond "Click Close" when the spelling check is complete
Check grammar	"Check Grammar" "Click Change" or "Click Ignore" depending on how you want to respond. "Click Close" when the grammar check is complete.
<b>Searching and Replacing</b>	
Search for text	"Find a Word" Dictate the word or phrase you want to find in the Find dialog box "Click Find"
Replace all instances of a word or phrase	"Find Text" Dictate the word or phrase you want to find "Click Replace" "Click Replace With" (to move the insertion point to the Replace With field) Dictate the replacement word or phrase "Click Replace All" "Click Close" (to close the Find and Replace dialog box)
<b>Inserting Document Segments</b>	



Add a page	"Go To <location>" (to move the insertion point to where you want to insert the new page). For example, "Go To Bottom" to add a new page at the end of the current document. "Add a New Page"
Create a line break	"Go To <location>" (to move the insertion point to the location where you want the text to break). For example, "Go To third line" to add a line break at the end of the third line in the current paragraph. "Insert Hard Line Break"
Create a page break	"Go To <location>" (to move the insertion point to the location where you want the text to break). For example, "Go To third paragraph" to add a page break at the end of the third paragraph in the current page. "Insert Page Break"
Add the date and time	"Go To <location>" (to move the insertion point to the location where you want to place the information) "Insert Date and Time" or "Insert Date" or "Insert Time"
<b>Moving Text</b>	
Move a word	Move the insertion point to the word you want to move "Select Word" "Move Word Forward/Back <number> Words/Lines", for example, "Move Word Forward Five Lines"
Move a line	Move the insertion point to the line you want to move "Select Line" "Move Line Forward/Back <number> Lines" or "Move Line to the Beginning/End of Paragraph/Document", for example, "Move Line to the End of Paragraph"
Move a paragraph	Move the insertion point to the paragraph you want to move "Select Paragraph" "Move Paragraph Forward/Backward <number> paragraphs" or "Move Paragraph to the Beginning/End of Document", for example, "Move Paragraph to the Beginning of Document" or "Move Paragraph Backward Six Paragraphs"
<b>Switching Between Open Documents</b>	
Switch between open documents	1. "Say "List windows for Microsoft Word" Do one of the following: Say "Choose n", where n is the number of the window you want to switch to. For example, say "Choose 2" OR Choose the number of the program from the list and click OK
<b>Changing Text Properties</b>	

Change text properties	"Set Word/Line/Paragraph to Strikeout" "Underline this Word/Line/Paragraph" "Italicize Next <number> Words" "Bold This Page"
<b>Changing Font and Point Sizes</b>	
Change font name and point size	"Set the Font to Twenty Four Points Times in the Word/Line/Paragraph" "Increase/Decrease the Font Size to Eighteen Points in the Word/Line/Paragraph" "Set the Font to Courier in the Selection/Word/Line/Paragraph/Page/Section/Document" "Decrease Selection by Two Points"
<b>Changing Font Properties</b>	
Change font properties	"Turn on Bold and Italics" "Format That Regular" "Italicize the Next <number> Words/Lines/Paragraphs," for example, "Italicize the Next Five Lines" "Unitalicize That"
<b>Changing Capitalization</b>	
Change case	"Capitalize the First/Last/Next <number> Words/Lines/Paragraphs," for example, "Capitalize the Next Five Words" "Lowercase the First/Last/Next <number> Words/Lines/Paragraphs," for example, "Lowercase the Last Ten Words" "Toggle the Case of the Word"
<b>Changing Font Color</b>	
Change font color	"Set Font Color to Green in This Line" "Set the Color to Red in the Selection" "Set It to Dark Blue" (refers to current word or selection)
<b>Changing Line Spacing</b>	
Change line and paragraph spacing	"Double Space the Paragraph" "Single Space Selection" "Increase Paragraph Spacing to <number> Inches/Centimeters"
<b>Changing Text Justification</b>	
Change text justification	"Justify the Document" "Right Justify It" or "Right Align Selection" "Left Align This Line/Paragraph" "Set Initial Indent to <number> Inches/Centimeters" "Set Hanging Indent to <number> Inches/Centimeters on This Page"

<b>Creating Bulleted or Numbered Lists</b>	
Create and delete bullet points or list numbers	"Set the paragraph to Bulleted/Numbered" "Delete Bullets From the Document" "Unnumber the Selection"
<b>Working With Outlines</b>	
Create an outline	"Set View to Outline"
Set, expand, or collapse heading	"Make It Heading" "Set Style Heading Three" "Expand Previous Heading <number> Levels" "Collapse the Next Heading" "Promote the Next Paragraph into Heading" "Demote the Paragraph" "Autoformat This Paragraph"

### **I. Microsoft Outlook Commands (Dragon Professional or Legal Only):**

Start Microsoft Outlook	Compose New All Day Event
Go To Inbox	Set Start Time to <day>
Check Mail	Press Tab Key
Open Mail Message: Read first unread message	Move to the text box
View Next Unread Message: Open the next message	Invite People to This Event
Reply to Message	Send this appointment
Reply to This Message	Make This an Online Event
Reply to All	Set Reminder On
Send Message	Show Time as Tentative
Create E-mail	Decline This Event
Subject	Mark This Appointment as Unread
Text Field or Move to Text	Forward This Appointment
Send Message	View Address Book
Mark the Message as Unread	Create New Contact
Copy this Message to a Folder	Press Alt Yankee : Open the Company field
Flag Message for Followup	Click Business: Open the telephone number field
Close All Items	Save and Close This
View Calendar	

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## CHAPTER TWO

**TAXES: WHAT YOU NEED TO KNOW**

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**JENNIFER COATES** holds an LLM in Taxation from the New York University School of Law and has practiced tax law for 20 years in large law firms, including the New York offices of Dewey Ballantine and Sidley & Austin and the offices of Dorsey & Whitney, in Seattle. She opened her solo practice Jenny Coates Law, PLLC at the end of 2010. Her experience includes representing large institutional clients in the financial sector, tax structuring for multinational corporations and assistance to individuals and businesses engaging in a variety of domestic and cross-border transactions. She also provides tax support to a number of law firms, lawyers and accountants. Jenny has presented on tax topics before the Real Property, Probate and Trust and International Practice Sections of the WSBA, the Society of Trust and Estate Practitioners (“STEP”), the American Immigration Lawyers Association (“AILA”), Washington Women in Tax, the Seattle Tax Group and Select Seattle Attorneys, among others.

## I. INTRODUCTION

As a law firm associate or as an attorney for a corporation or the government, it can be easy to forget that practicing law is a business. Central to operation of any business is management of tax risk and liability. Whether you are just starting a solo practice, entering into a partnership with others, purchasing an existing law practice or have been on your own for years, it is very important to be aware of the tax implications of your law practice. If you operate your business with attention to tax considerations, things will go much more smoothly for you in the long run.

Section references in these materials are to sections of the Internal Revenue Code of 1986, as amended (the "Code") or applicable regulations, unless otherwise specified.

## II. SOME TAX IMPLICATIONS OF OWNERSHIP VERSUS EMPLOYMENT

### *A. Importance of Accurate Bookkeeping and Recordkeeping*

As an employee, there generally aren't any tax records to maintain, *per se*. You receive your Form W-2 *Wage and Tax Statement* ("W-2") at the end of the year and import the appropriate numbers into your personal income tax return (Form 1040). When you are a business owner, the landscape changes and you need to maintain clear records of expenses and income for your business as a basis for your tax return. Details about your business operations, including all of your receipts and specific expenses and purchases, will be reported on Schedule C of your Form 1040.

All business expenses and receipts should go through a business bank account separate from your personal account, regardless of whether you operate in your individual capacity or entity form. This is important to substantiate the deductibility of expenses as associated with your business. If you are just starting a solo business or small firm, it is generally not difficult to obtain a business credit card which you can then use for many of your business expenditures before you have revenue. This has the added benefit of allowing you to track these costs separately from your personal expenditures charges as well.

### *B. Compensation Income as Employee versus Solo*

In the employment context, the employer is required to deduct and pay to the Internal Revenue Service ("IRS")(generally on a bi-weekly schedule) amounts meant to approximate federal and state (if applicable) income taxes owed on the employee's compensation. See I.R.C. §3402; IRS Publication 15 (Circular E) *Employer's Guide* (2016). At the end of the year, an employee receives a W-2 from the employer showing amounts withheld, salary and other items for filing that year's income tax return. I.R.C. §6051.

As a lawyer with your own practice, you will receive payments from your clients without any tax withheld, and you yourself will have to make quarterly estimated income tax

payments to the IRS. If you don't make sufficient estimated payments, you may be subject to interest charges on the underpayment depending on amount of the shortfall and the availability of certain safe harbor calculations. I.R.C. §6654.

Another set of federal taxes applies only to compensation income. These are Social Security tax and Medicare tax (and where applicable, Additional Medicare tax) imposed under the Federal Insurance Contributions Act ("FICA" and "FICA taxes"). An employee and employer share equally in the obligation to pay FICA taxes. The employer is required to withhold the employee's share of FICA taxes from salary along with the other income tax withholding, and the employer and employee portions of the tax are deposited with the IRS in accordance with the appropriate deposit schedule (generally bi-weekly). See I.R.C. §§ 3101; 3102

The self-employed lawyer, on the other hand, must pay 100% of the FICA taxes. The Code provides for a deduction from gross income for one half of the FICA taxes paid to mitigate this burden. However it does not offset the actual increase in liability. This full burden for FICA taxes placed on the self-employed individual is often referred to as the "self-employment tax".

For 2016, the income thresholds and applicable FICA taxes, as stated in IRS Publication 15 (Circular E) *Employer's Guide* 2016, are as follows:

Social Security Tax:	12.4% on the first \$118,500 of net income
Medicare Tax:	2.9% of <i>all</i> net income (no cap).
Additional Medicare Tax	0.9% on net income over \$200,000 (\$250,000 joint filers)

See *also* I.R.C. §3101;

### *C. Reporting of Income Earned to the IRS*

In the employment context, you receive a W-2 from your employer after the end of the tax year, and this provides the information about your wages needed for your tax return. This form also relays the same information to the IRS. For income from self-employment, there is no withholding regime. Instead, clients who pay you more than \$600 during the year are required to report such amounts to the IRS and to you on Form 1099 (unless you are incorporated). See I.R.C. §6041. You should obviously report income received on your income tax return even if you do not receive a Form 1099.

### *D. Independent Contractor Status*

In most circumstances, your relationship to any particular client will be that of independent contractor rather than employee. Your work, income and focus will be spread out among a number of clients. You will address issues raised by the client but will not be subject to supervision as to how you perform the work. These are indicia of independent contractor rather than employee status. See I.R.C. §3121(d). As

mentioned previously, no taxes are withheld from payments to independent contractors and you are responsible for paying quarterly your estimated taxes on your income. You are also responsible for the full amount of FICA taxes.

It is, however, not uncommon for lawyers to have relationships more in the nature of employment for a particular client. If your relationship goes beyond the handling of a discrete issue and/or contemplates more of a close, supervised relationship with the client, it is possible you may be an employee rather than an independent contractor. Whether a service-provider is an independent contractor or employee is a factual determination, and the IRS and state and federal labor authorities could challenge independent contractor status if circumstances warrant a different result. See Revenue Ruling 87-41, 1987-1 CB 296, June 8, 1987. Any agreement between you and the client should specify the nature of the relationship if there is any concern about this issue.

#### *E. Business Costs, Expenses And Deductions*

As an employee in a law firm, one receives a salary, which is generally taxable without offset for any costs that might be associated with the employment, except for fairly limited and specific exceptions. A self-employed lawyer, on the other hand, can offset the costs of doing business against gross revenue. Typical deductions might include rent or mortgage and utility expenses associated with a home office, malpractice insurance, the cost of research services and other subscription and fees for membership in state and local bar associations and other professional associations, among others.

At inception and at different points during the life of your practice, you will buy assets, equipment, furniture and other items expected to last beyond the year, for use in your business over time. These are considered capital expenditures, which, under general tax rules, are deducted over time according to set schedules for different classes of assets rather than currently as a business expense. However, a special rule allows a business owner to elect to “expense”, or deduct currently, purchases which otherwise would be treated as capital if the asset is put to use in the business in the year of purchase. The upper limit for the deduction is \$500,000. See I.R.C. §179. It is unlikely a solo practice will exceed this limit in a given year.

#### *F. Washington State Business & Occupancy Tax: Local Taxes*

One of the benefits of living in Washington as compared with other states is that it has no personal income tax. Therefore, an employee pays no tax to Washington on salary received from his or her employment. However, businesses operating within the State of Washington are generally subject to the Washington Business & Occupancy Tax provided for in RCW 82.04 (the “B&O”). This tax is a gross receipts tax, which means that you are subject to the tax on all proceeds received for your legal services within the State without offset for any of your costs of doing business. However, if your gross revenue is less than \$56,000, a small business credit will eliminate any B&O tax liability.



The B&O applies different rates to different classifications of business income. Lower rates apply to manufacturing income and wholesaling income (0.484%) and retailing income (0.4871%). The income category “services and other activities” applies to most businesses, including law practices, and it carries the highest tax rate of 1.5%. Business classification, rates and other information about the B&O tax can be found on the Washington Department of Revenue website.

Although there are generally no allowed deductions, amounts advanced on behalf of the client and later reimbursed can be subtracted from gross receipts as long as the obligations are clearly the client’s and the lawyer has no primary or secondary liability for them. See WAC 458-20-111. Consequently, if in your practice, you advance fees such as corporate filing fees, formation costs or other expenses that are the sole responsibility of the client, you do not need to count them in your gross receipts for purposes of the B&O.

Cities may also assess taxes for the privilege of operating within them. A business will generally become registered for such taxes upon obtaining a license in the city or locality. Seattle and Bellevue, for example assess such taxes. City government websites provide a lot of information about business licensing and applicable taxes. Various jurisdictions also impose business property taxes. Any state or local taxes paid in connection with doing business will be deductible from gross income as business expenses.

### III. FORM OF BUSINESS

One of the first decisions any prospective business owner makes is the legal business form through which he or she will operate. There may be reasons to consider a change in entity structure for an existing business if circumstances and goals have changed. The options available to you depend on your particular circumstances and business needs. Federal income tax rules apply differently depending on the type of entity chosen, and tax compliance obligations can vary significantly. The different business entity forms are discussed below.

#### *A. Sole Proprietorship*

If you conduct business in your individual capacity, without forming a separate legal entity, you are considered a “sole proprietor”. All of your income from providing services will be reported on Schedule C of your Form 1040 personal income tax return. This is a perfectly legitimate way to conduct business. Because a limited liability company and corporation don’t shield owners from actions arising out of their own negligence or wrongdoing, lawyers must address this risk with malpractice insurance, regardless of the type of business form they chose. Therefore, many lawyers practicing alone choose not to form a separate entity and simply practice as sole proprietors.

As discussed above, all of your income from providing legal services will be subject to FICA taxes in addition to federal income tax and any applicable state income or other taxes.

### *B. Partnership*

Lawyers may choose to come together in an enterprise together for profit, jointly sharing in expenses and revenue. This is a partnership. See I.R.C. §7701(a)(2). The common law general partnership arises purely out of an agreement among the business members and generally does not entail filing organizational paperwork with state authorities. Under Washington law, which has adopted the Uniform Partnership Act like most other states, partners are jointly and severally liable for all obligations of the partnership and, therefore, each partner is at risk for obligations and claims arising out of the actions of other partners. See RCW 25.05.135. For this reason, various types of statutory limited partnerships are used more often. Washington authorizes creation of limited partnerships and limited liability partnerships in RCW Chapters 25.10 and Chapters 25.05, Article 11, respectively.

For federal income tax purposes, a partnership is considered a “flow-through” entity and items of income, loss, gain, deduction and credit flow through to the partners in accordance with their respective allocation percentages under the partnership agreement. Partners are taxed on their allocable share of the entity’s profits whether or not such profits are distributed. However, the partnership is required to file a federal income tax return (Form 1065) from which each partner’s share of items of income, loss, gain and other tax attributes is determined and reported to him/her and the IRS on Schedule K-1. The partner then uses the information on Schedule K-1 to complete his or her federal income tax return and any applicable state returns. Tax accounting for a partnership is more complex than operating as a sole proprietorship or a corporation. However, the partnership structure provides business partners the flexibility to share income, loss, gain, deductions, and tax credits as they wish, reflecting the desired economic arrangement. This flexibility is unavailable with a corporation.

If lawyer spouses are practicing together and both are members of the business, the arrangement generally is taxed by default as a partnership between them (except in community property states). Spouses can elect to be taxed as a joint venture in which each reports separately as a sole proprietor, if each materially participates in the business. Spouses would elect joint venture treatment by dividing all items of income from the business between the spouses and having each attach a separate Schedule C to the jointly filed Form 1040. See Instructions to Schedule E, Form 1040 (2015). In community states, like Washington, the IRS allows the couple to choose to report the enterprise as either a partnership or disregarded. See Rev. Proc. 2002-69, Rev. Proc. 2002-69.

### *C. Corporation*

You may choose to conduct your business by incorporating an entity under state law, and, absent an election, this entity will be taxed as an entity separate from you at rates applicable to corporate taxpayers. The federal tax treatment of corporations is governed by Subchapter C of the Code, and thus they are sometimes referred to as “C corporations” to distinguish them from “S Corporations”, discussed below. The current maximum rate for corporate taxpayers is thirty-five percent (35%). See I.R.C. §11. The corporation deducts business expenses from gross revenue (per section 162 of the Code) and any distributed net profits are taxable again in the hands of the shareholders at the graduated tax rates applicable to individual taxpayers. See I.R.C. §1; §301. The current maximum rate for individual taxpayers is thirty-nine and six tenths percent (39.6%). I.R.C. §1. Unlike the partnership (or S corporation, discussed below), profits are not taxable to the shareholders until actually distributed. These amounts are, of course, taxable to the corporation.

Neither the income of the corporation nor the profits paid out to the lawyer owner(s), will be subject to self-employment taxes. The profits, when distributed, will be treated as qualified dividend income taxed to the shareholder/business owner at a maximum rate of twenty percent (“20%”). See I.R.C. §1. Corporate income may be substantially offset by salary payments to employees. The lawyer-employee salary would be taxable at individual income tax rates and the corporation would need to comply with the payroll obligations previously discussed. The corporation’s share of the FICA taxes would be deductible against gross income of the corporation as a business expense. Some business owners choose a C corporation over the S corporation structure discussed below because of certain limits imposed on exclusion of fringe benefits from compensation income paid to the owner/employees. See I.R.C. §1372.

### *D. S Corporation*

A number of lawyers incorporate their businesses and then make an election on Form 2553 to be taxed under Subchapter S of the Code, applicable to small business corporations. The special tax rules applicable to S corporations are contained in sections 1361-1379 of the Code. Generally, much like a partnership, income, loss, deductions and gain flow through to owners of the entity, and net profit is reported on the owners’ individual returns, whether or not distributed.

Business owners seeking to avoid the double tax regime applicable to C corporations may choose the S corporation over a partnership (or limited liability company taxed as a partnership, discussed below) because of the possibility of minimizing FICA tax exposure. The S corporation entity form allows the corporation to pay a reasonable salary to its employees, and because of the corporate structure, remaining profits can be paid out to the owners as dividend income, free of FICA taxes. See I.R.C. §1368. It is important that the stated salary can be objectively justified in the event of challenge by the IRS.

A number of special rules apply to S corporations. They may not have more than 100 shareholders. Nonresident aliens and entities are ineligible to be shareholders and the entity cannot have more than one class of ownership interest. See I.R.C. §1361(b). Additionally, exclusion of various fringe benefits from employee taxable income is denied for employees who own two percent (2%) or more of the company. See I.R.C. §1372.

A lawyer considering operating through an S corporation should weigh the added complexity of payroll obligations, bookkeeping and tax compliance for an S corporation against the benefit that will be gained. If it is expected that net revenue will significantly exceed salary compensation at a level that would be considered reasonable, alleviation of the burden of the self-employment taxes on that excess may be entirely worth the trouble.

Applicable rules also allow the election to be made by March 15 and be retroactive to the beginning of the calendar year. I.R.C. §1361. Therefore, it's possible to wait and see how a particular year is beginning and evaluate revenue trends for making the election. Once the election is made, it can be terminated, but the taxpayer will have to wait 5 years before being able to elect S corporation status again. I.R.C. §1361(b). A termination of the election causes the entity to be treated like a subchapter C corporation, with income subject to tax at the corporate and shareholder level.

#### *E. Limited Liability Company ("LLC")*

A lawyer or group of lawyers might choose to form a limited liability company ("LLC")(references to LLC include the professional limited liability structure through which group of lawyers or other licensed professionals normally would operate). The LLC is a flexible entity which provides for essentially the same limited liability protection afforded by a corporation but also allows the owner to choose whether to be taxed as a disregarded entity (if there is only one member), a partnership, a corporation or an S corporation. The flexibility comes from the fact that the LLC is a creature of state law whose designation is not provided under federal income tax law. Instead, treatment is determined under federal income tax entity classification rules, which define default treatment for various types of business entities while giving business owners, in certain circumstances, the ability to elect different treatment. See I.R.C. §7701; Treas. Reg. §301.7701-3. An LLC with one member will, by default, be treated as disregarded but can elect to be taxed as a corporation by filing Form 8832. The effect of an entity being disregarded is to tax the owner as if he or she were a sole proprietor. Thus, a single member LLC allows a solo law practitioner to obtain the benefits of limited liability and still retain the simplicity of operating as a sole proprietor. An LLC with more than one member will be taxed as a partnership unless it elects to be taxed as a corporation by filing Form 8832.

#### IV. EMPLOYEES

Depending on the nature of your practice, you may need additional support right from the start, or perhaps as your practice grows. If you hire employees, you will have the wage and FICA tax withholding obligations discussed. Before hiring employees, you will want to make sure you have the systems in place to handle the payroll obligations called for under applicable tax rules. Alternatively, there are many on-line and other services that handle payroll compliance. It will be important to engage trustworthy, competent and professional support in this area, however, as the penalties for failure to comply are severe and will largely fall on you, even if the error lies with your service provider. See IRS Publication 15 (Circular E) *Employer's Guide* (2016) for a description of the various penalties that can apply in the event of noncompliance. Nonetheless, reliance on a bookkeeper, accountant or other professional can sometimes provide an argument for abatement of penalties.

Many business owners who need administrative and other support choose to hire independent contractors rather than employees. One of the benefits of engaging a contractor is the lack of payroll obligations. Whether a service provider is an employee or an independent contractor depends on the particular circumstances, but key factors are the level of supervision (more supervision and control over the work performance favors treatment as an employee) and whether the service provider does work for multiple clients (concentrated work for a single service recipient implies employee status). See I.R.C. §3121(d). The IRS and federal and state labor regulators may challenge a service provider's status as an independent contractor rather than an employee. While not dispositive, it is important to have a contract which clearly indicates a service provider's status as an independent contractor. See generally IRS Publications 15-A *Employer's Supplemental Tax Guide*, or *Publication 1779, Independent Contractor or Employee*.

#### V. STRUCTURING OF SERVICE ENGAGEMENTS; PAYMENT

##### A. *Lawyer as Independent Contractor or Employee*

In most circumstances, a lawyer performing legal services, whether individually as a sole proprietor or through an entity, does so as an independent contractor rather than an employee. Generally, the lawyer, while focusing on issues raised by the client, has the leeway to determine how the services are performed and performs services for multiple clients. See discussion above. To the extent the lawyer provides a significant proportion of his/her services to a particular client (corporate counsel type arrangements and others), and takes specific direction from the client as to how the services are performed, perhaps even using client office space, there may be a risk of reclassification as an employee. Depending on the situation, the lawyer may, in fact, deliberately choose the increased security and possible increased benefits of an employment arrangement. Under other circumstances, treatment as a contractor may be preferable. In all events, it's important for the terms of the engagement to speak to the issue if there is ambiguity. As discussed, each status has different tax implications,

and it is important for the lawyer to understand the nature of the relationship with the client or other recipient of his/her services.

### *B. Payment*

Lawyers typically receive cash payment for their services, in the form of actual cash, check or credit card payments. Most service businesses operate on a cash basis method of accounting, which means that they take income into account as received and expenses at the time paid. Thus, a law practice generally will be taxable on income received during the tax year net of expenses paid during that year, regardless of when amounts might have been billed or payables invoiced. There may be some mismatch between amounts collected and the timing of tax deductions for expenses incurred in collecting such income. This mismatch is likely to be greatest for those lawyers who charge for their work on a contingency basis

There are some lawyers, particularly those working with technology and other start-up businesses, who might choose to receive payment in the form of equity of the client. This can raise tax and other issues which need to be explored. The ramifications will depend on how the equity interest is structured, valuation and other terms of the agreement. Generally, the lawyer is treated as receiving taxable compensation equal to the value of the equity interested taken. In some circumstances, a lawyer may choose to accept other types of payment in kind, possibly even services, in return for providing legal advice. The lawyer will be taxable on the fair market value of any such property or services in the year of receipt.

## VI. SAVING FOR RETIREMENT

As an employee, retirement savings options are generally your employer's 401K plan and/or certain types of individual IRAs. For the self-employed, there are several possible retirement savings options. Contribution limits for most plans available to the self-employed are higher than those for employees. Because the business owner can potentially contribute both as an employee and as an employer, a self-employed lawyer may be able to save significant amounts for retirement (while reducing current taxable income). There are three main options available to you as a solo or small practitioner, and the specifics of your situation will determine which works best for you.

### *A. Simple Employee Pension Plan (SEP IRA)*

You can make contributions only in the capacity of business owner. These contributions are deductible as a business expense. Employees do not make any contributions. There is no mandatory contribution percentage or amount. However, if you contribute to your own account, you must contribute the same percentage to all employee accounts. Contributions to this type of plan will not affect your contributions to an employer 401K. See *generally* IRS Publication 560, *Retirement Plans for Small Business* (2015); See also I.R.C. 408.

### *B. Savings Incentive Match Plan for Employees (SIMPLE IRA)*

This plan allows for tax-deductible contributions by the business owner and pre-tax contributions by the employee. The employer is required to match a certain portion of the employees' contributions, regardless of whether the business is operating at a profit. Employees can contribute up to 100% of salary. A solo practitioner could contribute as both employer and employee. If there are employees, the business owner will need to consider whether it can accommodate the burden of making the required matching employee contributions.

If you are employed elsewhere in addition to having your own practice, contributions to the SIMPLE IRA will count against your yearly limit for contributions to the employer's 401K and vice versa. Additionally, this type of plan carries more harsh penalties for early withdrawal (25%) than other retirement plans (10%). Contribution limits are lower than other options available. See generally IRS Publication 560, *Retirement Plans for Small Business* (2015); See also I.R.C. 408.

### *C. Self-Employed 401K Plan (sometimes also called the Solo 401K)*

This is a tax-deferred retirement plan specifically for self-employed individuals and has the most generous contribution limits of the options available (except for a defined benefit plan). The Self-Employed 401K however is only available for businesses without actual employees. It is a great option for many solo law practices. There is a little more compliance required. When assets exceed \$250,000, the plan must make an annual filing with the IRS. See generally IRS Publication 560, *Retirement Plans for Small Business* (2015); See also I.R.C. 401(k). If you are employed elsewhere in addition to having your own practice, contributions to the Solo 401K will count against your yearly limit for contributions to the employer's 401K and vice versa.

## VII. ENTRY AND EXIT

Many solo and small firm lawyers will commence life as business owners by simply hanging their shingles and taking the necessary steps to begin anew, possibly with a book of business from previous employment. Your initial investment in hard assets for the business, and intangibles such as a logo and website will represent your initial cost basis in the business. I.R.C. §1012. Your basis will change over time, but because of the nature of your business, it may not change much. If, on the other hand, you start off by purchasing the law practice of another (essentially buying the seller's client list and goodwill and perhaps other assets of the practice such as equipment, a business name, and other items), your cost basis will equal the amount you paid for the practice. Your basis in your law practice becomes relevant if/when you sell.

Upon a sale of your own business, your basis will be subtracted from the proceeds received to determine taxable income to you on gain from the sale. I.R.C. 1001. As a service business, your most valuable asset will be the reputation you develop (or already possess) and ongoing client relationships, referred to as "goodwill". Business

sales are often structured so that the purchase price is paid over time out of revenues from the business, essentially creating a loan from the seller to the buyer, secured by assets of the business.



# TAXES: WHAT EVERY SMALL FIRM ATTORNEY NEEDS TO KNOW

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WSBA, ANNUAL SOLO AND SMALL FIRM CONFERENCE  
JULY 22, 2016

## EMPLOYMENT V. OWNERSHIP

LESS FREEDOM

LESS COMPLEXITY

RECEIVE A PAYCHECK; INCOME TAXES WITHHELD;

EMPLOYER BEARS 50% OF FICA TAXES

*Social Security Tax: 12.4% on first \$118,500 of net income*

*Medicare Tax: 2.9% of all net income (no cap)*

Total: 15.3% on first \$118,500 of net income;  
2.9% on income above \$118,500.

*Additional Medicare Tax: 0.9% on net income over  
\$200,000 (\$250,000 joint filers)*

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## EMPLOYMENT V. OWNERSHIP cont.

- EMPLOYEE USES INFORMATION ON FORM W-2 WAGE STATEMENT TO PREPARE INCOME TAX RETURN (FORM 1040)
- COMPENSATION TAXED AT RATES UP TO 39.6%
- WA NO INCOME TAX; EMPLOYEE NOT SUBJECT TO B&O
- BECAUSE OF WITHHOLDING, NO ESTIMATED TAXES PAYABLE ON EMPLOYMENT INCOME; OFTEN, LITTLE OR NO TAXES DUE WITH TAX RETURN.
- NO DEDUCTIONS OR TRACKING OF EXPENSES, LITTLE RECORDKEEPING

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## OWNERSHIP V. EMPLOYMENT cont.

*NO PUNCHCARD*

*MORE COMPLEXITY; ADMINISTRATION*

YOU AS OWNER TRACK INCOME RECEIVED

YOU PAY ALL OF THE FICA TAX

NO WITHHOLDING; PAY QUARTERLY ESTIMATED TAXES

AS A WA BUSINESS OWNER YOU ARE SUBJECT TO THE **B&O TAX** ON INCOME FROM SERVICES AT A RATE OF 1.5%

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## OWNERSHIP V. EMPLOYMENT cont.

YOU CAN OFFSET INCOME WITH BUSINESS EXPENSES

- RENT OR HOME OFFICE EXPENSE FOR SPACE USED REGULARLY AND EXCLUSIVELY FOR BUSINESS PURPOSES
- UTILITIES
- TRANSPORTATION, MEALS, ASSOCIATION FEES, ETC.
- SECTION 179 EXPENSING – CAN DEDUCT UP TO \$500,000 OF EXPENSES FOR ASSETS PURCHASED AS LONG AS THEY ARE PUT TO USE WITHIN THE SAME TAXABLE YEAR.

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## FORM OF BUSINESS

### SOLE PROPRIETORSHIP

- NO BUSINESS ENTITY; NO SEPARATE ENTITY TAXPAYER
- INDIVIDUAL DOING BUSINESS UNDER YOUR NAME OR DBA
- INCOME AND EXPENSES REPORTED ON FORM 1040 SCHEDULE C
- NO LIMITED LIABILITY
- KEEP BUSINESS AND PERSONAL SEPARATE

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## FORM OF BUSINESS continued

### PARTNERSHIP

- GENERAL PARTNERSHIP – UNLIMITED LIABILITY (*COMMON LAW* ENTITY FORMED THROUGH PARTNERSHIP AGREEMENT)
- LIMITED PARTNERSHIP – *STATE LAW* ENTITY; AT LEAST ONE GENERAL PARTNER MANAGER WITH PERSONAL LIABILITY
- LIMITED LIABILITY PARTNERSHIP –*STATE LAW* ENTITY; NO PARTNER HAS GENERAL LIABILITY; ALL CAN MANAGE; PROFESSIONAL SERVICES

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## FORM OF BUSINESS continued

### PARTNERSHIP TAXATION

- NO TAX AT PARTNERSHIP LEVEL; PARTNERS TAXED ON ALLOCABLE SHARE OF PROFITS, LOSS, EXPENSES, GAIN
- FLEXIBILITY TO REFLECT ECONOMIC DEAL; CAN VARY ALLOCATIONS OF INCOME AND OTHER ITEMS AMONG PARTNERS; MUST COMPLY WITH DETAILED IRS RULES DESIGNED TO REQUIRE ECONOMIC SUBSTANCE
- PARTNERSHIP FILES A TAX RETURN ON FORM 1065. K-1 INFORMATION STATEMENTS GO TO PARTNERS
- PARTNERSHIP INCOME REPORTED ON SCHEDULE C OF FORM 1040
- **ALL INCOME WILL BE SELF-EMPLOYMENT INCOME, TAXABLE AT ORDINARY INCOME TAX RATES PLUS FULL SHARE OF FICA TAX**

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## FORM OF BUSINESS continued

### **CORPORATION** (TAXED UNDER SUBCHAPTER C OF THE TAX CODE)

- LEGAL ENTITY FORMED UNDER STATE LAW;
- LIMITED LIABILITY FOR ALL OWNERS
- TAXED AS A “PERSON” SEPARATE FROM OWNER(S), UP TO 35%
- SECOND LEVEL OF TAX TO OWNERS ON DISTRIBUTED NET PROFITS
- PAYMENTS OUT OF PROFITS ARE DIVIDENDS RATHER THAN EMPLOYMENT INCOME, UNLESS OWNER IS AN EMPLOYEE; AT RATES UP TO 20%
- NOT REPORTED ON SCHEDULE C

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## FORM OF BUSINESS continued

### **S CORPORATION** (TAXED UNDER SUBCHAPTER S OF THE TAX CODE)

- A “C CORPORATION” CAN ELECT TO BE A SMALL BUSINESS CORPORATION, TAXED UNDER SUBCHAPTER S.
- AVOIDS ENTITY LEVEL TAX. INCOME ONLY TAXED AT THE SHAREHOLDER LEVEL.
- S CORPORATION FILES ENTITY LEVEL RETURN ON FORM 1120-S AND ISSUES K-1 INFORMATION STATEMENTS TO SHAREHOLDERS.
- PROFITS ABOVE “REASONABLE SALARY” PAID TO OWNER EMPLOYEES CAN BE DISTRIBUTED FREE OF FICA TAX LIMITATIONS ON QUALIFICATION – ONLY INDIVIDUAL OWNERS; NO NONRESIDENT OWNERS; ONE CLASS OF STOCK
- ELECTION CAN BE MADE BY MARCH 15 OF THE TAX YEAR AND BE EFFECTIVE FOR WHOLE YEAR

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## FORM OF BUSINESS continued

### LIMITED LIABILITY COMPANY

- ENTITY FORMED UNDER STATE LAW
- LIMITED LIABILITY PROTECTION; CAN AVOID ENTITY LEVEL TAX
- FLEXIBILITY OF TAX CLASSIFICATION –
  - PARTNERSHIP IF TWO OR MORE MEMBERS
  - DISREGARDED ENTITY IF SINGLE MEMBER (SOLE PROPRIETOR)
  - CAN ELECT C OR S CORPORATION STATUS
- TAX CONSEQUENCES OF LLC FLOW FROM TAX CLASSIFICATION

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## OFFICE AND OTHER SUPPORT

- EMPLOYEES
  - WAGE WITHHOLDING; GENERALLY BI-WEEKLY
  - PAY ½ FICA TAXES
  - ISSUE FORM W-2 TO REPORT COMPENSATION AND WITHHOLDING
  - FEDERAL AND STATE LABOR OBLIGATIONS; RIGHTS; BENEFITS
  - COMPENSATION AND BENEFITS DEDUCTIBLE
- INDEPENDENT CONTRACTORS
  - NO WAGE WITHHOLDING
  - NO FICA TAX RESPONSIBILITY
  - MUST 1099 IF PAYMENTS FOR YEAR OVER \$600
  - DEDUCTIBLE BUSINESS EXPENSE
- CHARACTERIZATION
  - DEGREE OF CONTROL; SUPERVISION; FACT SPECIFIC

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## LEGAL SERVICES ENGAGEMENT

- GENERALLY, INDEPENDENT CONTRACTOR RELATIONSHIP
  - RECEIVE 1099 FORM FROM CLIENTS FOR \$600 OR MORE
  - REPORT ALL RECEIPTS, WHETHER OR NOT RECEIVE FORM 1099
- CERTAIN CLIENT RELATIONSHIPS MAY BE EMPLOYMENT
  - CORPORATE COUNSEL SERVICES
  - IN OFFICE; SUPERVISION
- PARTNERS/JOINT VENTURE/COLLABORATION
  - TAX IMPLICATIONS, LIABILITY

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## PAYMENT

- CHECKS, CREDIT CARD, WIRED FUNDS (TAXED IN YEAR RECEIVED)
- EQUITY IN CLIENT (START-UPS) - TAX ON VALUE; ARGUABLY VALUE = HOURLY CHARGES;
- IN-KIND – TAX ON VALUE; ARGUABLY VALUE = PRICE OF SERVICES
- DEBT – TAXED AS COMPENSATION, WHEN RECEIVED; INTEREST TAXED AS ORDINARY INCOME
- CONTINGENCY - TAXED WHEN RECEIVED

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## SAVING FOR RETIREMENT

### RETIREMENT OPTIONS FOR SELF-EMPLOYED/BUSINESS OWNERS

- SIMPLE EMPLOYEE PENSION PLAN (SEP IRA) --CONTRIBUTIONS UP TO 25% OF YOUR NET EARNINGS FROM SELF-EMPLOYMENT PLUS CONTRIBUTIONS FOR SELF, UP TO **\$53,000**.
- SAVING INCENTIVE MATCH PLAN FOR EMPLOYEES (SIMPLE IRA) - CONTRIBUTIONS OF NET EARNINGS FROM SELF-EMPLOYMENT UP TO **\$12,500** PLUS ADDITIONAL **\$3,000** IF 50 OR OLDER PLUS A **2% FIXED** CONTRIBUTION OR A **3% MATCHING** CONTRIBUTION. GENERALLY FOR INCOME OF GREATER THAN \$45,000 ONE OF THE OTHER PLANS WILL ALL FOR HIGHER TAX-DEFERRED RETIREMENT SAVINGS EACH YEAR
- SELF-EMPLOYED 401K PLAN (SOLO 401K) – 20% OF INCOME PLUS \$18,000 (+ \$6,000 IF OVER 50)- MAXIMUM TOTAL **\$53,000**.

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## ENTRY AND EXIT

### STARTING OUT

- CREATE CLIENT RELATIONSHIPS AND PRACTICE – MAY HAVE A BOOK OF BUSINESS FROM PRIOR EMPLOYMENT
  - DEVELOP/CREATE ASSETS SUCH AS GOODWILL, GOING CONCERN VALUE, CLIENT LISTS – BASIS LOW, GAIN IF/WHEN SELL
  - OFFICE EQUIPMENT, LEASE/BUILDING ETC.- COST BASIS
- PURCHASE LAW PRACTICE FROM ANOTHER OR BUY IN
  - MAY PURCHASE THE CLIENT RELATIONSHIPS AND GOING CONCERN VALUE OF ANOTHER OR BUY OR BUY INTO A BUSINESS ENTITY
  - ACQUIRE COST BASIS IN BUSINESS ASSETS
  - OFTEN PURCHASE PRICE PAID OVER TIME OUT OF PROFITS

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# ENTRY AND EXIT

## LEAVING THE PRACTICE

- SELL TO ANOTHER – CONSEQUENCES DEPEND ON STRUCTURE OF TRANSACTION, BUT OFTEN STRUCTURED AS ASSET SALE.
  - SALE OF RECEIVABLES – ORDINARY INCOME
  - SALE OF GOODWILL/GOING CONCERN VALUE– LOW BASIS, BUT CAPITAL GAIN;
  - TRANSITIONAL EMPLOYMENT/SERVICES – ORDINARY INCOME AS PAID
  - COVENANT NOT TO COMPETE – ORDINARY INCOME
  - PAYMENT IN INSTALLMENTS TAXED AS RECEIVED
- CAN WIND-UP MATTERS AND DISSOLVE ENTITY, IF APPLICABLE

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## CHAPTER THREE

**GETTING THE HELP YOU NEED TO RUN YOUR PRACTICE: USING TEMPORARY EMPLOYEES AND INDEPENDENT CONTRACTORS EFFECTIVELY AND LEGALLY**

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## I. EMPLOYMENT LAW: THE BIG PICTURE

It is indeed a BIG picture. The workplace, and the employment relationship, is a highly regulated area of the law. Hundreds of laws and thousands of promulgated regulations are vigorously enforced by several key federal and state agencies. The U.S. Department of Labor alone enforces more than 180 laws. Agencies are making it easier and easier for employees to file complaints, which get investigated at considerable employer expense. The minute you hire just one employee, you are considered an employer and are subject to employment statutes and regulations which govern how you treat your employee and create reporting requirements and notice posting requirements. The agencies hold the small business employer accountable for knowing and complying with these laws.

Employment laws are typically categorized according to the size of the employer they affect. Some laws pertain only to employers in excess of 100 employees. Some pertain only to federal contractors. And some laws have been extended beyond their statutory provisions. For example, in Washington, the Washington Law of Discrimination (“WLAD”) applies to employers with eight (8) or more employees. However, the Supreme Court has extended the protection of the law to employers with less than the requisite number of employees on “public policy” grounds.

Unfortunately, in our experience attorneys are often the least compliant employers with workplace regulations. Attorney business owners are often shocked at what the law requires they do for their employees. On several occasions, managing partners have argued with us that paralegals and legal assistants should be classified as exempt employees, meaning not eligible for overtime pay. Attorney business owners have objected to continuing to cover employee health insurance premiums while on family leave. And we routinely get calls from associate attorneys who feel they are working in a hostile work environment.

## II. WHICH LAWS APPLY?

Below are some of the key statutes and regulations for small employers such as solo and small law firms.

### A. FEDERAL LAWS WHICH APPLY TO ALL EMPLOYERS REGARDLESS OF SIZE

1. Fair Labor Standards Act, 29 U.S.C. § 201 *et seq*; 29 C.F.R. Parts 510 to 794
2. Equal Pay Act, 29 U.S.C. § 206(d)
3. Uniformed Services Employment and Re-Employment Rights Act of 1994 (USERRA) 38 U.S.C. §§ 4301 to 4334
4. Consumer Credit Protection Act, 15 U.S.C. § 1671 *et seq*; 29 C.F.R. Part 870

5. Employee Polygraph Protection Act, 29 U.S.C. § 2001 *et seq*; 29 C.F.R. Part 801
6. Employer Retirement Income Security Act ("ERISA") 29 U.S.C. § 1001 *et seq*; 29 C.F.R. Part 2509 *et seq* (if you offer a retirement plan to your employee(s))
7. Occupational Safety and Health Act ("OSHA"), 29 U.S.C. § 651 *et seq*; 29 C.F.R. Part 1900 to 2400
8. National Labor Relations Act ("NLRA"),
9. Whistleblower Protection Provisions – The Occupational Safety and Health Administration (OSHA) administers the employee protection (or "whistleblower") provisions of sixteen (16) statutes, including numerous environmental protection laws and the Sarbanes-Oxley Act (SOA), 18 USC § 1514A.

#### B. STATE LAWS WHICH APPLY TO ALL EMPLOYERS REGARDLESS OF SIZE

1. Washington Minimum Wage Act, RCW Chapter 49.46
2. Employment Security Act (unemployment compensation), RCW Title 50
3. Industrial Insurance Act (workers compensation), RCW Title 51
4. Domestic Violence Leave Act, Chapter 49.76 RCW
5. Washington Family Care Act, RCW 49.12.265; WAC 296-130
6. Washington Law Against Discrimination ("WLAD") (despite the statute saying it applies to employers of eight (8) or more employees)

#### C. WASHINGTON LAW AGAINST DISCRIMINATION

The WLAD prohibits negative employment action and differential terms and conditions of employment, based upon the following protected bases: age, marital status, sexual orientation, race, creed, color, national origin, families with children, gender, honorably discharged veteran or military status, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability. Basically, everyone but white guys under 40.

#### D. NATIONAL LABOR RELATIONS ACT

Employers with one or more employees are subject to the NLRA. Many employers are surprised to learn that they are subject to the requirements of the NLRA even if they do not have any unionized employees. This is because the law protects far more employees than just those who are members of a union. With only a few exceptions, the NLRA applies to all private employers who are engaged in interstate commerce. The NLRA guarantees the right of employees to organize (join a union) and bargain collectively with their employer, or to refrain from such activity. Employers and unions have rights under the act as well.

The law is enforced by the National Labor Relations Board (NLRB.) Industries that are exempt from NLRA requirements: airlines, railroads, agriculture and government.

## E. WAGES AND HOURS

### 1. Payment of Wages.

Washington law requires that employees must be paid no less than once a month. WAC 296- 128-035. Wages earned in the last week of a pay period may be included in the next pay period. WAC 296-126-023. Despite a regulation that suggests otherwise, if an employer has more than a seven (7) day lag time between the date an employee is paid and the last day of the payroll period will face enforcement action by L&I.

### 2. Withholding.

Deductions from wages are covered by WAC 296-126-025 (final wages) and WAC 296-126-028 (on going employment). During ongoing employment, employers are very limited as to what can be deducted; the overriding philosophy is that a deduction (other than those required by law) must be to the benefit of the employee. The employer may not "derive any financial profit or benefit from any of the deductions" during ongoing employment.

Regarding the final paycheck, there is more leeway, though there must be a clear policy and something signed in advance by the employee. An employer may deduct for an employee's acceptance of a bad check or credit card in violation of company policies; any breakage or loss of equipment caused by a dishonest or willful act; any cash shortage or walkout by a customer who fails to pay caused by an employee's dishonest or willful act; any losses due to theft by the employee - PROVIDED a police report is filed. However, none of the final paycheck deductions can bring the amount of the final paycheck below minimum wage for all hours worked, and the "bad act" must occur within that final pay period.

The regulations specifically prohibits taking out money for any bad acts that happened before the final pay period. The only time deductions can take the check below minimum wage for all hours worked is with a deduction for an insurance premium, a retirement plan payment, or for payment to a creditor or third party (and the employer may be the creditor).

### 3. Payment of Bonuses.

If bonuses are tied to a successful outcome of cases, for paralegals and other non-attorney staff, this is most likely a violation of RPC 5.4. See WSBA Informal Opinions 1816 and 2126. Several other jurisdictions agree with this conclusion: Philadelphia Bar Association Professional Guidance Opinion 2001-7 (2001); the Utah State Bar Ethics Advisory Opinion Committee UT Eth. Op. 02-07, 2002 WL 31079593 (Utah St. Bar); the New York State Bar Association Committee on Professional Ethics (N.Y. St. Bar Assn. Comm. Prof. Eth.); and the South Carolina Ethics Advisory Committee SC Adv. Op. 97-02, 1997 WL 582907 (S.C. Bar Eth. Adv. Comm.).

#### 4. Overtime.

As a general rule, paralegals and non-attorney staff are NOT exempt from overtime. The United States Department of Labor takes the position that paralegals are not exempt and regulations reinforce this position. Also, the professional exemption provision specifically addresses the status of paralegals in Subpart D, §541.301(e)(7).

### III. HIRING YOUR FIRST EMPLOYEE

#### A. CHECKLIST

1. Get an Employer Identification Number from the Internal Revenue Service
2. Obtain IRS Form W-4, Employee's Withholding Allowance Certificate (Form SS- 4, available at their website: [www.irs.gov](http://www.irs.gov)).

IRS Publication 15 Circular E, Employer's Tax Guide, provides information on employers' tax obligations, such as withholding Social Security and paying federal unemployment taxes. This publication is very important reading for anyone who is considering hiring an employee. To download or order Publication 15, go to the IRS website at [www.irs.gov](http://www.irs.gov)

3. Obtain Form I-9, Employment Eligibility Verification from the U.S. Citizenship and Immigration Services (USCIS)
4. File an amended Master Business License. See the Washington Business License Service website at: <http://bls.dor.wa.gov/addemployees.aspx>
5. Establish Payroll Practices

This includes determining how often you will pay, the scheduled work week and work day.

6. Prepare Written Job Description

A clear idea of what you would like and what you need your employee to do will help you to focus your hiring efforts. Spend time thinking about what duties you are doing, what duties and tasks you actually like and which ones you would prefer to delegate.

7. Identify Your Work Style, or Create One

It is important to understand how you work best before you add someone new to your

office. For example, if you are a “big picture” type of worker, an employee who needs micromanaging is not likely to succeed in your office. Look for an employee’s whose personality and work style compliments yours.

8. Determine What you can Afford

a. *Salary and Benefits*

If you are going to be a "good" employer, offering benefits, vacation, sick days and the like, be prepared to pay the hourly wage plus 25 to 40 percent. You might want an accountant to help you with the estimating so you don't hire someone you can't afford, have to let them go, and have your account charged when they collect unemployment.

b. *Associated Potential Costs of an Employee*

New  
letterhead  
Business  
cards  
Furniture  
Software  
Malpractice  
Insurance CLE  
tuition  
Announcements  
Changes to  
website  
Professional  
photos Bar dues

9. Develop a Workplace Safety Plan (legally required, I’m afraid)

10. Post Required Notices

Several laws require workplace posters, which must be placed in an area frequented by employees, such as a lunch or break room. If you do not have a break or lunch room, copy the posters and hand them to your employee. See Appendix D for the ones required by the State of Washington.

11. Create Personnel File

Keep medical information separate and private! Keep I-9 form separate  
Copy of completed W-4  
Regular performance evaluations  
Disciplinary forms



## 12. Create Employee Handbook and/or Workplace

Policies IOLTA procedures  
Potential New Clients, Intake  
Procedures Internet and Social  
Media Policies Complaint  
Procedure  
Confidentiality Statement/Agreement

## IV. HAVE I REALLY HIRED AN INDEPENDENT CONTRACTOR?

Many attorneys have support staff or attorneys that they label as “independent contractors.” In this way the law firm avoids worker’s compensation, quarterly taxes, unemployment taxes and the like. However, many assistants and contract attorneys are actually “employees” and the misclassification opens the law office up to serious penalties. In this area of the law, labels are not determinative, and agreement amongst the parties is not a defense.

The practice of hiring an independent contractor, instead of an employee, is prevalent not only with law firms. receives more attention from regulatory agencies. Recently, the Internal Revenue Service increased its focus on this issue. The IRS began a study that focuses on employment tax compliance and this project will randomly examine or audit about 2,000 businesses each year for three years. About 25 years ago the IRS conducted a similar study and discovered the misclassification of workers as independent contractors led to a loss of almost \$1.6 billion dollars in tax revenue (which would be equal to more than \$3.4 billion in 2010 dollars). As part of its five-year plan (FY 2011 – 2016), the U.S. Department of Labor announced it will focus resources on the issue of misclassification.<sup>1</sup> Former Secretary of Labor Hilda Solis had issued a strong statement that went along with that announcement: “misclassification of employees of independent contractors deprives employees of critical workplace protections and employment benefits to which they are entitled.”<sup>2</sup>

Penalties for an employer for misclassification include up to an 11% per year federal tax penalty, interest on unpaid state and federal taxes, state tax payments, and exposure to lawsuits for any pension or benefit plan violations, for wrongfully withheld wages, for denial of coverage under other laws regulating the workplace for employees such as federal and state anti-discrimination laws.

Part of the confusion in this area is that there are multiple “tests” used to decide whether a worker is an employee or an independent contractor and which test is used often depends on the employment issue under scrutiny (wages, benefits or taxes are the most common).

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<sup>1</sup> The full plan can be downloaded here: <http://www.dol.gov/sec/stratplan/StrategicPlan.pdf> (last visited 02-11-2011).

<sup>2</sup> 4/22/2010 News Release: <http://www.dol.gov/opa/media/press/whd/WHD20100541.htm>

## A. THE “ECONOMIC REALITIES” TEST

Under the FLSA, the most common test is the “economic realities” test. The economic reality test looks to six relevant factors:

1. The degree of the alleged employer's right to control the manner in which the work is to be performed;
2. The alleged employee's opportunity for profit or loss depending upon his or her managerial skill;
3. The alleged employee's investment in equipment or materials required for his or her task, or his or her employment of helpers;
4. Whether the service rendered requires a special skill;
5. The degree of permanence of the working relationship; and
6. Whether the service rendered is an integral part of the alleged employer's business.

The evaluation of the relationship as a whole, however, depends not on isolated factors but upon the circumstances of the whole activity. *Hale v. State of Arizona*, 967 F.2d 1356, 1364 (9<sup>th</sup> Cir. 1992); *Real v. Driscoll Strawberry Assocs.*, 603 F.2d 748, at 755 (9<sup>th</sup> Cir. 1979). It is not necessary to establish all of the above factors, but merely to find, on balance, that the individual is or is not an employee. *Id.*

The FLSA definition of “employee” is broader than the common law definition and is “the broadest definition that has ever been included in any one act.” *Bonnette v. California*, 704 F.2d 1465, 1469 (9<sup>th</sup> Cir. 1983).

## B. THE “COMMON LAW AGENCY” TEST

The courts have also used a common law agency test for “employee” status. Under this test, the worker is an employee of the business that exercises control over the work performed by the worker. *Glover v. Richardson and Elmer Co.*, 64 Wash. 403 (1911); *Community for Creative Non-Violence v. Reid*, 490 U.S. 736, 751-52 (1989).

## C. THE INTERNAL REVENUE SERVICE TEST

The IRS has recently revised and consolidated its test, and published guidance – Publication 15- A, “Employer’s Supplemental Tax Guide”.<sup>3</sup> The IRS has boiled down its older “20 point test” into three areas of inquiry: 1) Behavioral control; 2) financial control; 3) and the type of relationship of the parties. The IRS makes it clear that if a business reserves the right to control the how, the when (i.e. imposing a particular work schedule, or amount of hours), and the tools to be used on an assignment, the IRS will tend to see that as an employee/employer relationship. With financial control, the IRS looks to the method of payment: hourly versus a flat, project based fee as well

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<sup>3</sup> As of July 2016, the guide can be downloaded here: <https://www.irs.gov/pub/irs-pdf/p15a.pdf>. Discussion begins on page 6.

as examining the right of the worker to receive reimbursement (typically independent contractors are not reimbursed). The IRS looks to the length of the relationship – if the parties have worked together for a long time and there is no reasonably anticipated “end date”, the IRS will find an employee/employer relationship. Finally, the IRS will examine the written documentation between the parties, though labels are still not determinative.

#### D. WASHINGTON AGENCY TESTS

Employers must pay premiums into the Workers Compensation fund, even for an independent contractor, if they are a “worker” as defined in the Act. RCW 51.08.180. The Act includes a six-part test for when “services performed by an individual for remuneration shall not constitute employment subject to this title”. RCW 51.08.195.

Employers in Washington must also contribute to the unemployment compensation fund for workers in their employment unless the employer can establish a worker is exempt. Whether or not a worker meets the “independent contractor” exemption is governed by RCW 50.04.140.

Legislation in 2008 made the tests for “independent contractor” under both worker’s compensation and unemployment compensation virtually identical. If **all** of the following criteria are met, services performed by an individual for remuneration shall not be deemed to be “employment”:

1. Such individual has been and will continue to be free from control or direction over the performance of such service, both under his or her contract of service and in fact; and
2. Such service is either outside the usual course of business for which such service is performed, or that such service is performed outside of all the places of business of the enterprises for which such service is performed; and
3. Such individual is customarily engaged in an independently established trade, occupation, profession, or business, of the same nature as that involved in the contract of service; and
4. On the effective date of the contract of service, such individual is responsible for filing at the next applicable filing period, both under the contract of service and in fact, a schedule of expenses with the internal revenue service for the type of business the individual is conducting; and
5. On the effective date of the contract of service, or within a reasonable period after the effective date of the contract, such individual has established an account with the department of revenue, and other state agencies as required by the particular case, for the business the individual is conducting for the payment of all state taxes normally paid by employers and businesses and has registered for and received a unified business identifier number from the

- state of Washington; and
6. On the effective date of the contract of service, such individual is maintaining a separate set of books or records that reflect all items of income and expenses of the business which the individual is conducting.

For further information, see Appendix C, [Independent Contractor Guide](#), Washington State Department of Labor & Industries

In reviewing a particular working arrangement, any “contractual language is not dispositive; instead, the court considers all the facts related to the work situation.” ***Jerome v. Employment Sec. Dep’t***, 69 Wn. App. 810, 814-15, 850 P.2d 1345 (1993).

**NOTE:** Keep in mind even if you have a paralegal (or contract attorney) who actually is an independent contractor, you as an attorney are not relieved of your obligations under RPC 5.3 (“Responsibilities Regarding Nonlawyer Assistants”).

## E. MALPRACTICE INSURANCE ISSUES

Before you “hire” a contract attorney to help out with your practice, you need to make sure this person really is an independent contractor (see Section V above). Then you need to call your malpractice insurance agent or carrier. Not all carriers cover independent contractor attorneys. If the contract attorney has direct client contact, this attorney could potentially be named in a malpractice claim. If the contract attorney assumes s/he is covered under your policy and does not carry his/her own E&O policy, your firm’s carrier could be on the hook. If your carrier isn’t aware you are using contract help, then you could be on the hook personally.

The same holds true for support staff, a law student intern or work study student. Some carriers do not make any mention of non-attorney support staff in their policies, presumably because the attorney is ultimately ethically responsible for client work product. Not all E&O carriers automatically provide coverage for contract attorneys, so you need to verify coverage with your individual carrier.

Our firm’s insurance broker provided this information:<sup>4</sup> Of seven professional liability carriers, three (3) automatically included independent contractors or contract attorneys within the definition of the covered Insured as long as the person is acting within the scope of their duties on behalf of the Insured. One carrier did not provide coverage for any independent contractors. Two carriers included contract attorney or independent contractor within the definition of a covered Insured, but only for services performed within their employment / retention agreement. The final carrier had a more complex policy. Independent contract attorneys were covered only for legal services rendered on behalf of the Insured as long as a fee is earned (or would have been earned in the event of a contingency case).

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<sup>4</sup> Thank you Shannon O’Dell, First Choice Insurance Services, for the content in this Section. shannon@fcins.biz

You might think to ask your contract attorney carry his/her own malpractice insurance. But this coverage may be very difficult to obtain. E&O policies are typically designed to protect an attorney for claims made against them by clients. But in the independent contractor relationship, the actual client is the law firm. The way to solve this dilemma is to have your contract attorney work directly with you and avoid creating the attorney-client relationship between the contract attorney and your client.

## V. VIRTUAL ASSISTANTS – AN ALTERNATIVE TO THE TRADITIONAL EMPLOYMENT RELATIONSHIP

As a solo and small firm practitioner, you have immense flexibility in how you structure your law firm and law practice. Law firm structure is evolving from the traditional brick and mortar, associate slave driven law firm (been there done that) to a more creative, quality of life driven firm structure. One of the most important advantages to the non-traditional “virtual” law firm is vastly reduced overhead expenses.

It is my feeling that lawyers function best as members of a team. A paralegal or administrative assistant whose qualifications and skills meet your needs will effectively extend the reach and quality of your practice. You can hire such a person to work full or part-time, on your payroll. However, technology increasingly affords an efficient alternative: the VA, or virtual assistant.

The concept of a virtual assistant is not terribly new. In 2007, an article in Law Practice Today called *The Virtual Assistant: Every Lawyer Needs One!* was very enthusiastic about the relationship.<sup>5</sup>

### A. ADVANTAGES

Virtual assistants are an outsourcing strategy that can give lawyers the best of all solutions to the need for help. You get a professional team member, selected to your criteria, attuned to the business and professional needs of your practice. You are relieved of the cost (and potential liability) that an employee may represent. Best of all, you have an efficient solution to managing your practice; it frees you to do the client representation and development work that you want (and need) to do.

### B. BUSINESS RELATIONSHIP

VAs are paralegals or other administrative specialists who work offsite and online, creating work product to your specifications and tailored to your practice. They represent an extension of the outsourcing that lawyers and law firms have done for years. Once that outsourcing was limited to mailing and records storage services. More recently it has come to include transcription of voice files for depositions, accounting support for billing, data entry, litigation support graphics, and legal research. Such outsourced services are transparent to the client – to such an extent

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<sup>5</sup> <http://apps.americanbar.org/lpm/lpt/articles/tch07071.shtml>

that they now can be performed a continent away.

As an independent business owner, or as an employee of a virtual staffing firm, the VA is neither employee nor subordinate. VAs more closely resemble an accountant or any other business consultant with whom the lawyer has an ongoing, collaborative relationship. They become familiar with your practice and attuned to your business needs as much as any service provider engaged for a substantial length of time. The best scenario for any solo and small firm is to engage a VA who is a bona fide independent contractor.

### C. SELECTION

Finding a virtual legal assistant can be as easy as asking colleagues for recommendations for contract paralegals and then after meeting face to face, conducting all work electronically. Make sure you read the Independent Contractor section above.

There are many virtual legal assistant and paralegal firms to choose from. This section is not an endorsement of any particular firm, just a starting list from which to conduct further research. Representatives from [Virtual Paralegal Services](#) have appeared non-virtually at several ABA GPSolo Division meetings. They offer virtual paralegals in a wide variety of practice areas. [Virtual Independent Paralegals LLC](#), located in Seattle, has many contract legal assistants and paralegals to serve the solo and small firm practitioner. [The Virtual Paralegal](#), located somewhere in Washington, provides a variety of contract paralegal and legal assistant services from work processing to scheduling depositions to drafting discovery responses. When considering working with a virtual assistant firm, take these considerations into account:

1. Is there an informative, well-constructed Web site, as evidence that the VA has the technical skill and sophistication to conduct an effective online business relationship?
2. Conduct a personal consultation, face to face or by phone. It is not appropriate to ask for resumes or for work history beyond professional references, but the VA should be willing to provide information on experience and qualifications.
3. Request a business track record. Look for a VA who has been successfully in business for at least three years, and one who is actually *is* in business (not just working part time or providing an incomplete service package).
4. Does the VA provide a realistic cost structure? Inappropriately low rates can signal a lack of business sense and indicate a practice that is not profitable (and won't be around for long). Because you want to rely

on the VA long-term, you want assurance that their business is viable.

#### D. QUALIFICATIONS

Beyond the above business considerations, you should also think through the professional qualifications that you want from the VA. If you're seeking paralegal services, you should expect a certificate of completion from an accredited educational institution. Paralegal programs are accredited by the American Bar Association. Professional paralegals are often members of NALA. Make sure your VA paralegal can demonstrate knowledge of local rules regarding court and civil procedure, in addition to practical insights pertinent to your practice area(s).

Other relevant skills might include:

1. Organize files and chronologies
2. Prepare documents for summons, complaints, answers, motions and other proceedings
3. Conduct investigations and summarize depositions
4. Perform legal research
5. Coordinate with outside vendors for trial preparation
6. Create and maintain client files

A virtual assistant should be able to conduct all these activities electronically from a remote location. That assumes and requires compatible email, word processing, document management and database capabilities. If your word processing system is WordPerfect, engaging a VA who works only in Word can complicate rather than simplify your life. The same is true for other software products: Excel versus Lotus, Quicken versus QuickBooks etc/. There are of course other document exchange tools – fax, overnight courier, even surface mail. But effective electronic integration is a must.

APPENDIX A  
**SAMPLE CONFIDENTIALITY AGREEMENT FOR LAW OFFICE STAFF**

ACCESS TO CONFIDENTIAL INFORMATION

All employees of the Law Office of \_\_\_\_\_ will, in the performance of their duties, gain access to information pertaining to clients or to an attorney. Such information is strictly privileged and confidential. Under no circumstances should this information be given to others without prior authorization from the Attorney, nor should it be discussed with anyone outside this office. All client information, including telephone number and address are considered confidential. If there is ever question as to whether information should be released, employees are to check with management first. Absent the client's prior consent, this includes answering questions as to whether a particular person is our client.

When asked to call someone, it is imperative that employees remember the attorney-client relationship and the strict rule of confidentiality that exists between the two. When an employee speaks directly with a client, he/she is expected to convey all information as instructed by the attorney. However, if the employee speaks with somebody else in the client's household or the client's place of employment, the only thing he/she is permitted to do is leave a message for the client to return our call. Under no circumstance should one tell the person on the other end of the line the information intended for the client, or even that he/she is calling from the client's attorney's office. Those kinds of disclosures would break our rule of confidentiality. If asked what the call is in reference to, one should say "it's a personal matter."

Every piece of information concerning our clients, written or unwritten, must be treated with utmost confidentiality. The following is a list of some examples of inadvertent disclosures all employees must be careful: Discussing matters over lunch with a person working for a firm adverse to our client; accidentally mailing confidential information to the wrong person; mentioning something about a case to someone who knows someone adverse; complying with an official-sounding request of someone on a telephone and release confidential information; releasing confidential information to third parties who come into the office, claiming they have to pick something up for the client, or discussing the case with your spouse, who repeats it to someone. Any instance of disclosing client information without attorney approval is prohibited.

Washington's Rules of Professional Conduct establishes very strict rules with respect to client information, and a violation of these rules will result in severe disciplinary consequences to the attorneys.



APPENDIX B  
**SELECTED EMPLOYMENT RESOURCES**

AGENCIES THAT ENFORCE EMPLOYMENT LAWS

Laws and regulations enforced by the EEOC  
Laws and regulations enforced by the US Department of Labor  
Laws and regulations enforced by the National Labor Relations Board  
Laws and regulations enforced by the Washington State Department of Labor & Industries  
Laws and regulations enforced by the Washington State Human Rights Commission

BLAWGS

[ABA list of Labor and Employment Law Blawgs](#)  
[Labor Relations Today](#)  
[EmployerLawReport](#)  
[The Employer Handbook](#)

WEBSITES

[Small Business Guide](#), Governor's Office for Regulatory Innovation and Assistance.  
[Start or run your business](#), Washington State Department of Labor & Industries  
[Hire employees](#), State of Washington Business License Service  
[Washington Business Hub](#)  
[Business Owner's Toolkit](#)

ARTICLES

["The Lawyer As Employer: Why Do They Keep Changing The Rules?"](#) Jim T. Priest, ABA GPSolo Magazine, January/February 2007.

["Care & Feeding of the Law Office Staff,"](#) Jim Calloway, ABA GPSolo Magazine, January/February 2007:

[How Much Revenue Should You Have Before Hiring Help?](#), Lee Rosen, Divorce Discourse blog.

["Hiring Your First Employee: An Introduction"](#), Marcia Pennington Shannon (ABA Law Practice magazine)



# Independent Contractors

*Industrial Insurance: RCWs 51.08.180, 51.08.181 and 51.08.195*

**RCW 51.08.180** states that an independent contractor who provides essentially personal labor is covered by industrial insurance. If the individual provides the labor of others (has their own employees) they are exempt. If the individual provides equipment (beyond ordinary hand tools), and they are not controlled in the use of the equipment, they are exempt. In these instances the individual is providing more than their personal labor.

If the individual does not provide their own employees or equipment in performing the contract, they may still be exempt if they meet the six-part test in **RCW 51.08.195**. The independent contractor must meet ALL six parts of the test in order to be exempt.

For the construction trades, there are seven parts to the test (**RCW 51.08.181**). Independent contractors in the construction trades must meet ALL seven parts of the test in order to be exempt.

1. Be free from your direction and control.
2. Need to pass one of the following three subtests:
  - a. Perform a service which is outside the course of your business or,
  - b. Perform the service away from all your business locations, including all your job sites or,
  - c. Be responsible, both under the contract and in fact, for the costs of the principal place of business from which the service is performed.

3. Need to pass one of the following two subtests:
  - a. Be customarily engaged in their own business to provide the services which are of the same nature as those performed under the contract or,
  - b. Provide a principal place of business that qualifies for an IRS business deduction; the place must be used regularly and exclusively for business purposes.
4. Be required under IRS rules to file a business tax return with the IRS.
5. Have an active account and an active unified business identifier number (UBI) with the Department of Revenue.
6. Maintain their own set of books and records showing business income and expenses.

*Additional requirement for the construction trades:*

7. The individual must have a valid contractor registration pursuant to chapter **18.27 RCW** or an electrical contractor license pursuant to chapter **19.28 RCW**.

If you have any questions, check with your local L&I field office to verify if your subcontractor would be considered your covered worker for industrial insurance purposes, or online at: <https://fortress.wa.gov/lni/crpsi>.

This card is intended as a Quick Reference Guide for industrial insurance (workers' compensation) purposes. We make every effort to ensure that it is correct. When using this card, please understand it is not intended to replace Department of Labor & Industries' or insured's policies, procedures, RCWs or WACs in their entirety.



# Workplace Posters: Required and Recommended

The following posters are available **free** from the issuing State of Washington or federal agency. Contrary to some advertisements you may have received, employers aren't required to purchase posters from private companies.

Online access to posters is indicated, when available. Otherwise, call the phone number listed to request that posters be mailed to you. Employers must post required posters where their employees can read them.

## Washington State

**Department of Labor & Industries** (required posters)

[www.lni.wa.gov/RequiredPosters](http://www.lni.wa.gov/RequiredPosters) ■ 1-800-547-8367

- Job Safety and Health Law (F416-081-909)
- Your Rights as a Worker (F700-074-909)
- Notice to Employees – If a Job Injury Occurs (F242-191-909)

*Or*

- Notice to Employees – Self-insured Businesses (F207-037-909)  
*This poster is for self-insured businesses. All others use F242-191-909.*

*Printed posters are also available from your local L&I office. All posters are printed in English/Spanish combined.*

**Employment Security Department** (required poster)

[www.esd.wa.gov/about-employees/forms-and-publications](http://www.esd.wa.gov/about-employees/forms-and-publications)

- Unemployment Benefits poster (EMS 9874)
- Church and Religious Organizations poster (UI07-0119)

**Human Rights Commission** (recommended poster)

[www.hum.wa.gov/publications](http://www.hum.wa.gov/publications)

1-800-233-3247 (in Washington State) or 360-753-6770

- Washington State Law Prohibits Discrimination in Employment

## United States

**Equal Employment Opportunity Commission**

(required poster)

<http://webapps.dol.gov/elaws/posters.htm>  
1-866-487-2365

- Equal Opportunity Employment is the Law  
*Also covers Americans with Disabilities Act.*

**Department of Labor** (required posters)

<http://webapps.dol.gov/elaws/posters.htm>  
1-866-487-2365

- Fair Labor Standards Act (FLSA)  
Federal Minimum Wage Poster (WH Pub.1088)
- Employee Polygraph Protection Act (WH Pub.1462)
- Family and Medical Leave Act of 1993 (WH Pub.1420)
- Your Rights Under USERRA – The Uniformed Services Employment and Reemployment Rights Act\*

*\* Federal law requires employers to notify employees of their rights under USERRA; employers may meet this requirement by displaying this notice where they customarily place notices for employee*

**Affordable Care Act** (required notice)

[www.dol.gov/ebsa/healthreform/regulations/coverageoptionsnotice.html](http://www.dol.gov/ebsa/healthreform/regulations/coverageoptionsnotice.html) ■ 1-866-444-3272

More information on reverse ►

## Online guide, helpful websites and numbers

### Governor's Office for Regulatory Innovation and Assistance

[www.oria.wa.gov](http://www.oria.wa.gov) ■ 1-800-917-0043

- Small Business Guide, [www.BizGuide.wa.gov](http://www.BizGuide.wa.gov)
- 

### Business Licensing Service

[www.Business.wa.gov/BLS](http://www.Business.wa.gov/BLS) ■ 1-800-451-7985

- Washington's Website For Businesses, [www.Business.wa.gov](http://www.Business.wa.gov)
- 

### Department of Labor & Industries

[www.Lni.wa.gov](http://www.Lni.wa.gov)

- Small business liaison, 1-800-987-0145
  - Agency information and assistance, 1-800-547-8367
  - Contractor registration, 1-800-647-0982
  - Employment standards/workplace rights, 1-866-219-7321
  - Workplace safety and health, 1-800-423-7233
- 

### Employment Security Department

[www.esd.wa.gov](http://www.esd.wa.gov)

- Employer helpline (24 hours), 1-888-836-1900
- Shared Work Program, 1-800-752-2500
- Labor market information, 1-800-215-1617

*Upon request, foreign language support and formats for persons with disabilities are available. Call 1-800-547-8367. TDD users, call 360-902-5797. L&I is an equal opportunity employer.*

# HELP, I NEED SOMEBODY



## NOT JUST ANYBODY: HIRING STAFF AND ALTERNATIVES TO EMPLOYMENT

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# POLLING QUESTIONS



- 1. HOW MANY OF YOU CURRENTLY EMPLOY AT LEAST ONE PERSON AT LEAST PART TIME?**
- 2. HOW MANY OF YOU ARE THINKING ABOUT GETTING SOME KIND OF ASSISTANCE WITH YOUR PRACTICE?**

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## So You Think You Need Help With Your Practice?

- Assess your ability to pay
- Identify specific tasks you will delegate
- Jennifer's firm model works without staff
- Call a practice management consultant if in doubt



Exhibit A: Practice Management Consultant



Exhibit B: Practice of Law Advisor

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## WHAT ARE THE OPTIONS?

- Hiring an employee, full or part time
- Independent contractor
- Virtual Staff
  - Employees or Independent Contractors
- Law students and other slaves
- Creative arrangements

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# HIRING AN EMPLOYEE

## BASIC EMPLOYMENT LAW PRINCIPLES

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## Hiring Just One Employee

- You must be familiar with a LOT of laws
- Hundreds more regulations
- Notice and posting requirements
- Wage and hour rules
- Laws on how to treat your employees
- Workplace safety issues

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## Figure Out Which Laws Apply

- Laws Relating to Discrimination
- Accommodation Obligations
- Laws Relating to Compensation
- Laws Relating to Employee Benefits
- Laws Relating to Leave
- Laws Relating to Harassment
- Laws Relating to Worker Safety
- Posting Requirements

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## Federal Laws Applicable to Employers of One

- Fair Labor Standards Act
- Equal Pay Act
- Uniformed Services Employment and Re-employment Rights Act
- Consumer Credit Protection Act
- Employee Polygraph Protection Act
- Employment Retirement Income Security Act
- Occupational Safety and Health Act
- National Labor Relations Act
- Whistleblower Protection Provisions
- Effect of Supreme Court opinions

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## State Laws Applicable to Employers of One

- Washington Minimum Wage Act
- Employment Security Act
- Industrial Insurance Act
- Domestic Violence Leave Act
- Washington Family Care Act
- Washington Law Against Discrimination
- Washington Appellate opinions
- Local laws & ordinances

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## Before You Hire

- Identify the true cost of employment
  - Payroll taxes
  - Benefits
  - Start-up costs
  - Get help with compensation issues
- Time
  - Finding, interviewing, selecting
  - Managing
  - Documenting

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## Where to Find Applicants

- **Colleagues**
- **Law schools**
- **Advertising**
- **Bar Associations**
- **Other legal organizations**
- **Private agencies; headhunters**
- **Internet recruiting**
- **Temporary help services**

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## Thoughts on Applications

- **Applications:**
  - Create one if you don't have one
  - Make sure you don't ask illegal or discriminatory questions
- **Consider different approaches**
  - Writing sample
  - Analyze a client scenario
  - Mock client meeting

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## Thoughts on Resumes

- **A resume:**
  - Is frequently embellished!
  - Doesn't always provide the right information
  - May contain information which is illegal or discriminatory for you to consider
- **Verify the information reported**

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## Thoughts on Interviews

- **Prepare your interview questions in advance**
- **Choose a suitable location**
- **Start the interview by talking about your firm, your work philosophy, your expectations**
- **Focus on getting at the character of the candidate**
  - Can you work well together?
- **Review WAC 162-12-140**

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## Illegal Application/Interview Questions

1. What is your age?	Only in the case of a young applicant can the employer ask if the person can prove he or she is of legal age after hiring. In other cases, age questions such as, "When did you graduate from high school?" are not permitted.
2. What church do you attend?	No questions regarding the religion of the applicant or the applicant's family are allowed.
3. Do you have children or do you plan to get pregnant?	Questions regarding personal family plans or living arrangements are not permitted.
4. Have you ever been arrested?	Inquiries concerning convictions and imprisonment which either do not relate reasonably to job duties or did not occur within the last ten years
5. How is your health?	"Do you have any condition that would prevent you from doing this job?" is permissible.

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## Incentives and Benefits

- **Incentives and Bonus**
  - Cash
  - Non-cash
- **Benefits**
  - Vacation, holidays
  - Health plans
  - Sick leave
  - Retirement options

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## Non-Cash Incentives & Benefits

- **Flexible Work Arrangements**
  - Compressed work-week
  - Flex time
  - Job sharing
  - Telecommuting
- **Intrinsic Rewards**
  - Job satisfaction
  - Healthy, happy work environment
- **Enlightened Policies**
  - Employee discounts
  - Memberships
  - Workshops, training, educational benefits
  - Use of company facilities

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## Training and Evaluating Performance

- Every staff person will require an orientation
- Some degree of training, feedback and eventually performance appraisal or evaluation
- Ideally, performance feedback is ongoing
- Management of staff requires effort and documentation
- First performance appraisal at three months

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## Thoughts on Termination

- Washington may be an “at-will” state, but don’t rely on it
  - Exceptions: discrimination, retaliation, exercising employment rights
- Without documentation, you are at risk
- Don’t contest unemployment benefits
- Don’t terminate during the exercise of employment rights

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## INDEPENDENT CONTRACTORS

**MAKE SURE THEY REALLY ARE**

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## Independent Contractors



- The law favors the employment relationship
- The burden is on the employer to demonstrate IC status
- Independent contractors own their own businesses
- The IC must have a business license, DOR account, EIN number

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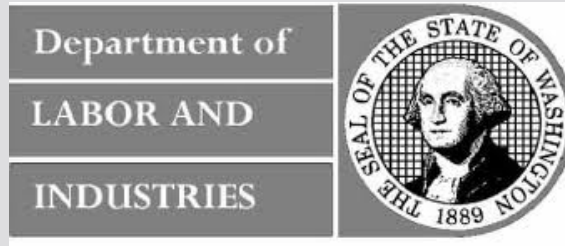
## L&I's Tests



- Free from direction and control
- Must meet one of these three subtests:
  - Perform a service outside the course of your business
  - Perform the service away from your business
  - Be responsible in contract and in fact for the costs of their business
- Must meet one of these two subtests:
  - Be customarily engaged in the business for which they are contracted
  - Provide a principal place of business that qualifies for IRS deduction

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## Best Source of Information on Employment



[www.lni.wa.gov](http://www.lni.wa.gov)

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## THE VIRTUAL ALTERNATIVE

### What is a **Virtual Assistant**?

A *Virtual Assistant* (VA) is an office administration professional offering **remote** administrative support to small or medium sized businesses.

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## Virtual Assistants

- Help with specific skills for short-term staffing needs
- Develop into long term business relationships
- Eliminate the burden and cost of employment
- Virtual assistants can perform a variety of roles:
  - Paralegal
  - Legal Assistant
  - Transcriptionist
  - Receptionist
  - Bookkeeper

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## Hiring Virtual Staff

- Selection
- Video screening
- Include others in selection
- Conduct a trial run
- Test for customer service skills
- Have a conversation

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## Examples of Virtual Assistant Companies

- **Virtual Paralegal Services**  
([www.virtualparalegalservices.com](http://www.virtualparalegalservices.com))
- **The Aide-de-Camp Collective**  
([www.adccollective.com](http://www.adccollective.com))
- **Virtual Independent Paralegals LLC**  
([www.viphelpme.com](http://www.viphelpme.com))
- **The Virtual Paralegal**  
([www.thevirtualparalegal.com](http://www.thevirtualparalegal.com))
- **Habiliss**  
([www.habiliss.com](http://www.habiliss.com))

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## OTHER ALTERNATIVES

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## Law Students

- Law students will always be employees
- May work for peanuts but must still be paid minimum wage
- Interns, apprentices, whatever you call them, still must be paid minimum wage
- Work study provides up to 40% wage reimbursement
- Law student must qualify for work study, it's considered financial aid
- [www.wsac.wa.gov](http://www.wsac.wa.gov)

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## Newly Minted Attorneys

- May work for peanuts but must be paid at least minimum wage
- Either they're an employee or an independent contractor
- There is no other category of worker

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## Creative Alternatives: Are There?

- Goal: You want to pay the attorney when you get paid by the client
- Goal: You want the attorney to generate billable hours
- Goal: You want the attorney be a rainmaker
- Solution?

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## QUESTIONS?

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## CHAPTER FOUR

**ESSENTIAL WEB SERVICES FOR LAWYERS –  
CLOUD COMPUTING ETHICS, SECURITY AND OPTIONS**

July 2016

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**BARRON HENLEY, ESQ.**, is one of the founding partners of Affinity Consulting Group, a legal technology consulting firm focused on automating and streamlining law firms and legal departments. He earned his B.S./B.A. (marketing and economics) and J.D. from The Ohio State University and is a member of the American, Ohio and Columbus Bar Associations, and the Worthington Estate Planning Council. He is a member of the ABA Law Practice Management Section, a Board Member for the ABA TECHSHOW, and is the former Chair of the Ohio State Bar Association Law Office Automation & Technology Committee. Mr. Henley heads Affinity's document assembly/automation and software training departments; he is a renowned expert on Microsoft Word, Adobe Acrobat and HotDocs document assembly software; and has authored legal-specific manuals on HotDocs, Adobe Acrobat, and Microsoft Word, Excel & Outlook. Barron is also an expert in launching new law firms, overhauling existing firms and documenting and re-engineering law firm processes. Finally, Barron teaches continuing legal education (CLE) classes throughout the U.S. and Canada covering a wide variety of topics related to law practice management, technology and ethics..

# Cloud Computing for Lawyers: The Pros, Cons and Ethical Issues and Options

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# Cloud Computing for Lawyers: The Pros, Cons and Ethical Issues and Options

I. **PREMISE OF THIS SEMINAR:** Cloud computing encompasses a lot of different things and this seminar will endeavor to explain all of them in plain English. We'll cover everything from Software-as-a-Service to hosted servers to the online delivery of legal services; so buckle up!

II. **CLOUD COMPUTING:**

A. **Definitions Related to Cloud Computing:**

1. **SaaS or Software As A Service:** Rather than purchasing and installing software on a computer or server, SaaS is simply accessed via a web browser. Your data is stored in the vendor's servers in a data center (see paragraph 6 below) rather than in your office. There are a ridiculous number of definitions of SaaS, but I think this one sums it up succinctly without using 15 more acronyms requiring definitions:

“Generally speaking, it’s software that’s developed and hosted by the SaaS vendor and which the end user customer accesses over the Internet. Unlike traditional packaged applications that users install on their computers or servers, the SaaS vendor owns the software and runs it on computers in its data center. The customer does not own the software but effectively rents it, usually for a monthly fee. SaaS is sometimes also known as hosted software or by its more marketing-friendly cousin, ‘on-demand.’”<sup>1</sup>

To be clear, this means that you do *not* have the software installed on your computer - it is accessible only via a browser on the Internet. Further, your data and/or documents are located on the vendor’s servers and not on your computer or server.

2. **PaaS or Platform As a Service:** PaaS is a derivation of SaaS that allows users to *rent* hardware, operating systems, storage, and network capacity over the Internet access. Salesforce.com is a great example of this with their Customer Relationship Management (CRM) product. Salesforce's platform allows outside developers to create add-on applications that integrate into the main application and are "hosted" on the company's

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<sup>1</sup> *Software as a Service (SaaS) Definition and Solutions*, by Meridith Levinson on May 15, 2007, [www.cio.com](http://www.cio.com), see <http://tinyurl.com/24cofbx> for full article.

infrastructure. For example, Advologix<sup>2</sup> is a legal case management system that was built on the Salesforce.com platform.

3. **IaaS or Infrastructure as a Service:** In most cases, this means renting access to a server located in a data center (see paragraph 6 below). The server provides processing power and electronic storage, both of which are accessed via the Internet. The server is available on-demand and the provider is usually responsible for maintaining the server, providing backup and technical support.
4. **Hybrid Approaches:** Of course, there are slight variations on these ideas. With pure SaaS, you don't own anything except your data. However, services like Hosted Exchange<sup>3</sup> are a little different. In that case, you can own the application necessary to view the data (Outlook), it's installed on your computer, you own the data, and you can access/view the data offline regardless of whether you continue to subscribe to the service. You are necessarily also renting a server with Hosted Exchange so it has aspects of SaaS and IaaS.
5. **Colocation:** You can also buy your *own* server and install it in a data center (see paragraph 6 below).
6. **Data Center:** Here's a good definition from [www.cio.com](http://www.cio.com):

"Known as the server farm or the computer room, the data center is where the majority of an enterprise servers and storage are located, operated and managed. There are four primary components to a data center:

**White space:** This typically refers to the usable raised floor environment measured in square feet (anywhere from a few hundred to a hundred thousand square feet). For data centers that don't use a raised floor environment, the term "white space" may still be used to show usable square footage.

**Support infrastructure:** This refers to the additional space and equipment required to support data center operations — including power transformers, your uninterruptible power source (UPS), generators, computer room air conditioners (CRACs), remote transmission units (RTUs), chillers, air distribution systems, etc. In a high-density, Tier 3 class data center (i.e. a concurrently

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<sup>2</sup> See [www.advologix.com](http://www.advologix.com)

<sup>3</sup> Microsoft Exchange is Microsoft's server application for backing up and sharing email, contacts, calendars, tasks and other information in Microsoft Outlook. It provides centralized data storage, sharing abilities, plus synchronization with various phones and other devices. Hosted Exchange is essentially renting this service by paying a monthly fee per user.



maintainable facility), this support infrastructure can consume 4-6 times more space than the white space and must be accounted for in data center planning.

IT equipment: This includes the racks, cabling, servers, storage, management systems and network gear required to deliver computing services to the organization.

Operations: The operations staff assures that the systems (both IT and infrastructure) are properly operated, maintained, upgraded and repaired when necessary. In most companies, there is a division of responsibility between the Technical Operations group in IT and the staff responsible for the facilities support systems."<sup>4</sup>

In plain English, a data center is a secure physical facility which houses the computers of one or more enterprises. Depending upon what "Tier" a data center is rated for, it may have redundant components, backup generators and multiple uplinks (internet connections). There are 4 Tiers and Tier 4 guarantees 99.995% uptime.

7. **Virtual Law Office (VLO):** This typically means that a law firm is operating without a physical office. An example would be [www.burton-law.com](http://www.burton-law.com), an Ohio law firm headed by Chad Burton. Here's an excerpt from an article entitled [Expert Witness: Chad Burton Explains the Virtual Law Firm](#) by Jason Krause.

"In 2011, he announced Burton Law would become a virtual law firm – no central office, dispersed practices, and run entirely on cloud-based software and technology. The idea is that a virtual law firm can offer professional legal services at a lower cost thanks to the obvious cost savings in real estate, IT budget, and other trappings of the traditional practice.

...

The label 'virtual law practice' has emerged as a way to describe emerging law firm business models. Firms can range from solo practices delivering services online to multi-lawyer, multi-jurisdictional law firms (and everything in between)."<sup>5</sup>

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<sup>4</sup> See [http://www.cio.com/article/499671/Data\\_Center\\_Definition\\_and\\_Solutions](http://www.cio.com/article/499671/Data_Center_Definition_and_Solutions)

<sup>5</sup> [Expert Witness: Chad Burton Explains the Virtual Law Firm](#) by Jason Krause, June 18, 2013, see <http://tinyurl.com/oevsh3t>.

Another definition to consider:

"A virtual law office (VLO) is a law firm, run by a lawyer or group of lawyers, that meets the legal needs of its clients securely over the Internet and through other technological tools. For lawyers, this means that no physical office is required, allowing attorneys to maximize profit while offering flexibility and having the option to work from home or anywhere else. For clients, VLOs provide an incredibly convenient way to take care of legal needs online while working without compromising the quality of the legal representation."<sup>6</sup>

Obviously, a law firm can render legal services via the web regardless of whether the law firm itself is virtual under the first definition above.

8. **Client Portal:** I know Wikipedia is not a reliable source for everything, but its definition of Client Portal is accurate and well-stated:

"A client portal is an electronic gateway to a collection of digital files, services, and information, accessible over the Internet through a web browser. The term is most often applied to a sharing mechanism between an organization and its clients. The organization provides a secure entry point, typically via a website, that lets its clients log into an area where they can view, download, and upload private information."<sup>7</sup>

So you are using a client portal when you book a flight or hotel online, when you log into your bank's website or even when you use Facebook.

- B. Is Going to the Cloud All or Nothing?** Absolutely not. For example, I could be using hosted Exchange (with Outlook) while running Word, Excel & PowerPoint locally. If you rent a cloud server, programs like Citrix XenApp<sup>8</sup> provide a delivery mechanism so that regular shrink-wrapped software you own can be delivered to you through the Internet. So I could run my accounting software from a cloud server via Citrix XenApp, while every other program I use is running locally.

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<sup>6</sup> [You Don't Have To Quit Lawyering To Have A Life: 5 Steps To A Virtual Practice](#) by Rachel Rodgers, Forbes Magazine, December 11, 2012.

<sup>7</sup> See [http://en.wikipedia.org/wiki/Client\\_portal](http://en.wikipedia.org/wiki/Client_portal)

<sup>8</sup> See <http://tinyurl.com/dv3jx> for more information about XenApp.

III. **SOFTWARE-AS-A-SERVICE:** When most lawyers think of going to "the cloud," they're referring to SaaS. SaaS definitely has some advantages but there are also distinct disadvantages.

A. **Advantages of SaaS:**

1. **Up Front Price Advantage:** Let's say you want to start using a case management application for your practice. If you were to buy one such as Time Matters, you would have to pay for the software outright along with the annual maintenance contract which is mandatory (\$905 for the first license and \$525 for each license thereafter). You may have to buy a file server or otherwise upgrade your hardware in order to run the program. For an example cost, a new server plus installation and setup could easily run \$5,000 - \$8,000. Therefore, buying software may turn out to be quite expensive. In the alternative, you could begin subscribing to something like [www.rocketmatter.com](http://www.rocketmatter.com) in which case you would pay \$59.99 for the first user per month and \$49.99 per user for the next 5 users per month. You wouldn't have to buy a server and you probably wouldn't have to upgrade any of your existing equipment assuming you already have high speed Internet access.
2. **No Hardware Required:** If you already have a computer and high speed Internet access, then you probably don't need anything else from a hardware perspective.
3. **Works with Apple or Windows:** Since these applications are browser based, they will usually work with both Apple and Windows computers.
4. **Updates Included:** Most cloud application include all updates which are installed for you.
5. **Technical Support Included:** With most cloud applications, you get "free" technical support included with your monthly subscription fee. Of course, purchased software also provides technical support but it is often an extra fee on top of the original software purchase price.
6. **Access From Anywhere:** As long as you're using a computer with internet access, you can probably use your cloud applications. You wouldn't need a VPN, GoToMyPC or any other type of additional remote access application to accomplish this.
7. **Share Applications Among Users Spread Out Geographically:** For lawyers with multiple offices or who wish to work from multiple locations, cloud applications provide a lot of flexibility. Of course, there are other ways to

gain access to programs besides subscribing to cloud applications, but this feature is obviously built in to cloud apps without buying anything else.

8. **Data Backup Provided:** Since your data is stored on the host company's servers, they almost always provide backup services along with that so that there is little (if any) risk that you would lose your data or access to your application due to a physical hardware failure.

## B. Disadvantages of SaaS:

1. **Nearly All Cloud Applications Are Inferior To Their Shrink Wrapped Counterparts:** We have tested dozens of cloud applications and have found only a few that are as functionally complete as server or PC based software. For example, Google Docs<sup>9</sup> is virtually useless for drafting legal documents. You can't even do something as basic as outline automatic paragraph numbering. Even the Microsoft Word Web App is pathetically inadequate compared to the desktop version of MS Word. So for something as fundamental as word processing, there are no cloud options which are even close to the functionality built into MS Word.
2. **Give Up Integration:** If I have a case management system like Amicus Attorney, it can integrate (share data) with Microsoft Word, my accounting program (PCLaw, Tabs, Timeslips, QuickBooks, etc.), and my document management program (Worldox). It can synchronize with Microsoft Outlook. All of these things are possible because Amicus Attorney and all of the other programs I mentioned are installed on my computer and server. In other words, they're not in the cloud. So let's say I decided to try a cloud based case management program instead of Amicus Attorney (there are many to choose from). Since the case management program isn't installed on my server, it can't integrate with Word, my accounting program or my document management program; and it certainly can't synchronize with Outlook. It also cannot sync its calendar, contacts or tasks with any smart phone. So now I am forced to enter everything at least twice and maintain two separate databases of client data. Obviously, this destroys the efficiency I had when everything was installed locally.
3. **More Expensive Over Time:** These technology rental programs were not designed by the vendors to take less money from you. To the contrary, they are generally designed to take more money from you over a longer period of time. Here's a great quote on the subject:

"The tech press is full of people who want to tell you how completely awesome life is going to be when everything moves to

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<sup>9</sup> See [www.docs.google.com](http://www.docs.google.com)

‘the cloud’ – that is, when all your important storage, processing and other needs are handled by vast, professionally managed data-centers.

Here's something you won't see mentioned, though: the main attraction of the cloud to investors and entrepreneurs is the idea of making money from you, on a recurring, perpetual basis, for something you currently get for a flat rate or for free without having to give up the money or privacy that cloud companies hope to leverage into fortunes.”<sup>10</sup>

In almost every case we’ve looked at, the subscription model becomes more expensive than buying an equivalent program outright by about the 24<sup>th</sup> month (and often sooner).

4. **Difficult To Leave the Vendor:** Let’s say you’re using an on-line document management service and you’re unhappy with it or are just tired of paying the monthly fee and want to bring your documents back in-house. How do you get all of your documents back, how long will it take and how much will it cost? You would obviously have very little leverage.
5. **You May Not Be Able To Use The Data You Get Back:** Your SaaS vendor may store your data in a proprietary structure or database. Therefore, if you stop using the vendor and get your data back, you may not be able to do anything with it since you no longer have access to the vendor’s software. Further, you may or may not be able to import the data into another system. Even if the vendor gives you back a non-proprietary database like SQL, do you have any idea what to do with it? If not, you’ll have to find someone to help and it’s not likely to be inexpensive.
6. **No Offline Access:** If all of your documents, accounting or practice management data is only accessible via an Internet connection, then what happens if the connection goes down; or you're simply in a situation where there is no internet access (like a plane)?
7. **Vendor May Increase Prices:** Nearly every SaaS vendor reserves the right to adjust prices periodically. If they do, for the reasons outlined above, you may feel you have no choice but to pay whatever they’re asking. Here’s an actual example:

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<sup>10</sup> Doctorow, Cory, “Not every cloud has a silver lining - There's something you won't see mentioned by too many advocates of cloud computing – the main attraction is making money from you” The Guardian - guardian.co.uk, September 2, 2009, <http://www.guardian.co.uk/technology/2009/sep/02/cory-doctorow-cloud-computing>.

“We’re all for startups trying to make money, but we also recognize a good old ‘bait and switch’ tactic when we see one. Case in point: on-demand help desk software maker Zendesk, which has just emailed its customers to let them know they’re raising their prices – resulting in a 300+ percent increase in monthly fees for some. The announcement, which was also posted on the company’s forums, comes in the form of an introduction of new product features, with the new pricing scheme mentioned underneath (never a good sign). The startup claims the new pricing plans are being offered in response to ‘customer requests for different packaging and features’. But judging from the commentary on the forum entry and on Twitter, we’re not so sure that’s really the case.”<sup>11</sup>

8. **Vendor Service Disruptions:** The following quote from an article by Jon Brodtkin published September 10, 2011 on ARS Technica explains this risk best:

"Outages are becoming a distressing fact of life for Microsoft’s cloud e-mail customers, and users of other cloud services such as Google Apps. Two weeks of e-mail glitches plagued Exchange Online customers using Microsoft’s Business Productivity Online Suite (BPOS) in May. Office 365, the successor to BPOS which launched in late June, suffered an e-mail outage in August and then again last night and this morning. Google Docs suffered an outage this week, and Amazon’s Elastic Compute Cloud infrastructure-as-a-service platform was plagued by outages and lost customer data in April and August. The latest Microsoft outage was caused by what the company vaguely called a “DNS issue” and affected not just Office 365 but also the consumer services Hotmail and SkyDrive. The outages were spread throughout the world. Taken together, the outages may put second thoughts in the minds of IT executives considering the move from locally hosted Exchange servers to Microsoft’s cloud, to Google Apps or to Amazon’s cloud.”<sup>12</sup>

9. **Upgrades Are Forced On You:** Having been in the legal tech industry for a lot of years, I can promise you that there are lot of upgrades people don’t want. Whether it’s case management, accounting or even a word

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<sup>11</sup> *Zendesk Raises Prices, Pisses Off Customers*, by Robin Wauters on May 18, 2010 for TechCrunch, see <http://techcrunch.com/2010/05/18/zendesk-pricing/> for full article.

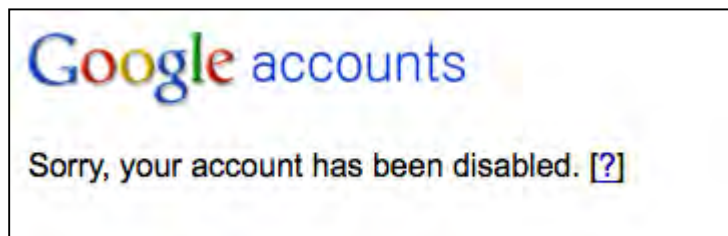
<sup>12</sup> *Office 365, Google Docs Go Down Again, Could Give Pause To The Cloud-Wary*, by Jon Brodtkin, September 10, 2011, see <http://tinyurl.com/3gfh7w>

processor, sometimes the “upgrades” introduce big changes you’re not comfortable with. Furthermore, there have been plenty of examples when an upgrade breaks a feature that worked perfectly before. With cloud applications, the upgrades are performed without your knowledge or consent and you may not be happy with the result.

10. **Vendor Bankruptcy:** Particularly in this economy, online vendors can end up in bankruptcy. What happens if a Bankruptcy Trustee now has possession of all of your important information?
11. **What If You Have Internet But Still Cannot Get Access?** This is most easily illustrated by a recent blog post I read from C. C. Chapman (see <http://tinyurl.com/zastat>):

“Yesterday I woke up in NYC and went about my day. Part of every day is checking my e-mail, calendar and other things. I do almost all of this using Google products. My phone kept saying that I had the wrong password for my e-mail which was confusing, but I just sort of shrugged and told myself that I’d check my e-mail later in the day.

But, it kept doing it and it wasn’t until I got to the train station that I was able to get on a computer and was then told by Google that my account had been temporarily disabled due to a “perceived violation of either the Google Terms of Service or product-specific Terms of Service.”



I tried going through their SMS code verification as well as every other way I could go and still nothing.

This morning I asked about this on Twitter and someone showed me that Chris Brogan<sup>13</sup> is going through the EXACT same thing.

A hack? Something bigger broken at Google? I don’t know what it is, but I just want my stuff to work. I forgot how much I rely on

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<sup>13</sup> See <http://tinyurl.com/zasn1t> for Chris Brogan’s post entitled “When Google Owns You - a New Chapter”, April 22, 2010.

Google. Time to make backup plans because I'm realizing that up until now I haven't had any and that is a bad thing!"

12. **Bandwidth Caps:** Many Internet Service Providers (ISPs) are imposing maximum GB download limitations on their customers per month. As you'll read here (<http://tinyurl.com/3ny9uk4>), these limitations may act to cut your access off to your cloud applications and/or force you to pay far more per month than you expected.

**IV. RELATIVE RISKS OF THE CLOUD:** IaaS represents almost no risk since you own (or can buy) the software and could re-install it on a server in your own office. SaaS represents more of a risk, but that doesn't mean it's not a great value proposition. In either event, you need to address the ethical issues (see Article V below) and go in with your eyes wide open. Anything involving the Internet has an element of risk, but there's a much bigger risk that: a) someone breaks into your office and steals client data, b) a laptop, tablet or phone containing client data is lost or stolen, or c) a disgruntled employee steals client data.

**V. ETHICAL ISSUES PRESENTED BY MOVING TO THE CLOUD:**

**A. Applicable Rules of Professional Conduct:** Below is just the text of the rules applicable to this discussion and a few references to the American Bar Association Model Rules.<sup>14</sup>

1. **WASHINGTON 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.

2. **WASHINGTON RULE 1.1 - Comment 6 - Maintaining Competence:**

[6] 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 and comply with all continuing legal education requirements to which the lawyer is subject.

3. **ABA RULE 1.1 - Comment 8:**

[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

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<sup>14</sup> See <http://tinyurl.com/4omg5ch> for the full text of all of the ABA Model Rules.



and education and comply with all continuing legal education requirements to which the lawyer is subject.

4. **WASHINGTON RULE 1.6(a) - 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 or the disclosure is permitted by paragraph (b).

...

5. **ABA RULE 1.6(c):**

(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.

6. **WASHINGTON RULE 1.6 - Comment 16:**

[16] A lawyer must act competently to safeguard information relating to the representation of a client against inadvertent or unauthorized disclosure by the lawyer or 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.

7. **ABA RULE 1.6 - Comment 18:**

[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 against inadvertent or unauthorized disclosure by the lawyer or 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. **The unauthorized access to, or the inadvertent or unauthorized disclosure of, information relating to the representation of a client does not constitute a violation of paragraph (c) 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). **A client may require the lawyer to implement special security**

measures not required by this Rule or may give informed consent to forgo security measures that would otherwise be required by this Rule.

8. **WASHINGTON RULE 1.6 - Comment 17:**

[17] **When transmitting a communication that includes information relating to the representation of a client, the lawyer must take reasonable precautions to prevent the information from coming into the hands of unintended recipients. This duty, however, does not require that the lawyer use special security measures if the method of communication affords a reasonable expectation of privacy. Special circumstances, however, may warrant special precautions.** Factors to be considered in determining the reasonableness of the lawyer's expectation of confidentiality include the **sensitivity** of the information and the extent to which the **privacy of the communication is protected** by law or by a confidentiality agreement. **A client may require the lawyer to implement special security measures not required by this Rule or may give informed consent to the use of a means of communication that would otherwise be prohibited by this Rule.**

9. **WASHINGTON RULE 5.3 - Responsibilities Regarding Nonlawyer Assistants:** This rule makes Rule 1.6 apply to everyone that works for the lawyer (not just the lawyers). It further makes the lawyer(s) responsible for the conduct (and mistakes) of nonlawyer assistants.

With respect to a nonlawyer employed or retained by or associated with a lawyer:

(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;** and

(c) a lawyer **shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct** if engaged in by a lawyer if:

(1) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or

(2) the lawyer is a partner or has comparable managerial authority in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

**B. Other Authorities:**

1. **Washington State Bar Association Advisory Opinion 2215 (2012)<sup>15</sup>:**

a. **Illustrative Facts:** Law Firm contracts with third-party vendor to store client files and documents online on remote server so that Lawyer and Client could access the documents over the Internet from any remote location.

b. **Key Points:**

i. It is impossible to give specific guidelines as to what security measures should be in place with a third party service provider of online data storage in order to provide adequate protection of client material, because the technology is changing too rapidly and any such advice would be quickly out of date.

ii. It is also impractical to expect every lawyer who uses such services to be able to understand the technology sufficiently in order to evaluate a particular service provider's security systems.

iii. A lawyer using such a service must, however, conduct a due diligence investigation of the provider and its services and cannot rely on lack of technological sophistication to excuse the failure to do so.

iv. While some lawyers may be able to do more thorough evaluations of the services available, best practices for a lawyer without advanced technological knowledge could include:

(1) Familiarization with the potential risks of online data storage and review of available general audience literature and literature directed at the

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<sup>15</sup> See <http://mcle.mywsba.org/IO/print.aspx?ID=1662>

legal profession, on cloud computing industry standards and desirable features.

- (2) Evaluation of the provider's practices, reputation and history.
- (3) Comparison of provisions in service provider agreements to the extent that the service provider recognizes the lawyer's duty of confidentiality and agrees to handle the information accordingly.
- (4) Comparison of provisions in service provider agreements to the extent that the agreement gives the lawyer methods for retrieving the data if the agreement is terminated or the service provider goes out of business.
- (5) Confirming provisions in the agreement that will give the lawyer prompt notice of any nonauthorized access to the lawyer's stored data.
- (6) Ensure secure and tightly controlled access to the storage system maintained by the service provider.
- (7) Ensure reasonable measures for secure backup of the data that is maintained by the service provider.

c. **Conclusion:** A lawyer may use online data storage systems to store and back up client confidential information as long as the lawyer takes reasonable care to ensure that the information will remain confidential and that the information is secure against risk of loss.

2. **American Bar Association's Standing Committee on Legal Ethics and Professional Responsibility Forma Opinion 95-398:**

"...[I]n this era of rapidly developing technology, lawyers frequently use outside agencies for numerous functions such as accounting, data processing, photocopying, computer servicing, storage and paper disposal and that lawyers retaining such outside service providers are required to make reasonable efforts to prevent unauthorized disclosures of client information."

"A lawyer who gives a computer maintenance company access to information in client files must make reasonable efforts to ensure that the company has in place, or will establish, reasonable procedures to protect the confidentiality of client information. Should a significant breach of

confidentiality occur, the lawyer may be obligated to disclose it to the client.”

3. **American Bar Association's Standing Committee on Legal Ethics and Professional Responsibility Forma Opinion 08-451:** "A lawyer may outsource legal or nonlegal support services provided the lawyer remains ultimately responsible for rendering competent legal services to the client under Model Rule 1.1. In complying with her Rule 1.1 obligations, a lawyer who engages lawyers or nonlawyers to provide outsourced legal or nonlegal services is required to comply with Rules 5.1 and 5.3. She should make reasonable efforts to ensure that the conduct of the lawyers or nonlawyers to whom tasks are outsourced is compatible with her own professional obligations as a lawyer with “direct supervisory authority” over them. In addition, appropriate disclosures should be made to the client regarding the use of lawyers or nonlawyers outside of the lawyer’s firm, and client consent should be obtained if those lawyers or nonlawyers will be receiving information protected by Rule 1.6.”<sup>16</sup>
4. **State Opinions on Cloud Computing:** All of the following permit cloud services and impose a reasonable care standard. However, the specific duties imposed on lawyers varies from opinion to opinion.
  - a. Alabama Ethics Opinion 2010-02
  - b. Arizona Opinion 09-04
  - c. California Opinion 2010-179
  - d. Florida Opinion 12-3
  - e. Iowa Opinion 11-01
  - f. Maine Opinions 194 and 207
  - g. Massachusetts Opinion 12-03
  - h. New Hampshire Opinion #2012-13/4
  - i. New Jersey Opinion 701
  - j. New York Opinion 842
  - k. Nevada Opinion 33

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<sup>16</sup> See <http://tinyurl.com/celuw4g> for the full text of the opinion.

- l. North Carolina 2011 Formal Ethics Opinion 6
- m. Oregon Opinion 2011-188
- n. Pennsylvania Opinion 2011-200
- o. Vermont Opinion 2010-6
- p. Virginia Legal Ethics Opinion 1872

**C. Sample State Opinions:**

**1. Nevada Formal Opinion 33:**

"The previous ABA opinions and the new comments to Rule 1.6 clearly evidence the ABA's policy to treat electronic client communications and information according to existing rules and not to hold an attorney responsible for a breach of client confidentiality, or for storing client information in such a manner that the breach is possible, so long as the attorney:

1. Exercises reasonable care in the selection of the third party contractor, such that the contractor can be reasonably relied upon to keep the information confidential; and
2. Has a reasonable expectation that the information will be kept confidential; and
3. Instructs and requires the third party contractor to keep the information confidential and inaccessible."<sup>17</sup>

**2. Arizona Opinion 05-04:**

Arizona Rules of Professional conduct "require that an attorney act competently to safeguard client information and confidences. It is not unethical to store such electronic information on computer systems whether or not those same systems are used to connect to the internet. However, to comply with these ethical rules as they relate to the client's electronic files or communications, an attorney or law firm is obligated to take competent and reasonable steps to assure that the client's confidences are not disclosed to third parties through theft or inadvertence. In addition, an attorney or law firm is obligated to take reasonable and competent steps to assure that the client's electronic

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<sup>17</sup> State Bar Of Nevada Standing Committee On Ethics And Professional Responsibility Formal Opinion No. 33, February 9, 2006. See <http://tinyurl.com/9tt3ljn>.

information is not lost or destroyed. In order to do that, an attorney must either have the competence to evaluate the nature of the potential threat to the client's electronic files and to evaluate and deploy appropriate computer hardware and software to accomplish that end, or if the attorney lacks or cannot reasonably obtain that competence, to retain an expert consultant who does have such competence."<sup>18</sup>

**D. Meeting the Reasonable Care Standard:** In exercising reasonable care, the following are some questions and considerations you need to address before deciding to use any particular service.

1. Where is your data stored? If it is to be moved, do you have the right to approve the transfer if it is going to be moved to another state or country?
2. What is the provider's disaster-recovery or avoidance plan?
3. How often are backups of the data made, where are they stored, and are multiple past versions maintained or only the most recent versions of your data?
4. Who (if anyone) from the provider has access to your data? What level of access does each person have? You need to make sure that the provider understands that the data is to be kept confidential and I would recommend a written instruction to that effect.
5. Is the data encrypted (not readable) when it is being transferred to the vendor and when you're accessing it from the vendor?
6. Be sure that the vendor is not claiming any ownership rights in your data.
7. What Tier is the datacenter where you data is being stored certified for? You want your data hosted in a Tier 4 certified data center. An explanation of the data center tier system can be found here: <http://tinyurl.com/8rvrzou>.
8. Is the cloud vendor contractually obligated to notify you in the event of a security breach?
9. Can you download your data at any time? If you decide to stop using the service, are they obligated to provide your data to you? If so, in what format and within how many days?

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<sup>18</sup> State Bar of Arizona Ethics Opinions, 05-04: Electronic Storage; Confidentiality 7/2005. See <http://tinyurl.com/qg6nrhh>.

10. How long has the provider been in business and what is its financial health? What happens if the provider closes down? How will you get your data?

## VI. PRACTICING LAW WITHOUT A PHYSICAL OFFICE:

- A. **Is It Possible?** Every time a lawyer writes the monthly office rent check, they probably ask themselves, "do I really need this overhead?" Many people feel more comfortable in their home offices and would prefer to spend more time there.
- B. **Issues That Must Be Addressed:** Let's assume two lawyers and two support staff in a firm. The big issues to address are:
  1. **Internal Collaboration & Communication:** How do you work together, collaborate and communicate easily on client matters?
  2. **External Communication:** How do clients and others reach you? If you're not available to answer the phone, then do you want your current or prospective clients talking to voice mail or an auto-attendant?
  3. **Sharing Files:** If everyone works out of their homes, how do you share client files with one another?
  4. **Meeting Clients:** Most people aren't comfortable having client meetings in their home offices; and since most matters being discussed are confidential, it makes finding a suitable location for meetings difficult if one doesn't have an external, private office. So how does one address this issue?
- C. **The Trend Toward an Untethered Practice:** All I mean by this is the ability to run a full-service law firm without a physical office. Technological advances have made this idea fairly easy to pull off and lawyers are doing it increasing numbers. Below, we'll discuss services and technologies you'll need to do it. Before we get into the pieces and parts necessary to do it, let's talk about the "why" first.
- D. **Benefits of an Untethered Practice:** Here's the short list.
  1. **Lower Overhead:** For many firms, the biggest annual cost behind payroll is the cost of physical space (in rent or mortgage payments). Saving \$20,000 - \$50,000 per year is nothing to sneeze at.
  2. **Better Life/Work Balance:** It's easier to deal with personal and family needs when you work from home. You're probably more comfortable and more relaxed. If you need to get something knocked out on off-hours, at least you don't have to be isolated in your remote office. Finally, you can



work from the home office, your vacation home, the lake cabin or anywhere else you can get Internet access.

3. **Solitude When You Want It:** When one is under pressure and needs uninterrupted time to get something done, the office is often the last place they want to be due to the many distractions present there.
4. **Tax Benefit:** If you meet the IRS's test, you may be able to deduct the expenses for the business use of your home. The IRS has a general description of the Home Office Deduction on their website<sup>19</sup>, but you really want to read IRS Publication 587<sup>20</sup> (rev. 2012) entitled Business Use of Your Home for the full description and test you must meet.

**VII. CLOUD APPLICATIONS FOR LAWYERS:** This is just a sampling of what is available.

**A. Case Management Options:** If you're unfamiliar with case management software, these programs handle file management, calendaring, contacts, tasks (to-do lists), time entries, communications (emails and phone calls), document management, document assembly, and can help you manage and share research. More importantly, each component feature is integrated with the others. For example, you can see all of the calendared appointments related to a particular matter (for everyone in your office) from within the electronic file. You never have to go look directly at someone's calendar for those things (which would be hard to find anyway). Anyway, here are some options for cloud-based case management.

1. **ActionStep:** [www.actionstep.com](http://www.actionstep.com)
2. **AdvologixPM:** [www.advologix.com](http://www.advologix.com)
3. **Amicus Attorney Cloud Edition:** [www.amicus-cloud.com](http://www.amicus-cloud.com)
4. **Clio:** [www.goclio.com](http://www.goclio.com)
5. **MyCase:** [www.mycase.com](http://www.mycase.com)
6. **Credenza:** [www.credenzasoft.com](http://www.credenzasoft.com)
7. **Houdini Esq:** <http://houdiniesq.com/esq.html>
8. **Rocket Matter:** [www.rocketmatter.com](http://www.rocketmatter.com)

**B. Digital Signatures:** A Digital signature (standard electronic signature) takes the concept of traditional paper-based signing and turns it into an electronic

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<sup>19</sup> See <http://tinyurl.com/a2gccsb>

<sup>20</sup> See <http://www.irs.gov/publications/p587/index.html>

"fingerprint." This "fingerprint," or coded message, is unique to both the document and the signer and binds both of them together. The digital signature ensures the authenticity of the signer. Any changes made to the document after it is signed invalidate the signature, thereby protecting against signature forgery and information tampering. Digital signatures help organizations sustain signer authenticity, accountability, data integrity and non-repudiation of electronic documents and forms.<sup>21</sup>

1. **RightSignature:** [www.rightsignature.com](http://www.rightsignature.com)
2. **DocuSign:** [www.docusign.com](http://www.docusign.com)
3. **Adobe eSign:** <http://tinyurl.com/z84af3r>
4. **e-SignLive:** <http://www.silanis.com/e-sign-products/e-signlive>
5. **CoSign Digital Signatures:** <http://www.arx.com/digital-signature>
6. **iSignhere:** [www.isignhere.com](http://www.isignhere.com)

**C. Legal Accounting Options:**

1. **QuickBooks Online:** <http://quickbooksonline.intuit.com>
2. **ActionStep:** [www.actionstep.com](http://www.actionstep.com) (this program is both case management and full accounting)
3. **Easy Legal Billing:** <http://www.easylegalbilling.com/>
4. **Bill4Time:** [www.bill4time.com](http://www.bill4time.com)
5. **Legal Billing:** [www.chaossoftware.com](http://www.chaossoftware.com)
6. **Toggl:** [www.toggl.com](http://www.toggl.com)
7. **FreshBooks:** [www.freshbooks.com](http://www.freshbooks.com)
8. **TimeSolv Legal:** [http://www.timesolv.com/timesolv\\_legal.html](http://www.timesolv.com/timesolv_legal.html)
9. **Case Management additional features:** Most of the foregoing case management programs also have accounting modules so they could be considered accounting options as well.

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<sup>21</sup> Definition from ARX - see <http://www.arx.com/digital-signatures-faq>

**D. Time Tracking:**

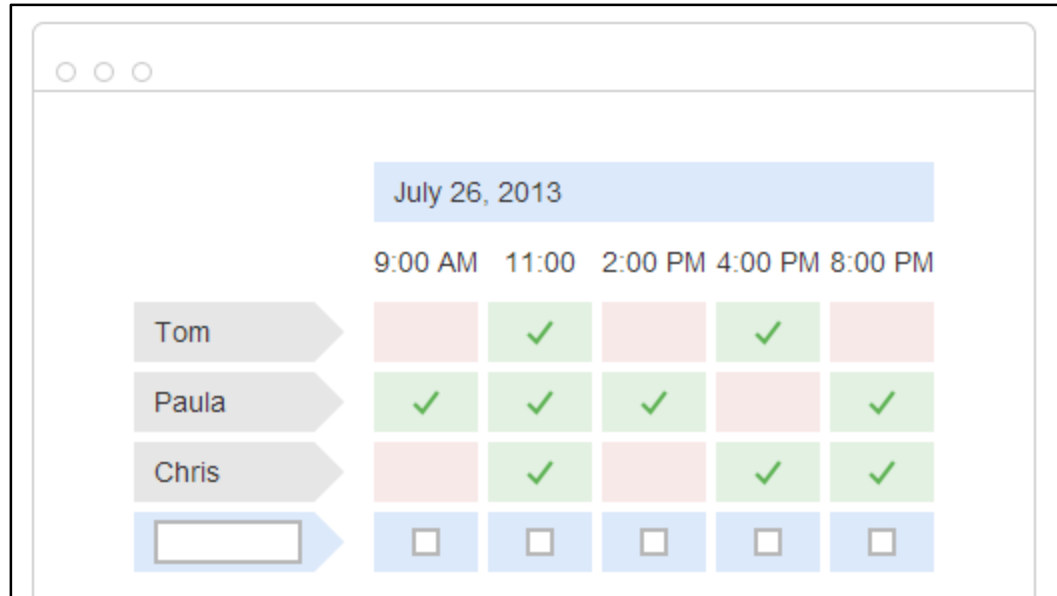
1. **Chrometa:** While running in the background while you work, Chrometa captures all of your time and allows you to categorize it for easy billing. See [www.chrometa.com](http://www.chrometa.com).
2. **Smart Time:** [www.smarttimeapps.com](http://www.smarttimeapps.com) - remote time entry for lawyers
3. **iTimeKeep:** [www.iTimeKeep.com](http://www.iTimeKeep.com) - awesome app that runs on any mobile device and connects to most of the popular legal accounting programs.

**E. Transcription Services:**

1. **SpeakWrite** - [www.speakwrite.com](http://www.speakwrite.com)
2. **CopyTalk** - [www.copytalk.com](http://www.copytalk.com)
3. **LawDocsXpress** - [www.lawdocsxpress.com](http://www.lawdocsxpress.com)
4. **LegalTypist** - [www.legaltypist.com](http://www.legaltypist.com)
5. **MOS Legal Transcription** - <http://www.legaltranscriptionservice.com/>
6. **Athreon** - [http://www.athreon.com/services\\_legal.php](http://www.athreon.com/services_legal.php)
7. **VerbalLink** - <http://verbalink.com>
8. **GMR Legal Transcription** - [www.gmrlegaltranscription.com](http://www.gmrlegaltranscription.com)

- F. Group Calendaring:** Ever feel like you are herding cats when trying to organize a good meeting time for a bunch of people? These cloud-based programs help you schedule meetings and other appointments with people outside your own organization's email and calendaring system. They are very simple, quick, and many are free or almost free. Usually the paid subscriptions are very inexpensive and offer direct integration with Outlook, which means no switching between your calendar and the application.

Invitees receive an easy chart show available times and simply checks the times he/she is available. Other invitees can see the results immediately in a consolidated view.



1. **Doodle:** [www.doodle.com](http://www.doodle.com)
2. **WhenIsGood.com:** [www.whenisgood.com](http://www.whenisgood.com)
3. **ScheduleOnce:** [www.scheduleonce.com](http://www.scheduleonce.com)
4. **TimeBridge:** [www.timebridge.com](http://www.timebridge.com)

**G. Credit Card Processing:**

1. **LawPay:** [www.lawpay.com](http://www.lawpay.com)
2. **LawCharge:** [www.lawcharge.com](http://www.lawcharge.com)
3. **Beacon Processing Solutions:** ([www.beaconprocessing.com/attorney-solutions](http://www.beaconprocessing.com/attorney-solutions)) - Beacon Processing Solutions does not provide services exclusively to attorneys, but they do have a special program for law firms that allows the attorney to choose between depositing funds into an operating account or into a trust account.
4. **Virtual Payment Systems:** <http://tinyurl.com/o65l3j6> - they have a couple of programs designed just for lawyers: [VPSpay.com](http://VPSpay.com) - payments where you get the full amount paid to you and transaction fees are charged to the payer. Traditional credit card processing where you firm is charged transaction fees to a designated fee account.
5. **Square:** <https://squareup.com/Square>. Square is a credit card processing system that allows you to take credit card payments using a free credit card reader that plugs into your iPhone, iPad, or Android device. Although

Square does not have the functions to separate operating account income from trust account income, it is popular among attorneys taking cases where trust accounting is not an issue.

6. **PayPal:** [www.paypal.com](http://www.paypal.com) - may not comply with trust accounting rules but if that isn't an issue, this is a great service.

#### H. **Word Processing:**

1. **Google Docs:** [www.docs.google.com](http://www.docs.google.com)
2. **Zoho Writer:** [www.writer.zoho.com](http://www.writer.zoho.com)
3. **Microsoft Office 365:** Microsoft is now offering office in the cloud and it's fairly amazing. See <http://tinyurl.com/ny7vll> for more information.
4. **ThinkFree Office Suite:** [www.thinkfree.com](http://www.thinkfree.com)
5. **HyperOffice:** [www.hyperoffice.com](http://www.hyperoffice.com)

#### I. **Document Management:** Document management applications provide an electronic filing system for documents you've created in-house, documents you receive (they must be scanned), notes, emails & attachments to emails. Good document management systems provide things like full text searching (find any document by the words contained inside it rather than what it is called), security, and versioning (you can save dozens of versions of the same file with a full audit trail).

1. **NetDocuments:** [www.netdocuments.com](http://www.netdocuments.com) - extremely sophisticated and well established document management application.
2. **SharePoint:** <http://tinyurl.com/b57xjhs> - SharePoint is an online collaboration tool developed by Microsoft. It is often used as a content management system for Intranets. SharePoint allows teams within an organization to share information anywhere there is Web access. With SharePoint, users can set up websites to share documents, manage projects and publish information. SharePoint also has many social media capabilities, such as blogs, wikis, microblogging and discussion boards.<sup>22</sup>
3. **Box Document Management:** see [www.box.com/business/document-management/](http://www.box.com/business/document-management/)
4. **Javek:** [www.javek.com](http://www.javek.com)

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<sup>22</sup> *What is SharePoint?* by Ryan Goodrich, TechNewsDaily, January 30, 2013, see <http://tinyurl.com/co8zcy>

5. **Agilewords:** www.agilewords.com - specializes in collaborative document review

6. **DocumentTree:** www.documenttree.com

**J. Document Assembly/Automation:**

1. **HotDocs Document Services:** www.hotdocs.com/products/document-services

2. **ContractExpress:** www.business-integrity.com

3. **Exari:** www.exari.com

4. **ProDoc:** www.prodoc.com

**K. Secure File Sharing:**

1. **Microsoft Office 365 or OneDrive for Business:** OneDrive is Microsoft's cloud storage offering and it comes with nearly every Office 365 plan. For only \$5/user/month (Business Essentials plan), you get 1 TB of online storage. See this: <http://tinyurl.com/h9mdn2v>

2. **Google Apps for Business:** This service is \$5/user/month or \$50/user per year and gets you 30 GB of online storage among other features. See your options here: <http://tinyurl.com/kcwt2fk>

3. **Dropbox Pro or Dropbox for Business:** Dropbox Pro gets you 100 GB of storage for \$10/user/month and Dropbox for Business gets you unlimited storage for \$15/user/month (minimum 5 users). See this: <https://www.dropbox.com/business/pricing>

4. **SpiderOak Professional:** This service offers complete encryption so thorough that not even SpiderOak employees can get to your data. For \$10/user/month, you get 100 GB of storage. See this for more: [https://spideroak.com/business\\_pricing/](https://spideroak.com/business_pricing/)

5. **Syncplicity:** See www.syncplicity.com.

6. **Box.com:** www.box.com

7. **Sugar Sync:** See www.sugarsync.com. This service offers online backup of your files and file synchronization among multiple PCs and smartphones. You can access your files anywhere you have Internet access thanks to apps for BlackBerry, iPhone and Windows Mobile.

8. **ShareFile by Citrix:** [www.sharefile.com](http://www.sharefile.com) - This is a fantastic service that allows you to create virtual "rooms" for others and share documents with them securely. You decide what rights each user has to the collection of documents. Simple and powerful.
9. **TrueShare:** [www.trueshare.com](http://www.trueshare.com) - Similar to ShareFile, a little less expensive, a little more difficult to use.
10. **FileGenius:** [www.filegenius.com](http://www.filegenius.com) - similar to TrueShare and ShareFile.
11. **OneHub:** Secure file sharing - see <https://onehub.com>.

**L. Encryption Options for Online Sync Programs Like Dropbox:**

1. **Viivo:** See <https://www.viivo.com/>
2. **Sookasa:** See <https://www.sookasa.com/>
3. **BoxCryptor:** See <https://www.boxcryptor.com/en>
4. **CloudFogger:** See <https://www.cloudfogger.com/en/>

**M. Create Your Own Cloud:** You can do this with specialized, inexpensive hardware that allows you to access the files stored on it via the Internet in a secure way. For example:

1. **CloudLocker:** See [www.stoamigo.com](http://www.stoamigo.com). StoAmigo's CloudLocker is a personal cloud storage device that you own and control physically as well as digitally, with patent-pending sharing and media control features like you have never had before. You can stream video or music playlists on the go and instantly locate the files you need, wherever you are. The great thing is your files stay safe in CloudLocker, without taking up space on your devices. These devices start at \$349.
2. **Transporter & Transporter Sync:** See [www.filetransporter.com](http://www.filetransporter.com). The award-winning Transporter will change the way you store, access and protect your documents, photos and videos by allowing all your digital devices to work as one. Privately. With no monthly fees. In other words, it's everything you love about the convenience of the cloud without any of the privacy or cost drawbacks. You can buy these on [www.amazon.com](http://www.amazon.com) and they come in multiple sizes including 1 and 2 TB. A 1 TB device starts at \$252.
3. **WD My Cloud:** There is a personal and business version of this product. The business version is called the My Cloud EX4. Prices start as low as \$150.

4. **Seagate Business Networked Attached Storage:** Seagate makes an array of network attached storage devices that allow access via the Internet.

**N. Project Management:**

1. **Wrike:** [www.wrike.com](http://www.wrike.com)
2. **Basecamp:** [www.basecamphq.com](http://www.basecamphq.com)
3. **Teambox:** [www.teambox.com](http://www.teambox.com)
4. **Projecturf:** [www.projecturf.com](http://www.projecturf.com)
5. **Apollo:** [www.apollohq.com](http://www.apollohq.com)
6. **Teamwork PM:** [www.teamworkpm.net](http://www.teamworkpm.net)
7. **Huddle:** [www.huddle.com](http://www.huddle.com)
8. **GlassCubes:** [www.glasscubes.com](http://www.glasscubes.com)
9. **GoPlan:** [www.goplanapp.com](http://www.goplanapp.com)
10. **Lighthouse:** [www.lighthouseapp.com](http://www.lighthouseapp.com)
11. **PBWorks:** [www.pbworks.com](http://www.pbworks.com)
12. **Zoho Projects:** [www.zoho.com/projects](http://www.zoho.com/projects)

**O. Task Management:**

1. **Evernote** - [www.evernote.com](http://www.evernote.com) - designed for note taking and task lists.
2. **Wunderlist** - [www.wunderlist.com](http://www.wunderlist.com) - my favorite!
3. **Remember The Milk** - [www.rememberthemilk.com](http://www.rememberthemilk.com)

**P. Remote Access Services:** These services allow you to "take over" another computer via the internet.

1. **LogMeIn:** [www.logmein.com](http://www.logmein.com) - this is the least expensive option at \$69.95/year.
2. **Gotomypc.com:** [www.gotomypc.com](http://www.gotomypc.com). Take over any other PC via the Internet. Unlimited remote access to your PCs from any other Internet-connected computer; ability to swap host PCs at will; unlimited software



and service upgrades; unlimited technical support and maintenance. Absolutely amazing service which we highly recommend.

3. **TeamViewer:** [www.teamviewer.com](http://www.teamviewer.com) - there is a free and a pay option for this.

**Q. Encrypted Email:**

1. **EchoWorx Encrypted Mail:** [www.echoworx.com/products/encrypted-mail](http://www.echoworx.com/products/encrypted-mail)
2. **Hightail:** [www.hightail.com](http://www.hightail.com) - this service was formerly known as YouSendIt.com. It's designed for sending enormous attachments, but also offers encryption for those attachments. Incredibly easy to use and inexpensive.
3. **Hushmail:** [www.hushmail.com](http://www.hushmail.com)
4. **Protected Trust:** [www.protectedtrust.com](http://www.protectedtrust.com) - [I really like this one.](#)
5. **RPost:** [www.rpost.com](http://www.rpost.com) - registered email service which can prove delivery + encrypted email
6. **SenditCertified:** [www.privacydatasystems.com](http://www.privacydatasystems.com) and note that they offer discounts through several bar associations.
7. **Symantec Desktop Email Encryption:** See <http://tinyurl.com/bcjuawp> for more information.
8. **ZixMail:** [www.zixcorp.com/products/zixmail](http://www.zixcorp.com/products/zixmail)

**R. Backup Services:**

1. **Carbonite:** [www.carbonite.com](http://www.carbonite.com) - \$99/year - unlimited storage.
2. **CrashPlan:** [www.code42.com/crashplan/](http://www.code42.com/crashplan/)
3. **Mozy Pro:** <http://mozy.com/pro>
4. **Mozy Home:** <http://mozy.com/home>
5. **iBackup:** [www.ibackup.com](http://www.ibackup.com)
6. **SOS Online Backup:** [www.sosonlinebackup.com](http://www.sosonlinebackup.com)

**S. Web Conferencing Services:**

1. **Join.Me** (<http://join.me>): my favorite and one of the least expensive
2. **GoToMeeting** ([www.gotomeeting.com](http://www.gotomeeting.com))
3. **WebEx Meetings** ([www.webex.com](http://www.webex.com))
4. **Adobe Acrobat Connect** (<http://tinyurl.com/2nbcwt>)
5. **Skype for Business** (<http://www.skype.com/en/business/>)

**T. E-Discovery & Litigation Support:**

1. **Verve** by Kroll Ontrack: ([www.krollontrack.com/e-discovery-software](http://www.krollontrack.com/e-discovery-software))
2. **NextPoint**: (<http://www.nextpoint.com>)
3. **Relativity** by kCura (<http://kcura.com/relativity>)
4. **Lexbe Online** ([www.lexbe.com](http://www.lexbe.com)) is a web-based litigation document management and review tool. Lexbe e-Discovery is an Electronic Discovery service which enables you to quickly, accurately and cost-efficiently convert email, office and other electronic stored information (ESI) for legal review and delivery of discovery productions.

**U. Microsoft Exchange:**

1. **What Is Microsoft Exchange:** Microsoft Exchange is a program that must run on a Windows server and allows Outlook users to warehouse their data (email, contacts, calendars, tasks, etc.) on the server as a backup. Here are the benefits:
  - a. **Share Data:** Exchange also allows users to share information in Outlook. For example, I could allow someone else in my office to access my calendar electronically and add appointments.
  - b. **Anywhere Email Access:** Exchange also allows users to gain access to office email while out of the office in many different devices. For example, I can see my inbox, calendar & contacts on my iPad (or any tablet), on any Windows or Mac computer connected to the Internet, or on my smartphone. I can use Outlook Web Access (which comes with hosted Exchange) via a browser; or I can run Outlook natively on my laptop (for example) and as long as I'm connected to the Internet, I'm also connected to Exchange.

- c. **Full Backup:** Everything in Outlook is backed up in Exchange (email, contacts, calendar & tasks).
- d. **Smartphone Sync:** Exchange will wirelessly sync with any smartphone running Android, iOS, Blackberry OS or Windows Phone 7.

2. **Exchange Options:**

- a. **Get Your Own Server:** Of course, you would also need to have Exchange running on that server.
- b. **Hosted Exchange:** This is essentially renting Exchange on a server you access through the Internet. It is exactly the same as having it in-house except for the fact that you avoid the expense of buying and maintaining a file server, Windows and Exchange. In other words, rather than paying \$8,000 + ongoing maintenance, you're paying \$10/month/user. Depending on the size of your office and physical setup of remote offices or telecommuters, hosted Exchange Server is often much less expensive than having Exchange Server on-site. Other benefits of hosted Exchange Server: multiple internet connections, multiple power sources, guaranteed uptime, no cost for backup or maintenance.

3. **Options for Hosted Exchange:** There are hundreds but here are a few:

- a. Microsoft - <http://tinyurl.com/bleasx7>
- b. [www.godaddy.com](http://www.godaddy.com)
- c. [www.1and1.com](http://www.1and1.com)
- d. [www.mailstreet.com](http://www.mailstreet.com)
- e. [www.apptix.com](http://www.apptix.com)
- f. [www.exchangemymail.com](http://www.exchangemymail.com)
- g. [www.appriver.com](http://www.appriver.com)

V. **Microsoft Office 365:** Before I talk about functionality, we first need to define a few things to make sure we're on the same page.

- 1. **Microsoft Office 365:** I'll let Microsoft describe this for you:

"Office 365" refers to subscription plans that include access to Office applications plus other productivity services that are enabled over the Internet (cloud services), such as Lync web conferencing and Exchange Online hosted email for business, and additional online storage with OneDrive and Skype world minutes for home.

Many Office 365 plans also include the desktop version of the latest Office applications, which users can install across multiple computers and devices. The Office 365 plans that are online-only are a great choice for certain business needs, and they are compatible with desktop versions of the latest version of Office, Office 2010, Office 2007 (with slightly limited functionality), Office 2011 for Mac, and Office 2008 for Mac.

All Office 365 plans are paid for on a subscription basis, monthly or annually.<sup>23</sup>

2. **Microsoft Office:** "Microsoft Office" is the name we still use for our familiar productivity software. Office suites have traditionally included applications such as Word, Excel, PowerPoint, and Outlook. All the new Office suites (for example, Office Standard 2013) include the latest versions of these applications. These suites can be installed on only one PC and do not come with any cloud-based services included in Office 365.<sup>24</sup>
3. **Office Online:** This was previously known as Office Web Apps and is a stripped down version of Word, Outlook.com, Excel, PowerPoint, and OneNote. It also provides a contact manager (People), a calendar and access to OneDrive.<sup>25</sup> Surprisingly, this works in Internet Explorer, Firefox, Chrome and Safari. This service is free, regardless of whether you have an Office 365 subscription.
4. **Office 365 Security:** In a nutshell, Office 365 offers top-notch security. It has the same user-level security options and Trust Center as the desktop version of Office. Rights management Service (RMS) supports encryption and lets you set permissions. Offsite, files are saved in specialized data centers where security is a primary concern. As a result, small to medium businesses will have better security using Office 365 than they can probably afford on their own. Here are just a few details:

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<sup>23</sup> See Office 365 for Business FAQ - <http://tinyurl.com/cq7ajhs>

<sup>24</sup> See Office 365 for Business FAQ - <http://tinyurl.com/cq7ajhs>

<sup>25</sup> See <http://office.microsoft.com/en-us/online/>

- Office 365 applications use encryption; transmissions intercepted by anyone without authorization can't be read.
- Microsoft Office 365 is certified as compliant by accepted industry (ISO) standards.
- Controls are in place to comply with HIPPA and FERPA.

Kirk Koenigsbauer, Corporate Vice President at Microsoft said, "...Office 365 supports the most rigorous global and regional standards such as ISO 27001, SAS70 Type II, EU Safe Harbor, EU Model Clauses, the US Health Insurance Portability and Accountability Act (HIPAA), the US Family Educational Rights and Privacy Act (FERPA), and the US Federal Information Security Management Act (FISMA). To meet evolving needs, we also plan to support IPv6 in Office 365 for Government by September of this year, and we're taking steps to soon support Criminal Justice Information Security (CJIS) policies."<sup>26</sup> If you glazed over at all of the acronyms, just know that Office 365's security is impressive.

According to Microsoft, here are Office 365's Top 10 Security and Privacy Features:

- We (Microsoft) restrict physical data center access to authorized personnel and have implemented multiple layers of physical security, such as biometric readers, motion sensors, 24-hour secured access, video camera surveillance, and security breach alarms.
- We enable encryption of data both at rest and via the network as it is transmitted between a data center and a user.
- We don't mine or access your data for advertising purposes.
- We use customer data only to provide the service; we don't otherwise look in your mailbox without your permission.
- We regularly back up your data.
- We won't delete all the data in your account at the end of your service term until you have had time to take advantage of the data portability that we offer.
- We host your customer data in-region.

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<sup>26</sup> 10+ things you should know before buying Office 365 by Susan Harkins in 10 Things, November 26, 2013. TechRepublic - see <http://tinyurl.com/m2e2zc4>.

- We enforce "hard" passwords to increase security of your data.
  - We allow you to turn off and on privacy impacting features to meet your needs.
  - We contractually commit to the promises made here with the data processing agreement (DPA). For more information about the DPA, visit the Data Processing Agreement section of the Independently verified page.<sup>27</sup>
5. **Office 365 Running Offline:** You can use Office 365 offline (without internet access) if you download and install the desktop version of Office with your plan. You have to connect to the internet every 30 days to maintain your subscription and Office 365 tells you when it's time to connect.
  6. **Office On Demand:** Office on Demand is a feature that provides online access to Office desktop applications, including Word, Excel, and PowerPoint, when you're using a PC or other device that doesn't have Office installed. Office on Demand is available to anyone who has an Office 365 subscription that includes the Office application suite. Office on Demand is a helpful option if you want to use your Office applications on an additional device or on a device that you don't own, such as when you're logged in as a guest using someone else's computer. When you use Office on Demand, the applications are streamed to the PC you're using as you need them. Office on Demand doesn't get installed. There's no offline access to Office on Demand.<sup>28</sup>
  7. **Microsoft Exchange:** This is included in most of the Office 365 plans. I would argue that this feature alone is worth the price of admission. Microsoft Exchange is a program that, among other things, allows Outlook users to back up their data (email, contacts, calendars, tasks, etc.) on a server. For a full explanation of what Exchange offers, see paragraph VII.U. on page 37 above.
  8. **Yammer:** This is a company Microsoft bought in 2012 for \$1.2 billion and as you'll see below, it is included with several versions of Office 365. Here's an explanation from PCWorld.com. I am friends with a few lawyers whose firms use this and it received high praise from them.

**A Social Network for Your Business:** Yammer is essentially a social network that's entirely focused on your business. In order to join your

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<sup>27</sup> See <http://tinyurl.com/oo8ltp7>

<sup>28</sup> See <http://tinyurl.com/nuwj2eq>

business's Yammer network, an applicant must have a working email address from your company's domain. You can also create external networks to allow non-employees, such as suppliers and customers, to communicate with your company.

**The Ticker:** The similarity between the Yammer and Facebook user interfaces is surely no accident. As with Facebook, new posts—complete with Likes—appear in Yammer's primary screen, which is known as the Newsfeed. Icons indicating private messages and other notifications appear in the upper left-hand corner. You can also create groups, which is helpful for segregating talk that's relevant only to specific internal teams. If a group conversation takes a turn that requires assistance from other employees, you can share it with a specific person via instant message or with another group entirely. Sharing a post with specific groups is a breeze thanks to handy-dandy drop-down menus below the Update box (which is similar to Facebook's Status box).

**Hashtags:** The overuse of hashtags on Twitter can make your eyes bleed, but they're very useful on Yammer. Yammer's robust search function digs up hashtagged posts lickity-split, so be sure to slap a #2013projections or #KeyCorporateAccount hashtag on the end of your posts for future search posterity. @mentions are also supported.

**Contact Coworkers:** You can create external networks and invite non-employees (suppliers and clients, for instance) to join them. The People Directory automatically creates a searchable database of every person enrolled in your Yammer, making it especially easy to find contact information for the people in your company. Even better, profiles have Skills listings that are also searchable in the People Directory. You'll never have to scramble to find the right person for the job again.

**Sharing Files:** Anyone can attach a file to a post to quickly share information without forcing recipients to slog through clogged inboxes. You can also upload files—including images and videos—to a file repository, where other Yammerers can download and update them. Groups have their own separate file repositories that augment the main one, and employees can receive automatic notifications whenever critical files are updated.

**Collaborating:** In addition to the previously mentioned file repositories, teams can also collaboratively create Pages (Pages are essentially documents) in a group setting. Admins have the ability to lock down Pages (and all other files) as official or read-only.

**Mobile Platforms:** Yammer has apps for iOS, Android, BlackBerry, and—of course—Windows Phone.

**Less Email:** Yammer claims that companies using Yammer generate about 40 percent less email.<sup>29</sup>

9. **Office 365 Versions and Services:** Unfortunately, Microsoft changes the options frequently so it's pointless to outline them here. Instead, go here (<http://tinyurl.com/p5sf6l2>) to see the latest direct from Microsoft's website.

**W. Google Apps for Business:** If you are on a limited budget, Google Apps Premier Edition costs only \$50/year and provides:

1. **Gmail for business:** Gmail for business offers 25 GB of storage per user, powerful spam filtering, sync with BlackBerry, iPhone and Android smartphones, sync with Outlook, and a 99.9% uptime SLA.
  - a. **Email, IM, voice and video chat:** Each user gets 25 GB of email and IM storage (50 times the industry average).
  - b. **Anytime, anywhere access to your email:** Gmail is securely powered by the web, so you can be productive from your desk, on the road, at home and on your mobile phone, even when you're offline.
  - c. **Sync with Outlook & BlackBerry:** Get the benefits of Apps on familiar platforms.
  - d. **Search and find emails instantly:** Spend less time organizing email and find emails quickly with Google-powered search for your inbox.
  - e. **Get less spam:** Powerful Gmail spam filtering helps you stay focused on what's important. Postini filtering lets you customize your spam protection.
2. **Google Calendar:** A web-based calendar application that enables employees to work together efficiently and helps minimize costs and IT hassles.
  - a. **Easily schedule appointments:** Overlay multiple calendars to see when people are available. Google Calendar sends invitations and manages RSVPs.

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<sup>29</sup> [What the Heck Is Yammer?](http://tinyurl.com/8plp6xs) by Brad Chacos, PCWorld, Aug 7, 2012. See <http://tinyurl.com/8plp6xs>.



- b. **Integrate with your email system:** Google Calendar is integrated into Gmail and interoperable with popular calendar applications.
  - c. **Share project calendars:** Calendars can be shared company-wide or with select co-workers. A range of sharing permission controls help maintain security and privacy.
  - d. **Access with your mobile device:** View and edit event details, add new events, and invite guests on mobile devices like the BlackBerry and iPhone. Even receive calendar notifications via SMS.
  - e. **Publish calendars:** Publicize external company events by publishing a calendar to make it searchable in the Google Calendar gallery. Easily embed calendars into web pages.
3. **Google Docs:** Web-based documents, spreadsheets, and presentations that let users edit the same file at the same time so you always have the latest version.
- a. **Anytime, anywhere access to your work:** Google Docs is securely powered by the web, giving you the flexibility to be productive from your desk, on the road, at home and on your mobile phone, even when you're offline.
  - b. **Works across operating systems:** Google Docs works in the browser on PC, Mac, and Linux computers, and supports popular formats such as .doc, .xls, .ppt, and .pdf.
  - c. **Secure access controls:** Administrators can manage file sharing permissions system-wide, and document owners can share and revoke file access at any time.
4. **Google Sheets:** Manage spreadsheet data faster with click-to-edit charts and discussion style comments.
5. **Google Slides:** Create presentations together, embed videos, and never press save again.
6. **Google Drive:**
- a. **Access Your Files Anywhere:** Google Drive on your Mac, PC or mobile device (or your browser) gives you a single place for up-to-date versions of your files from anywhere. In addition to any file type you choose to upload, Google Docs are also stored in Google Drive.

- b. **Bring Your Files To Life:** Share individual files or whole folders with individual people, your entire team or even customers, vendors and partners. Create and reply to comments on files to get feedback or add ideas.
  - c. **Buy What You Need & Grow Flexibly:** Start with 5 GB of included storage for each of your users. Need more? For as little as \$4/month for 20 GB, administrators can centrally purchase and manage up to 16TB (Yes, that's 16,000 GB!) of additional storage for each user
7. **Google Sites:** Google Sites is an easy way to create secure web pages for intranets and team projects. No coding or HTML required.
- a. **Organize information in a central place:** Use Google Sites to centralize documents, spreadsheets, presentations, videos, slideshows and more to help keep teams organized.
  - b. **Anytime, anywhere access:** Google Sites is securely powered by the web, so you can access company pages from your desk, on the road, at home and on your mobile phone.
  - c. **Works across operating systems:** Google Sites works in the browser on PC, Mac and Linux computers.
  - d. **System and site-level security controls:** Administrators can manage site sharing permissions across the business, and authors can share and revoke file access at any time.

**X. Instant Messaging for Lawyers:**

1. **What It Is:** Typically abbreviated as IM, this is a type of communications service that enables you to create a kind of private chat room with another individual in order to communicate in real time over the Internet. It's analogous to a telephone conversation but using text-based, not voice-based, communication. Typically, the instant messaging system alerts you whenever somebody on your private list is online. You can then initiate a chat session with that particular individual. IM systems often also include video (users can see each other via webcam), file-sharing/transfer capabilities, and phone (users can talk to each other using microphones connected to or built into their computers).
2. **Why IM Is A Valuable Communication Tool:** When you and your colleagues are spread out geographically, this can be invaluable (and it's typically free). For example, someone in one office might need a quick

answer from someone in another office. It's often difficult to reach someone on the phone and email queries are easily lost among the torrent of daily incoming email that each person has to deal with. This is when instant messaging is the perfect solution. With one click, the individual who needs an answer can determine if the person they need to communicate with is online and available. If that person is available, the asking individual can pop his/her question up on the computer screen of the person who can answer it. As long as the recipient can type (even if they're on the phone), they can quickly reply without interrupting what they are already doing. No phone call or email is necessary. One of our clients who started using IM commented:

"This is also critical when working with support staff who are working through issues on a phone call with an external party. By having access to the supervising attorney in real time, issues can be resolved immediately, rather than through several follow up calls or emails as questions go back and forth. I often use a paralegal in another office for litigation support and this has assisted me in working seamlessly with her, despite the fact that she is 45 miles away."<sup>30</sup>

3. **Consumer-Grade IM:** Common services include:
  - a. **AOL AIM** ([www.aim.com](http://www.aim.com))
  - b. **Google Talk** ([www.google.com/talk](http://www.google.com/talk))
  - c. **IBM Lotus Sametime** (<http://tinyurl.com/62nvm2>)
  - d. **Microsoft Skype** (formerly Messenger - see <http://tinyurl.com/kbuuy6u>)
  - e. **Yahoo! Messenger** (<http://messenger.yahoo.com>)
  - f. **Apple iChat** (<http://tinyurl.com/3lxdld6>).
4. **Secure IM Options:** Some businesses elect to deploy a secure instant messaging system. These systems are typically closed (limited to intra-company communication only), secure and can be monitored. Options include:

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<sup>30</sup> Erin Stewart, attorney in the office for the General Counsel of the University of North Texas

- a. **Microsoft Skype for Business:** This is included in most Office 365 plans and you can also buy it separately. See their plan offerings here: <http://tinyurl.com/kcvnvi6>
  - b. **IBM Lotus Sametime:** See <http://tinyurl.com/62nvm2>
  - c. **IceWarp Instant Messaging Server:** See <http://tinyurl.com/66roosi>
  - d. **Cisco Jabber:** See <http://tinyurl.com/65wqyf5>
  - e. **Bopup Messenger from B-Labs Software:** See [www.bopup.com/products/messenger](http://www.bopup.com/products/messenger)
  - f. **BigAnt:** See [www.bigantsoft.com](http://www.bigantsoft.com)
  - g. **Brosix:** See [www.brosix.com](http://www.brosix.com)
- Y. Phone Answering:** This isn't really a "cloud" service, but it *is* virtual. Some prefer an auto-attendant and some prefer a live human to answer their phones. Here are some options for phone answering services where real people will answer your phone:
- 1. **Ruby:** See [www.callruby.com](http://www.callruby.com). This service is typically rated #1 in the reviews I read on these things.
  - 2. **Instant Answering Service:** See <http://tinyurl.com/cf38bvx>. This is a general answering service that has a sub-specialty of law firms.
  - 3. **Attorney Answering Services:** Alert Communications provides this service - see [www.attorneyanswerservices.com](http://www.attorneyanswerservices.com).
  - 4. **Map Communications:** See <http://tinyurl.com/83qybcj>.
  - 5. **Hosted Receptionist:** See <http://tinyurl.com/8yw4h99>.
  - 6. **Grasshopper:** See [www.grasshopper.com](http://www.grasshopper.com). This service is interesting because you get all of the benefits of a VoIP phone system and call management without buying any phones (it works with whatever phones you already have).
  - 7. **VoIP Providers:** Just about every VoIP provider offers some kind of call management feature.
- Z. Internet Faxing Services:**

1. **RingCentral:** [www.ringcentral.com](http://www.ringcentral.com). With RingCentral, you get a toll free or local number; you can receive faxes on your PC, via email or with a mobile app; and you can send faxes via email or your PC from any application. Prices start at \$7.99/month for 500 pages and go up from there.

Plan Name	Free Pages Included Monthly	Price / Month	Additional Pages Cost	Buttons
Fax 500	500	\$7.99	5.9c	FREE TRIAL, BUY NOW
Fax 1000	1000	\$19.99	4.9c	FREE TRIAL, BUY NOW
Fax 2500	2500	\$49.99	3.9c	FREE TRIAL, BUY NOW
Fax ProUnlimited	Unlimited	\$39.99	-	CONTACT SALES, 1-888-389-0854

2. **Myfax:** [www.myfax.com](http://www.myfax.com) - pricing shown below. Toll free number and faxes are emailed as PDFs attached to email.

Plan Name	Free Pages (Send/Receive)	Price / Month	Buttons
BEST VALUE	100 / 200	\$10	30 DAY TRIAL, BUY NOW
MOST POPULAR	200 / 200	\$20	BUY NOW
FAX MORE	400 / 400	\$40	BUY NOW

3. **EFax:** [www.efax.com](http://www.efax.com) - This is a more expensive option. Pricing shown below:

eFax Plus	eFax Pro
<b>Annual Membership</b> ⓘ \$14.13/mo. (Save 2 months)	<b>Annual Membership</b> ⓘ \$16.63/mo. (Save 2 months)
<b>Monthly</b> \$16.95/mo.	<b>Monthly</b> \$19.95/mo.
<b>Setup fee</b> \$10.00	<b>Setup fee</b> \$19.95
<b>Receiving faxes</b> 150 FREE pages every month! Then \$0.10/pg	<b>Receiving faxes</b> 200 FREE pages every month! Then \$0.10/pg
<b>Sending faxes</b> 150 FREE pages every month! Then \$0.10/pg	<b>Sending faxes</b> 200 FREE pages every month! Then \$0.10/pg

4. **GreenFax:** [www.greenfax.com](http://www.greenfax.com) - Includes a local dedicated fax number for receiving faxes in the city or area of your choice. Pricing is \$12.95 per month (billed quarterly). One time setup-charge: \$10.00. Plan includes 250 inbound pages received per month. Pages received in excess of 250 per month are billed at 3 cents per page.
5. **MetroFax:** [www.metrofax.com](http://www.metrofax.com). \$7.95/month for 500 total pages.
6. **Onebox:** [www.onebox.com](http://www.onebox.com) - See their website for pricing information.
7. **faxZERO:** \$1.99 per fax

**VIII. MEETING CLIENTS WHEN YOU DO NOT HAVE AN OFFICE:** Of course, you could always meet the client at their home or office. However, that doesn't work in every situation. Enter the ever-increasing number of executive office suite options. If you are close to a metropolitan area, you probably have many choices here. A good example is Regus ([www.regus.com](http://www.regus.com)) which is a national company. For a small monthly fee, you can have access to an office, conference rooms, mail service, phone answering and a variety of other services. For example, I just conducted a Google search on "executive office suites, Columbus, Ohio" and found literally dozens of options. There is also a fantastic website which allows you to search by metropolitan area for executive office suite options - see <http://us.instantoffices.com>.

**IX. DELIVERING LEGAL SERVICES ONLINE:**

**A. Methods:** There are two basic ways law firms deliver services via the web:

1. **Secure Client Portal:** These can be used by virtual law offices or standard law firms. They can be custom-built or there are company from which you can rent or buy them. Further, there are many types of portals.

2. **Legal Service Company Referrals:** There are companies that solicit legal clients via the web and pair them with lawyers who subscribe to their service.
- B. Document Sharing Portals:** This type of portal may also allow you to send messages to others.
1. **Microsoft Office 365 or OneDrive for Business:** OneDrive is Microsoft's cloud storage offering and it can be purchased as part of an Office 365 plan or separately. You get 25 GB for \$2.50/user/month which is accessible from virtually any phone, tablet or computer, Windows or Apple. For the OneDrive plans, see <https://onedrive.live.com/about/en-us/plans/>. I personally like this option the best.
  2. **Google Apps for Business:** This service is \$5/user/month or \$50/user per year and gets you 30 GB of online storage among other features. See your options here: <http://tinyurl.com/kcwt2fk>
  3. **Dropbox Pro or Dropbox for Business:** Dropbox Pro gets you 100 GB of storage for \$10/user/month and Dropbox for Business gets you unlimited storage for \$15/user/month (minimum 5 users). See this: <https://www.dropbox.com/business/pricing>
  4. **SpiderOak Professional:** This service offers complete encryption so thorough that not even SpiderOak employees can get to your data. For \$10/user/month, you get 100 GB of storage. See this for more: [https://spideroak.com/business\\_pricing/](https://spideroak.com/business_pricing/)
  5. **Syncplicity:** See [www.syncplicity.com](http://www.syncplicity.com).
  6. **Box.com:** [www.box.com](http://www.box.com)
  7. **Sugar Sync:** See [www.sugarsync.com](http://www.sugarsync.com). This service offers online backup of your files and file synchronization among multiple PCs and smartphones. You can access your files anywhere you have Internet access thanks to apps for BlackBerry, iPhone and Windows Mobile.
  8. **ShareFile by Citrix:** [www.sharefile.com](http://www.sharefile.com) - This is a fantastic service that allows you to create virtual "rooms" for others and share documents with them securely. You decide what rights each user has to the collection of documents. Simple and powerful.
  9. **TrueShare:** [www.trueshare.com](http://www.trueshare.com) - Similar to ShareFile, a little less expensive, a little more difficult to use.
  10. **FileGenius:** [www.filegenius.com](http://www.filegenius.com) - similar to TrueShare and ShareFile.

11. **OneHub:** Secure file sharing - see <https://onehub.com>.

**C. Project Management Portals:**

1. **Basecamp:** [www.basecamphq.com](http://www.basecamphq.com)
2. **Teambox:** [www.teambox.com](http://www.teambox.com)
3. **Projecturf:** [www.projecturf.com](http://www.projecturf.com)
4. **GlassCubes:** [www.glasscubes.com](http://www.glasscubes.com)
5. **Apollo:** [www.apollohq.com](http://www.apollohq.com)
6. **Teamwork PM:** [www.teamworkpm.net](http://www.teamworkpm.net)
7. **Huddle:** [www.huddle.com](http://www.huddle.com)
8. **GoPlan:** [www.goplanapp.com](http://www.goplanapp.com)
9. **Lighthouse:** [www.lighthouseapp.com](http://www.lighthouseapp.com)
10. **PBWorks:** [www.pbworks.com](http://www.pbworks.com)
11. **Zoho Projects:** [www.zoho.com/projects](http://www.zoho.com/projects)

**D. Document Management Portals:** Document management applications provide an electronic filing system for documents you've created in-house, documents you receive (they must be scanned), notes, emails & attachments to emails. Good document management systems provide things like full text searching (find any document by the words contained inside it rather than what it is called), security, and versioning (you can save dozens of versions of the same file with a full audit trail).

1. **NetDocuments:** [www.netdocuments.com](http://www.netdocuments.com) - extremely sophisticated and well established document management application.
2. **Box Document Management:** see [www.box.com/business/document-management/](http://www.box.com/business/document-management/)
3. **Javek:** [www.javek.com](http://www.javek.com)
4. **Agilewords:** [www.agilewords.com](http://www.agilewords.com) - specializes in collaborative document review
5. **DocumentTree:** [www.documenttree.com](http://www.documenttree.com)



6. **SharePoint:** <http://tinyurl.com/b57xjhs> - SharePoint is an online collaboration tool developed by Microsoft. It is often used as a content management system for Intranets. SharePoint allows teams within an organization to share information anywhere there is Web access. With SharePoint, users can set up websites to share documents, manage projects and publish information. SharePoint also has many social media capabilities, such as blogs, wikis, microblogging and discussion boards.<sup>31</sup>

**E. Case/Matter Management Portals:** If you're unfamiliar with case management software, these programs handle file management, calendaring, contacts, tasks (to-do lists), time entries, communications (emails and phone calls), document management, document assembly, and can help you manage and share research. More importantly, each component feature is integrated with the others. For example, you can see all of the calendared appointments related to a particular matter (for everyone in your office) from within the electronic file. You never have to go look directly at someone's calendar for those things (which would be hard to find anyway). Anyway, here are some options for cloud-based case management which allow for client collaboration and secure sharing.

1. **Advologix Legal Suite:** [www.advologix.com](http://www.advologix.com)
2. **Clio:** [www.goclio.com](http://www.goclio.com)
3. **MyCase:** [www.mycase.com](http://www.mycase.com)
4. **LawRD:** [www.lawrd.com](http://www.lawrd.com)
5. **Houdini Esq:** <http://houdiniesq.com/esq.html>
6. **Rocket Matter:** [www.rocketmatter.com](http://www.rocketmatter.com)
7. **ActionStep:** [www.actionstep.com](http://www.actionstep.com)
8. **Total Attorneys:** [www.totalattorneys.com](http://www.totalattorneys.com)

**F. Virtual Law Office Platform Portals: DirectLaw:** [www.directlaw.com](http://www.directlaw.com) is about the only one left.

**G. Legal Service Companies That Refer Work:**

1. **Avvo** - [www.avvo.com](http://www.avvo.com)
2. **Lawyer** - [www.lawyer.com](http://www.lawyer.com)

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<sup>31</sup> *What is SharePoint?* by Ryan Goodrich, TechNewsDaily, January 30, 2013, see <http://tinyurl.com/co8zyc>

3. **TotalAttorneys** - [www.totalattorneys.com](http://www.totalattorneys.com)
4. **FindLaw** - [www.findlaw.com](http://www.findlaw.com)
5. **LegalMatch** - [www.legalmatch.com](http://www.legalmatch.com)
6. **LegalZoom** - [www.legalzoom.com](http://www.legalzoom.com) (you can become a LegalZoom Legal Plan Attorney)
7. **Rocket Lawyer** - [www.rocketlawyer.com](http://www.rocketlawyer.com)
8. **UpCounsel** - [www.upcounsel.com](http://www.upcounsel.com)

## CHAPTER FIVE

**CHAMPAGNE TECHNOLOGY ON A BEER BUDGET!**

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# Champagne Technology On A Beer Budget

- I. **BUILDING YOUR BUDGET:** Whenever you're going to spend a lot of money or buy a lot of different things (which may or may not add up to a lot of money), the best first step is to create a budget. For example, here's a screenshot of a sample budget (which I'm happy to email you if you'd like something to start with):

Your Firm Budget				
Description	Quantity	Unit Price	Subtotals	Grand Totals
<b>Computers</b>				
<b>Notebooks:</b> Dell Latitude E6430 notebook computers - includes dual 23" monitors, docking station, 3 yr/next business day/on-site warranty and 3 yr accidental damage protection, DVD/RW, webcam, backlit keyboard, fingerprint reader for security, bluetooth, Microsoft Office and Adobe Acrobat XI	2	\$2,319.58	\$4,639.16	
<b>Desktops:</b> Dell OptiPlex 7010 desktop computers - includes dual 23" monitors, 3 yr/next business day/on-site warranty, DVD/RW. Do not include MS Office because they won't leave the office.	1	\$1,458.02	\$1,458.02	
<b>Services:</b> Computer set up & configuration - fix defaults with Windows 7 and MS Office, download all updates to Windows & Office, install antivirus software - go through 8 page checklist on each computer.	3	\$300.00	\$900.00	
<b>Delivery &amp; Installation:</b> Deliver all new computers and hardware at your office, setup & install everything (computers, scanners, VOIP phones, and iPads); answer any questions; make sure everything works properly. FLAT FEE PER DAY	1	\$1,650.00	\$1,650.00	
<b>Computers Total:</b>			\$8,647.18	\$8,647.18
<b>Tablets</b>				
iPad w/ Retina Display 64 GB Black - Wi-Fi only (www.amazon.com)	2	\$672.95	\$1,345.90	
Anker® Ultrathin iPad Bluetooth Wireless Keyboard Aluminum Cover with Stand for iPad	2	\$35.99	\$71.98	
<b>Tablet Total:</b>			\$1,417.88	\$1,417.88

If you build your budget in a spreadsheet (Excel, for example), it gives you the flexibility to play with the quantities and prices to see how it impacts the total. This process also helps you think of every possible thing you're going to need. Surprises are what can ruin budgets so writing it all down helps avoid them which giving you a realistic idea of what it's all going to cost.

II. **SAVE MONEY BUT DON'T BE CHEAP:**

- A. **Some Things Are Worth Spending More On:** There are some things worth spending a little more money on to ensure that you're getting the quality and performance you need. For example, if you spend 10+ hours a day in front of a computer, then it makes sense to buy one that will be enjoyable to use. Faster processors, lighter laptops, bigger monitors and nicer keyboards all cost a little more. If you're talking about something you use constantly, every day, then remove it as a cost-cutting target. Getting the best deal you can on high-quality technology is always better than buying under-powered, under-performing technology just because it costs less.
- B. **Cheap Software Often Requires Painful Trade-Offs:** For example, we recently worked with a firm that just didn't want to spend money on legal industry

standards like Microsoft Exchange & Outlook. So they went with open source<sup>1</sup> software instead. Open source means that they paid nothing for the software. While it's nice to pay nothing for software, that also means that there's no one to call for technical support and that it integrates with nothing. By contrast, Exchange and Outlook integrate with almost *everything*. For example, almost all matter management programs sync with Exchange/Outlook. Every Windows and Mac computer, every Android or iOS tablet and every Windows, Android, Blackberry and iOS smartphone wirelessly sync with Exchange/Outlook. Document management programs *all* integrate with Outlook. Adobe Acrobat has an incredible integration with Outlook. The list goes on. The end result of this open-source money saving strategy for the firm in question was that all of the users hated the feature-deprived email software, it linked with nothing else they used and no one could get their email, calendar or contacts from the free email software to sync with their tablets or phones.

You can get free office suites including word processors (see [www.openoffice.org](http://www.openoffice.org) for example), free PDF creation programs (see [www.cutepdf.com](http://www.cutepdf.com) for example), and free Fax services (see <https://faxzero.com/> for example). However, they're not the legal-industry standard, they have non-existent technical support and they integrate/link with nothing else. In short, they're just not worth it.

C. Waiting For Technology To Die Is The Worst Way to Upgrade: Many law offices use their existing technology until it dies. This is a really bad idea for the following reasons:

1. Data Loss: Using anything until it no longer works often means there is no opportunity to transfer data, programs, etc. from the old device to the new one. Transferring data while the old and new devices are still working is typically a lot easier than trying to restore data from a dead device onto a new one.
2. No Time To Research: If someone's computer just died, you don't have time to conduct a lot of research to ensure you're getting the best replacement technology at the best price.
3. No Time To Wait For Something To Ship: You always get better deals from online vendors than bricks and mortar vendors. However, if whatever piece of technology is mission-critical, then you might not even have time to wait for something to be shipped to you (or built and shipped to you like a custom computer configuration). This means you'll have to go to the nearest store and buy whatever they have in stock, regardless of whether it's appropriate for your use or your office.

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<sup>1</sup> Generically, open source refers to a program in which the source code is available to the general public for use and/or modification from its original design free of charge, i.e., open. Open source code is typically created as a collaborative effort in which programmers improve upon the code and share the changes within the community. Open source sprouted in the technological community as a response to proprietary software owned by corporations. see [http://www.webopedia.com/TERM/O/open\\_source.html](http://www.webopedia.com/TERM/O/open_source.html), by Vangie Beal.

4. No Time To Negotiate: If you're buying more than 1 of anything, then you are in a good position to negotiate price. If you buy everything 1 at a time as old technology dies, then you give up that leverage and you pay the most.
5. End Up With a Hodge-Podge Mix of Technology: Problems with having a varied mix of technology include the following:
  - a. It's more expensive to maintain computers of different types/brands/models bought at different times than it is to maintain a set of identical computers bought together.
  - b. Users can't easily help each other if your office is using Office 2003, 2007, 2010 and 2013.
  - c. If you have 5 different printers, then you have to keep 5 different toner cartridges at all times.
  - d. If you haven't upgraded software in a long time (5 years or more), it may no longer be supported by the manufacturer which means you don't have any technical support options.

### III. HOW TO FIND THE BEST DEALS ON LEGAL TECHNOLOGY:

- A. Strategy For Getting the Best Deals: The following is a progression you can use to identify what to buy and then ensure you're getting the best deal on it.
  1. Identify the Players. **Many times you'll know the product category you want (like a scanner), but not which model is considered the best.** Therefore, you first need to find out who the significant manufacturers are. Google makes this fairly easy. For example, if you Google "document scanner", you'll to see a list of brands (HP, Visioneer, Fujitsu, NeatDesk, Canon & Xerox) and a few models, photos, and prices. Make a note of the manufacturers you find.
  2. Use Manufacturer Websites As A Starting Point. Since you typically have an **idea of what you're willing to spend, visit the manufacturer web sites** in order to determine which of the products is in your price range and **has the feature set you're looking for. Note that the prices you see on a manufacturer's web site are usually the worst-case scenario. You don't necessarily want to buy something directly from the manufacturer, but the manufacturer's website usually helps to determine the general price range** and they always provide comprehensive information about product functionality.
  3. Read What The Critics Are Saying. **After you've narrowed down your search to a couple of models from different manufacturers, your next task is to find reviews to help you determine which model is the best.** There are several magazine websites I recommend visiting for tech reviews. All

of the following are free except Consumer Reports: Law Technology News ([www.lawtechnews.com](http://www.lawtechnews.com)), Laptop Magazine ([www.laptopmag.com](http://www.laptopmag.com)), PC World ([pcworld.com](http://pcworld.com)), Consumer Reports ([consumerreports.org](http://consumerreports.org) - \$26/year but worth it), Popular Science ([popsci.com](http://popsci.com)), Popular Mechanics ([popularmechanics.com](http://popularmechanics.com)), and Wired ([wired.com](http://wired.com)). A few other great web sites for reviews include [reviews.CNET.com](http://reviews.CNET.com), [Engadget.com](http://Engadget.com), [PCMag.com](http://PCMag.com), [Epinions.com](http://Epinions.com) and [ConsumerSearch.com](http://ConsumerSearch.com). Amazon.com also posts valuable customer reviews for products they sell. Another great resource is [Become.com](http://Become.com). Just enter the product you are considering, click the **Research button and you'll be presented with a list of reviews of that product.**

4. Use a Google Trick for Searching a Particular Site. Sometimes I **search for a product on a site using the site's own** search function and come up blank even when I know they previously published something **about that product. This is when a Google trick comes in handy. Let's say you're trying** to find a review of the Fujitsu ScanSnap iX500 (scanner) on PCMag.com. Simply Google **"scansnap iX500 site:www.pcmag.com"** (omit quotation marks), and your first hit is their review. For whatever reason, Google often searches a site better than the site searches itself.
  
5. Use The Product Part Number To Find The Best Prices. **Once you've decided which product to buy, locate the manufacturer's part number from either the manufacturer's web site or any vendor that sells the product.** The part number will help you avoid confusion because many times there will be multiple versions of a product with slightly different part numbers. For example, Fujitsu makes five versions of the ScanSnap iX500 scanner with different part numbers (due to different included software bundles and whether the scanner works with Windows or Mac). There are many sites that offer price comparisons among vendors. If you plug your part **number into any of these sites, they'll return a list of vendors and pricing.** Consider the following:
  - a. US Price Comparison Services:
    - i. [Google.com/Products](http://Google.com/Products) (my favorite)
    - ii. [Shopper.com](http://Shopper.com)
    - iii. [Shopzilla.com](http://Shopzilla.com)
    - iv. [Become.com](http://Become.com)
    - v. [PriceGrabber.com](http://PriceGrabber.com)
    - vi. [StreetPrices.com](http://StreetPrices.com)
    - vii. [Shopping.Yahoo.com](http://Shopping.Yahoo.com)

- b. Canadian Price Comparison Services:
  - i. Shopbot.ca
  - ii. DealGenius.ca
  - iii. Wishabi.com
  - iv. CanadaPost.ca/shopper
  - v. PriceGrabber.ca
  - vi. PriceCanada.com
  - vii. PriceBat.ca
  - viii. ShopToIt.ca
  
- 6. Always Consider Shipping Costs. If you go to a site like Google.com/Products, enter a part number, and click the search button, **you'll be presented with many options. If you click the "Compare Prices" button below that, you'll see an option to enter your zip code just above the price list.** Make sure you do this because the site will then calculate shipping and a total price on the item you are researching from each vendor. Many vendors with low product prices will also have unreasonably high shipping costs so you need to take that into consideration when **choosing a vendor. After you've entered your zip code, make sure you** click the link that will show you all online stores because initially it will only show you a few.
  
- 7. Pay Attention to Vendor Ratings. There are a variety of services that allow consumers to review vendors; and most of the price comparison services display vendor ratings along with prices. Some of the rating services include BizRate.com, Google Checkout Reviews, Epinions.com, and ResellerRatings.com. In any event, you want to avoid vendors with less than 4 out of 5 stars or vendors with no ratings or only a few (indicating **that they are very new**). **In the case of the scanner example I'm using here, I'm perfectly willing to pay \$17 more for the scanner and get it from CostCentral.com (8,418 ratings with an average of 4.5/5 stars) rather than get it from CircuitsnThings.com which is cheaper but has no ratings at all.**
  
- 8. Due Diligence with Unfamiliar Vendors: **If you've never heard of the** vendor you are considering, do a little more research. First, make sure their web site lists an address and phone number. I avoid vendors who do **not disclose basic contact information prominently. Second, it's worth** checking to see if there are any negative reviews of the vendor on the web. For example, if you are considering buying something from MicroCenter.com, you could Google **"reviews www.microcenter.com" (omit** quotation marks). You could also check www.ResellerRatings.com, BizRate



(<http://tinyurl.com/4yghkee>) or [www.ComplaintsBoard.com](http://www.ComplaintsBoard.com) for further vendor reviews.

9. **It Is Essential That You Read Return Policies:** **If a vendor doesn't** make their return policy readily available, I view that as a huge red flag. It is very important that you read return policies and check for restocking fees. For example, NewEgg.com is a well-respected vendor, but returns must be made within 30 days and they charge a 15% restocking fee on just about everything. By contrast, amazon.com allows returns within 30 days but has no restocking fee. Therefore, if my choice is between those two vendors and the amazon.com price is higher but **close to NewEgg, I'm** going with amazon.com every time. In fact, there have been many times when I paid a little more for something at amazon.com because I know from personal experience that they are incredibly easy to work with on returns.
10. **Stock Indicators Are Important:** Always look for a stock indicator on **the vendor's website because you don't want to order something they don't have and possibly won't have again for weeks. If a web site doesn't have a stock indicator for the product I'm considering, I simply won't buy it from them even if it's cheaper. It's not worth saving a few dollars only to** wait 3 weeks for your product to show up.
11. **Note The Condition.** If using Google.com/Products to search prices, **make sure to note the "Condition" column. This will tell you if the product you're looking at is refurbished, used, or new. I would recommend** avoiding refurbished or used products; and the lowest price is frequently for a uses or refurbished product.
12. **Skip the Extended Warranty:** Unless you are buying a desktop or **laptop computer, it's not worth buying the extended warranties which are** typically offered at checkout. Of course, if you have a propensity for dropping or losing things, maybe you should consider one anyway. Otherwise, extended warranties generally represent a big profit center for **vendors because they're hardly ever used and sometimes** contain exclusions for things like accidental breakage.
13. **Create An Account Upon Checkout.** Depending upon the vendor **you've chosen, you will likely be presented with the opportunity to "create an account". I recommend doing this because it makes it easier** to track your orders and return an item if necessary. If given an option, I prefer not to allow the vendor to store my credit card information although I do not see a problem with them storing my name and address since it makes it a lot faster to check out the next time I buy something.
14. **Always Check For Discount Codes.** During the checkout process, you may see a box asking you to enter a Coupon Code or Discount Code if you have one. If you do not have one, go to RetailMeNot.com or CouponCabin.com and search for vendor coupons on those sites. I easily

saved over \$100 last year by using discount codes I found on those sites. It never hurts to look.

15. Get A Separate Email Address For Buying Items Online: Finally, if you do a lot of on-line shopping, I recommend signing up for a free web-based email address that you use solely for purposes of buying things (Gmail, Yahoo, Hotmail, etc.). The email address you use for online purchases will tend to receive lots of special offers and other SPAM you **don't want showing up in your main inbox every day.**
- B. Contact the Manufacturer for Recommended Consultants: Most legal-tech manufacturers rely heavily (if not exclusively) upon a network of outside consulting firms for product installation, customization and training. You can always check the manufacturer web-site for a list of consultants. Not only will you typically get expert help, but many of them re-sell the products at a discount.
- C. Legal-Specific Email Lists or List Servs: These are emailed discussion lists on just about every topic under the sun. Most state bar associations have them available. Regardless of whether your state bar offers them, consider the granddaddy of legal email lists - the American Bar Association's Solosez. It's for lawyers who are practicing alone or in a small firm setting and it has 3,000 subscribers. Best of all, *you don't have to be an ABA member* in order to join and it's free. Go to <http://tinyurl.com/2b886> to join. If you're considering buying something, post it there. You're bound to get lots of commentary on whether the product is good or not and what kind of pricing others have found.
- D. Law Technology News: See [www.lawtechnews.com](http://www.lawtechnews.com) - free to subscribers. Great place to get reviews and feedback.
- E. Technolawyer: See [www.technolawyer.com](http://www.technolawyer.com) - great email service discussing nothing but legal technology news.
- F. Get a Price Online, Then Call and Ask for a Discount: If you're going to buy from an online vendor, go to their web site and get the pricing on what you want to buy. Now call them and ask if the sales rep you talk to will beat the price you got on their web site. If they refuse, then ask for free shipping, ask them to throw in some software or upgrade the software you want (i.e., Microsoft Office basic to Microsoft Office small business edition). If you don't ask, you don't get. Most sales reps have some leeway in pricing and since their compensation is typically based upon sales, they'll have an incentive to get you a price that will inspire you to buy from them rather than the web page.
- G. Look for Previous Versions of Software or Hardware: For example WordPerfect X7 is the current version, but you can get a great deal on X6. Is there

a big difference between the two? No. WordPerfect Office X6 Standard Edition is \$57.02<sup>2</sup> while X7 is \$250<sup>3</sup>.

- H. Look For Non Manufacturer Parts: For example, an AC adapter (90W) for a Dell Latitude notebook computer is \$70 (Dell part number C120H). A quick search on Amazon.com for that same part number reveals that a generic adapter certified to work with a Latitude costs only \$9.69. If you really want the Dell branded adapter, you can get it for \$25 from [www.getpartsonline.com](http://www.getpartsonline.com).
- I. EBAY Is A Great Source: If you're looking for software, read EBAY's instructions on How To Buy Legal Software On An Auction Site<sup>4</sup>. Then see what you can find. There are great deals to be had. For hardware, there are tremendous discounts if you're willing to take the minor risk of buying via auction or direct from an ebay seller.
- J. Look for Download Software: Many software companies offer slight discounts if you'll buy a download only version of their software. In other words, you don't get a DVD and a manual. You just get a downloadable file which installs the software. Of course, you can burn that file to a DVD afterwards so you'll easily be able to re-install it later if necessary.
- K. Do Not Limit Your Search for Computer or Tech Help To Your Local Area: Installation, integration and training can be a significant portion of your overall budget. Keep in mind that there is no reason to limit your search for computer/tech help to your local geographic market. Thanks to things like managed services<sup>5</sup> and tech support software which allows a vendor to take over any computer in your office and fix things without being on-site. The installation and training typically occurs at your office (IT folks with a national practice have no problem visiting your office), but after-**care can easily be done remotely. Here's** how this can save you money:
  - 1. Find An Expert: Your local IT person might be able to read manuals and partially figure out how to install a case management or legal accounting program. **However, unless it's something they regularly do, it's extraordinarily likely that they'll make a mess of it and the program won't be set up correctly.** If you look outside your geographic market, you will unquestionably be able to find an expert in that particular program which will take far less time to handle the installation and will do it right. Having to clean up a mess created by someone who tried to handle an installation

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<sup>2</sup> [www.amazon.com](http://www.amazon.com)

<sup>3</sup> [www.corel.com](http://www.corel.com)

<sup>4</sup> <http://tinyurl.com/axoguxr>

<sup>5</sup> Managed Services means that all servers, backups, notebooks and desktop PCs can be maintained remotely by an IT company and you won't have technicians at your office unless there is a physical hardware failure which would require someone on-site. This also covers all technical support/help desk for all users (Word, Windows, Outlook, etc.).

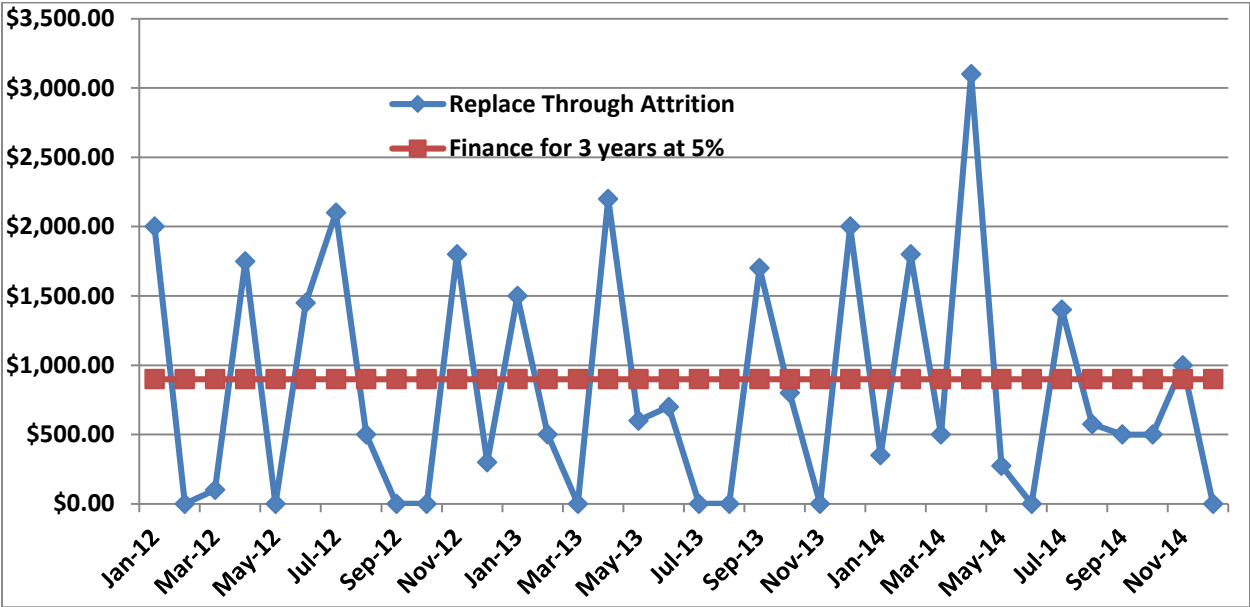
**they didn't understand is always** more expensive than having it done right in the first place by someone who may cost a little more.

2. Less Expensive: The market rate for IT help in major metropolitan areas is always higher. Therefore, you can often save yourself money by working with an IT company located in a smaller market because their rates are going to be commensurate with that smaller market. For example, we **have many clients in L.A., Pasadena and San Diego and it's not just because we're good at what we do. It's also because even including travel expenses, we're often less expensive than IT companies located in those areas.**
3. Higher Quality Help: Let me illustrate this with an example. A lawyer from a small town had a file server and was trying to get his new Android smart phone to synchronize wirelessly with Outlook. His local IT folks **couldn't get it to work and he was so frustrated that he was about to take the phone back and give up.** He called us as a last-ditch effort to get it working and because we have lots of experience getting all types of **smartphones to sync with Outlook, we were able to determine that it wasn't** working because his local IT people had failed to install a major service pack on his Windows server. After his local folks got the service pack installed, the sync began working. So the benefits were that he only paid for an answer, his local people were able to execute the solution and he now knows to keep on top of his IT folks so they are installing necessary updates on his server and computers.

#### IV. PAYING FOR IT:

- A. Financing Legal Technology: Many law firms (particularly small firms and solo practitioners) like to pay cash for everything. This aversion to debt or financing encourages law firms to replace their hardware and software through attrition because it's less expensive (up front) to do it that way compared to buying all new everything in one shot. However, this approach means that the firm is subject to unexpected technology expenditure spikes whenever a piece of hardware or software needs to be replaced. For example, a firm may have no expenditures on technology in January; then have to drop \$3,000 in February because someone's computer crashed and they needed a new printer; then nothing in March; then \$500 in April; then \$1,700 in May; nothing in June; etc. It's impossible to budget for these kinds of expenditures because you don't know what they're going to be and they can wreck your cash flow for the month if they're large enough. If you buy all new equipment as described above in a single purchase and get a three year, next business day, on-site warranty on all of the hardware, you're extremely unlikely to have any unexpected tech expenditures during that time. Therefore, we recommend a three year lease or loan to finance all of your technology needs. At the end of the loan/lease, you unload the existing equipment, buy new hardware and start over again. The result of this system is that you'll always have a technology payment; but on the upside, it's a low, even monthly payment you can budget for. This is a much better alternative to the large, random, unexpected budget-killing technology expenditures you're likely to incur otherwise.

For example, assume an annual technology expenditure for a small firm of \$10,000 (which is not unreasonable). Consider the graph below. The blue line is the random expenditure of \$30,000 when technology is upgraded or replaced through attrition over three years. The red line is financing \$30,000 at 5% interest which would yield a flat monthly payment of \$899. Which one would you rather deal with?



B. Technology Leasing for Lawyers - A Primer:

1. Deduct Payments as an Operating Expense: Your CPA will have to confirm this, but if you utilize an "operating lease" rather than a "capital lease" (with a fair market value end-of-lease purchase option rather than a \$1 end-of-lease purchase option), you can deduct every lease payment as an operating expense. This would enable you to effectively deduct the entire cost of the computers over 3 years rather than 5 (which is what you have to do if you depreciate them).
2. Disposal: Computer leasing companies like the one Dell has in-house will literally take back the computers at the end of the 3 year term. This may remove the sometimes significant headache of disposing of the old computers.
3. Leasing Pros and Cons: An outstanding article on this subject from Law Office Computing is attached as Exhibit A which lays out all of the pros and cons. A few good points from the aforementioned article:
  - "Computer technology leasing is an attractive option because computer systems get outdated quickly. There are good reasons to keep pace with technological change. Experts consistently recommend replacing computers on a three-year schedule. After three years, the typical computer has little or no market value and no longer will be covered

by warranty. Hardware costs, especially for servers, add up quickly. Large cash outlays for new purchases might be required."

- "Leasing is especially attractive to law firms that want to stay closer to the cutting edge in technology. It smoothes out their cash flow and protects their working capital while avoiding large periodic expenses for new technology purchases."
- "Smart leases give you a way to roll services, hardware and software into your monthly lease payment. This type of bundling allows a firm to consider an appropriate monthly cost of technology and aim a little higher on hardware, without cutting corners on training and support. For example, a bundled lease might even provide a way for a smaller firm to afford a high-level consulting firm, better software or a robust network infrastructure."

## V. COMPUTER CONSIDERATIONS:

A. Why Lawyers Should Buy Notebook PCs Instead of Desktop PCs: The bottom line is that notebooks are more expensive and less powerful. However, neither the price nor the performance gap is very big; and there are lots of other reasons to go with the notebook option.

1. Prices Are Very Close Between Notebooks and Desktops: Notebooks are more expensive than desktops, but the gap is nowhere near what it was just 5 years ago. The price difference fluctuates, but a notebook PC will typically cost \$150 to \$350 more than a comparably equipped desktop.
2. Work Anywhere: If having a notebook lets you work just one time per year under circumstances you would have been otherwise unable to work, then you've easily justified the extra \$350 you paid for the notebook. In fact, if the difference were \$1,000, I'd argue that it's still easily worth it.
3. Docking Stations Make a Notebook Feel Like a Desktop: Docking **stations are also known as "port replicators."** They allow you to connect your notebook to many external devices at once. For example, when I dock my notebook, I am instantly connected to two external monitors, an external (full size) keyboard and mouse, my scanner, my external hard drive (for backup), my network, the internet, printers, and my external speakers. At the end of the day, I simply undock (push one button on the **port replicator**) and I'm disconnected from all of that. They make it fast and easy to connect or disconnect. They also allow me to use full-size **peripherals (monitors, keyboards & mice) when I'm at the office.**
4. Take Your Files With You: If you use scanners to create complete digital files, you can take those digital files with you on a notebook where ever **you go. Very importantly, it doesn't matter whether you have an internet connection.** If you have complete digital files, then they can easily be

loaded onto a laptop and taken with you. This is the ultimate in practice mobility.

5. Access Your Office From Anywhere: Thanks to widespread Wi-Fi hotspots, aircards and tethering<sup>6</sup>, you can get internet access from almost anywhere. If you have remote access options to your office, then a notebook is the key element to creating an office where ever you happen to be.
- B. Have Only One Computer: If you're going with a laptop, use it everywhere and don't bother buying a desktop for the office and a laptop for when you need to travel. Having two computers just makes it difficult to make sure you have everything you need on each one.
- C. Save Money by Avoiding Apple:
1. Notebook Computer Configuration: To compare prices, I configured a Windows notebook computer and a MacBook Pro notebook computer with matching configurations (or at least as close as I could get them). The price for the Dell Windows computer was \$2,226; and the MacBook was \$3,523. That means that the Mac is \$1,297 more expensive than the Dell. Furthermore, the Dell is a much better equipped machine even though I made the configurations as similar as I could. For example:
    - a. Windows Computer Advantages:
      - i. The Windows computer has a 6<sup>th</sup> generation 2.7 GHz i7 processor compared to the Mac's 4<sup>th</sup> generation 2.8 GHz i7. This makes the Windows machine faster and 6<sup>th</sup> generation processors also use less battery.
      - ii. **The Windows computer has a larger screen (15.6" compared to 15.4").**
      - iii. The Windows computer has an on-site warranty (Mac is mail-in or carry-in).
      - iv. The Windows computer has a fingerprint reader and advanced security (Mac does not).
      - v. The Windows computer has a wired network adapter built in (Ethernet), but the Mac does not.
      - vi. The Windows computer has a docking station option, but the Mac does not.

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<sup>6</sup> Tethering is using your cell phone as a modem which allows you to connect your notebook to the internet through the cell phone connection to the web.

- vii. The Windows computer has antivirus software built in with Windows 10; the Mac does not.
  - b. Mac Computer Advantages: Really nothing unless you consider the operating system to be better.
- 2. Desktop Computer Configuration: Like above, I made the configurations as close to one another as I could. The Windows PC was \$1,304 and the iMac was \$1,932. In spite of the price difference, the Windows PC was faster (6<sup>th</sup> gen i5 3.2 GHz compared to a 4<sup>th</sup> gen i5 2.8 GHz for the iMac) the **screen was larger (23.8" compared to 21.5")**, and the warranty was better.
- 3. Limited Support with Apple:
  - a. Network Support: Let's say you want to set up a small network with an Apple Server and 4 connected Apple computers along with a network printer and scanner. If you're not sure how to do that yourself, good luck finding someone who can help. Apple has never aimed at business users and there are frankly very few network design firms that do anything with Apple. On the other hand, if you wanted a Windows network, there are probably hundreds of options for help with that depending upon the size of the market you're in. In the Columbus, OH phone book (for example), there are well over 200 computer consulting firms that can set up Windows networks and computers.
  - b. Computer Support: Apple doesn't offer on-site warranties with its laptops. Therefore, you'll have to ship it to them for service or find an Apple Store or other authorized service center and take it there. Desktops to offer on-site support, but it's a last resort.
- 4. Most Legal Specific Programs Will Not Run on the Apple Operating System: For example, the top 5 legal case management applications or top 5 time/billing and accounting programs will not run on the Mac OS. The best document assembly or trial presentation programs also do not work on a Mac. Finally, I've never seen a practice area-specific program that would work in the Mac OS. For example, leading Bankruptcy programs like Best Case and leading estate planning drafting systems like WealthDocx only work in Windows. Yes, you could run Windows on a Mac and use those programs. However, you have to BUY Windows first and install it on your Mac. Furthermore, many programs require a Windows server in order to run so you wouldn't be able to use an Apple server.
- D. Get The Software You Need Included With the New PC: It is almost always less expensive to have the software you want included with the new PC compared to what it would cost to buy it separately.

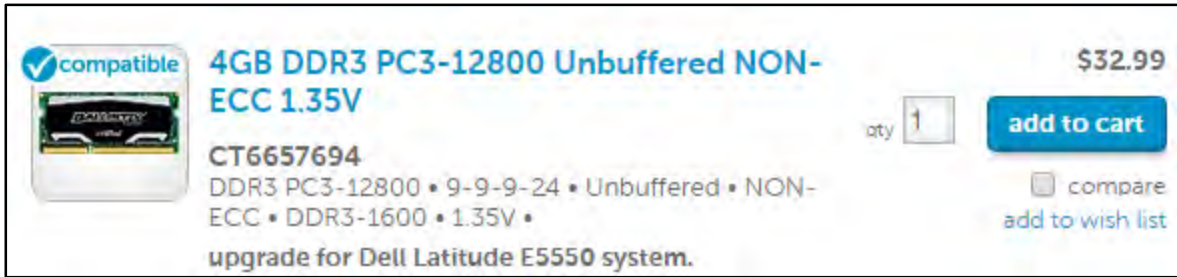


Look for a software bundle that includes an office suite of programs. Be warned that a lot of retailers will only carry a home configuration. If you experience this, keep shopping or look to online vendors. No matter what you do, make sure you get your office suite included if possible. Most vendors offer Microsoft Office and Corel WordPerfect Office with new PCs. Corel WordPerfect Office is so inexpensive to have included with a new PC, it's worth getting it even if it's not your primary word processor.

- E. Don't Be Afraid of a PC with an AMD CPU: AMD processors aren't currently as fast as Intel's fastest offerings, but they're close and they cost less, sometimes a lot less. More and more manufacturers are offering AMD processors and you'll have no problems with compatibility.
- F. Never Buy the Fastest CPU: You're always going to pay a premium to get the fastest CPU available at any given time and they just aren't necessary in a law firm environment. Therefore, look for a standard business computer one or two steps down from the fastest CPU to get the best bang-for-the-buck.
- G. How To Save Money:
  - 1. Bar Association Discounts: Most state bar associations offer computer discounts, some municipal bar associations do; and the American Bar Association (see <http://tinyurl.com/n42zlt>) does as well.
  - 2. Upgrade RAM Yourself: If you don't mind doing the simple operation of adding RAM to your computer, it's usually less expensive to buy and install additional RAM yourself compared to getting it included with a new computer. For example, in the screen shot below, you can see that it costs \$65.55 to configure a new Dell Latitude with 8 GB of RAM rather than 4.



However, on [www.crucial.com](http://www.crucial.com), you can get 4 GB of compatible memory for only \$32.99 (see below):



compatible **4GB DDR3 PC3-12800 Unbuffered NON-ECC 1.35V** \$32.99

CT6657694  
 DDR3 PC3-12800 • 9-9-9-24 • Unbuffered • NON-ECC • DDR3-1600 • 1.35V •

quantity 1

upgrade for Dell Latitude E5550 system.

3. Desktop PCs are Cheaper Than Notebooks: In spite of my recommendation **that you get a notebook, notebooks don't fit into everyone's budget. Desktops have always been less expensive than** comparable notebooks and I expect that to continue into the foreseeable future. Therefore, it may make financial sense to get a desktop, particularly if you already have a computer at home that you can use for office work.
4. Consider a "Budget" Notebook PC: For example, the Dell Inspiron 15 3000 only costs \$340 on amazon.com, has 4 GB of RAM, a 500 GB hard drive, a 15.6" screen, wireless network adapter, DVD player and Windows 8.1. You'd be getting vastly more computing power and usability than an iPad at about half the price.
5. Warehouse Clubs: **For example, both Sam's Club and Costco sell computers. You're not going to get a huge selection and the warranties aren't going to be great initially (you can usually pay more to upgrade the warranties),** but in my experience, they have excellent prices on the **systems they offer and they're usually well-known brands (Dell, HP, Acer, Asus, etc.).**
6. Consider **"Refurbished" Systems from the Dell Outlet:** Check out <http://tinyurl.com/39nqr> and you'll be at Dell's "Outlet." Refurbished systems can be purchased at significant discounts, but you can still get the 3 year, on-site warranty. If you find one you like, be prepared to buy it immediately because they turn over their refurbished inventory constantly.
7. Cut Back On Things You Can Easily Upgrade Later: For example, **it is easy to add RAM later. If you are buying a desktop PC, it's easy to add** an additional hard drive for more storage space (either internal or external) later. Notebooks only have room for one hard drive internally so your only real alternative is to add an external hard drive unless you want to transfer your entire operating system from one computer to another. If you are going to use an external monitor (either desktop or notebook), you could **continue using the one you had with your last computer until you've got** enough money to buy a larger one for your new computer. Monitor technology **doesn't change that much from year to year although you can** buy much larger monitors for the same money. You can also save a few bucks by sticking with the cheapo basic wired keyboards and mice that

come with new desktops. Later, you can drop \$80 for a much nicer wireless keyboard/mouse combo.

VI. RENTING TECHNOLOGY: Thanks to the Internet, there are many ways to rent technology instead of buying it. This approach avoids the up-front costs associated with out-right purchases, provides flexibility to change technological directions, and in many cases provides you with superior remote access.

A. Case Management Options: If you're unfamiliar with case management software, these programs handle file management, calendaring, contacts, tasks (to-do lists), time entries, communications (emails and phone calls), document management, document assembly, and can help you manage and share research. More importantly, each component feature is integrated with the others. For example, you can see all of the calendared appointments related to a particular matter (for everyone in your office) from within the electronic file. You never have to go look directly at someone's calendar for those things (which would be hard to find anyway). Anyway, here are some options for cloud-based case management.

1. ActionStep: [www.actionstep.com](http://www.actionstep.com)
2. AdvologixPM: [www.advologix.com](http://www.advologix.com)
3. Amicus Attorney Cloud Edition: [www.amicus-cloud.com](http://www.amicus-cloud.com)
4. Clio: [www.goclio.com](http://www.goclio.com)
5. MyCase: [www.mycase.com](http://www.mycase.com)
6. LawRD: [www.lawrd.com](http://www.lawrd.com)
7. Credenza: [www.credenzasoft.com](http://www.credenzasoft.com)
8. Houdini Esq: <http://houdiniesq.com/esq.html>
9. Rocket Matter: [www.rocketmatter.com](http://www.rocketmatter.com)
10. Total Attorneys: [www.totalattorneys.com](http://www.totalattorneys.com)

B. Digital Signatures: A Digital signature (standard electronic signature) takes the concept of traditional paper-based signing and turns it into an electronic **"fingerprint."** **This "fingerprint," or coded message, is unique to both the document and the signer and binds both of them together.** The digital signature ensures the authenticity of the signer. Any changes made to the document after it is signed invalidate the signature, thereby protecting against signature forgery and information tampering. Digital signatures help organizations sustain signer

authenticity, accountability, data integrity and non-repudiation of electronic documents and forms.<sup>7</sup>

1. DocuSign: [www.docusign.com](http://www.docusign.com)
2. RightSignature: [www.rightsignature.com](http://www.rightsignature.com)
3. Adobe EchoSign: [www.echosign.adobe.com](http://www.echosign.adobe.com)
4. e-SignLive: <http://www.silanis.com/e-sign-products/e-signlive>
5. CoSign Digital Signatures: <http://www.arx.com/digital-signature>
6. iSignhere: [www.isignhere.com](http://www.isignhere.com)

C. Legal Accounting Options:

1. ActionStep: [www.actionstep.com](http://www.actionstep.com) (this program is both case management and full accounting)
2. CosmoLex: <https://www.cosmolex.com/> (case management that also includes full accounting)
3. Easy Legal Billing: <http://www.easylegalbilling.com/>
4. Bill4Time: [www.bill4time.com](http://www.bill4time.com)
5. Legal Billing: [www.chaossoftware.com](http://www.chaossoftware.com)
6. Toggl: [www.toggl.com](http://www.toggl.com)
7. FreshBooks: [www.freshbooks.com](http://www.freshbooks.com)
8. TimeSolv Legal: [http://www.timesolv.com/timesolv\\_legal.html](http://www.timesolv.com/timesolv_legal.html)
9. QuickBooks Online: <http://quickbooksonline.intuit.com>
10. Case Management additional features: Most of the foregoing case management programs also have accounting modules so they could be considered accounting options as well.

D. Time Tracking:

1. Chrometa: While running in the background while you work, Chrometa captures all of your time and allows you to categorize it for easy billing. See [www.chrometa.com](http://www.chrometa.com).

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<sup>7</sup> Definition from ARX - see <http://www.arx.com/digital-signatures-faq>

2. Smart Time: [www.smarttimeapps.com](http://www.smarttimeapps.com) - remote time entry for lawyers

E. Transcription Services:

1. SpeakWrite - [www.speakwrite.com](http://www.speakwrite.com)

2. CopyTalk - [www.copytalk.com](http://www.copytalk.com)

3. LawDocsXpress - [www.lawdocsxpress.com](http://www.lawdocsxpress.com)

4. LegalTypist - [www.legaltypist.com](http://www.legaltypist.com)

5. VerbalLink - <http://verbalink.com>

6. GMR Legal Transcription - [www.gmrlegaltranscription.com](http://www.gmrlegaltranscription.com)

F. Group Calendaring: Ever feel like you are herding cats when trying to organize a good meeting time for a bunch of people? These cloud-based programs help you schedule meetings and other appointments with people outside your own **organization's email and calendaring system**. They are very simple, quick, and many are free or almost free. Usually the paid subscriptions are very inexpensive and offer direct integration with Outlook, which means no switching between your calendar and the application.

*Invitees receive an easy chart show available times and simply checks the times he/she is available. Other invitees can see the results immediately in a consolidated view.*

The screenshot shows a web-based interface for group calendaring. At the top, it displays the date "July 26, 2013". Below the date, there are five time slots: "9:00 AM", "11:00", "2:00 PM", "4:00 PM", and "8:00 PM". To the left of the time slots, there are three rows of names: "Tom", "Paula", and "Chris". Each name is followed by a grey arrow pointing right. Below the names, there is a grid of colored boxes representing availability. Green boxes with a checkmark indicate availability, while red boxes indicate unavailability. A fourth row with a blue arrow and empty boxes is also visible.

	9:00 AM	11:00	2:00 PM	4:00 PM	8:00 PM
Tom	Red	Green ✓	Red	Green ✓	Red
Paula	Green ✓	Green ✓	Green ✓	Red	Green ✓
Chris	Red	Green ✓	Red	Green ✓	Green ✓
	Blue □	Blue □	Blue □	Blue □	Blue □

1. Doodle: [www.doodle.com](http://www.doodle.com)

2. WhenIsGood.com: [www.whenisgood.com](http://www.whenisgood.com)

3. ScheduleOnce: [www.scheduleonce.com](http://www.scheduleonce.com)
  4. TimeBridge: [www.timebridge.com](http://www.timebridge.com)
- G. Credit Card Processing:
1. LawPay: [www.lawpay.com](http://www.lawpay.com)
  2. LawCharge: [www.lawcharge.com](http://www.lawcharge.com)
  3. Beacon Processing Solutions: ([www.beaconprocessing.com/attorney-solutions](http://www.beaconprocessing.com/attorney-solutions)) - Beacon Processing Solutions does not provide services exclusively to attorneys, but they do have a special program for law firms that allows the attorney to choose between depositing funds into an operating account or into a trust account.
  4. Virtual Payment Systems: <http://tinyurl.com/o65l3j6> - they have a couple of programs designed just for lawyers: VPSpay.com - payments where you get the full amount paid to you and transaction fees are charged to the payer. Traditional credit card processing where you firm is charged transaction fees to a designated fee account.
  5. Square: <https://squareup.com/Square>. Square is a credit card processing system that allows you to take credit card payments using a free credit card reader that plugs into your iPhone, iPad, or Android device. Although Square does not have the functions to separate operating account income from trust account income, it is popular among attorneys taking cases where trust accounting is not an issue.
  6. PayPal: [www.paypal.com](http://www.paypal.com) - may not comply with trust accounting rules but if that isn't an issue, this is a great service.
- H. Word Processing:
1. Google Docs: [www.docs.google.com](http://www.docs.google.com)
  2. Zoho Writer: [www.writer.zoho.com](http://www.writer.zoho.com)
  3. Microsoft Office 365: Microsoft is now offering office in the cloud and it's fairly amazing. See <http://tinyurl.com/ny7vllle> for more information or paragraph VI.W. below.
  4. ThinkFree Office Suite: [www.thinkfree.com](http://www.thinkfree.com)
  5. HyperOffice: [www.hyperoffice.com](http://www.hyperoffice.com)
- I. Document Management: Document management applications provide an electronic filing system for documents you've created in-house, documents you receive (they must be scanned), notes, emails & attachments to emails. Good document management systems provide things like full text searching (find any

document by the words contained inside it rather than what it is called), security, and versioning (you can save dozens of versions of the same file with a full audit trail).

1. NetDocuments: [www.netdocuments.com](http://www.netdocuments.com) - extremely sophisticated and well established document management application.
2. SharePoint: <http://tinyurl.com/b57xjhs> - SharePoint is an online collaboration tool developed by Microsoft. It is often used as a content management system for Intranets. SharePoint allows teams within an organization to share information anywhere there is Web access. With SharePoint, users can set up websites to share documents, manage projects and publish information. SharePoint also has many social media capabilities, such as blogs, wikis, microblogging and discussion boards.<sup>8</sup>
3. Box Document Management: see [www.box.com/business/document-management/](http://www.box.com/business/document-management/)
4. Javek: [www.javek.com](http://www.javek.com)
5. Agilewords: [www.agilewords.com](http://www.agilewords.com) - specializes in collaborative document review
6. DocumentTree: [www.documenttree.com](http://www.documenttree.com)

J. Document Assembly/Automation:

1. HotDocs Document Services: [www.hotdocs.com/products/document-services](http://www.hotdocs.com/products/document-services)
2. ContractExpress: [www.business-integrity.com](http://www.business-integrity.com)
3. Exari: [www.exari.com](http://www.exari.com)
4. ProDoc: [www.prodoc.com](http://www.prodoc.com)

K. Secure File Sharing:

1. Microsoft Office 365 or OneDrive for Business: OneDrive is Microsoft's cloud storage offering and it can be purchased as part of an Office 365 plan (1 TB per user) or separately. You get 25 GB for \$2.50/user/month which is accessible from virtually any phone, tablet or computer, Windows or Apple. For the OneDrive plans, see <https://onedrive.live.com/about/en-us/plans/>. I personally like this option the best.

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<sup>8</sup> *What is SharePoint?* by Ryan Goodrich, TechNewsDaily, January 30, 2013, see <http://tinyurl.com/co8zyc>

2. Google Apps for Business: This service is \$5/user/month or \$50/user per year and gets you 30 GB of online storage among other features. See your options here: <http://tinyurl.com/kcwt2fk>
  3. Dropbox Pro or Dropbox for Business: Dropbox Pro gets you 100 GB of storage for \$10/user/month and Dropbox for Business gets you unlimited storage for \$15/user/month (minimum 5 users). See this: <https://www.dropbox.com/business/pricing>
  4. SpiderOak Professional: This service offers complete encryption so thorough that not even SpiderOak employees can get to your data. For \$10/user/month, you get 100 GB of storage. See this for more: [https://spideroak.com/business\\_pricing/](https://spideroak.com/business_pricing/)
  5. Syncplicity: See [www.syncplicity.com](http://www.syncplicity.com).
  6. Box.com: [www.box.com](http://www.box.com)
  7. Sugar Sync: See [www.sugarsync.com](http://www.sugarsync.com). This service offers online backup of your files and file synchronization among multiple PCs and smartphones. You can access your files anywhere you have Internet access thanks to apps for BlackBerry, iPhone and Windows Mobile.
  8. ShareFile by Citrix: [www.sharefile.com](http://www.sharefile.com) - This is a fantastic service that allows you to create virtual "rooms" for others and share documents with them securely. You decide what rights each user has to the collection of documents. Simple and powerful.
  9. TrueShare: [www.trueshare.com](http://www.trueshare.com) - Similar to ShareFile, a little less expensive, a little more difficult to use.
  10. FileGenius: [www.filegenius.com](http://www.filegenius.com) - similar to TrueShare and ShareFile.
  11. OneHub: Secure file sharing - see <https://onehub.com>.
- L. Encryption Options for Online Sync Programs Like Dropbox:
1. Viivo: See [www.viivo.com](http://www.viivo.com)
  2. BoxCryptor: See [www.boxcryptor.com](http://www.boxcryptor.com)
  3. CloudFogger: See [www.cloudfogger.com](http://www.cloudfogger.com)
- M. Create Your Own Cloud: You can do this with specialized, inexpensive hardware that allows you to access the files stored on it via the Internet in a secure way. For example:
1. CloudLocker: See [www.stoamigo.com](http://www.stoamigo.com). **StoAmigo's CloudLocker is a personal cloud storage device that you own and control physically as well as digitally, with patent-pending sharing and media control features like**



you have never had before. You can stream video or music playlists on the go and instantly locate the files you need, wherever you are. The great thing is your files stay safe in CloudLocker, without taking up space on your devices. These devices start at \$349.

2. Transporter & Transporter Sync: See [www.filetransporter.com](http://www.filetransporter.com). The award-winning Transporter will change the way you store, access and protect your documents, photos and videos by allowing all your digital devices to work as one. Privately. With no monthly fees. In other words, **it's everything you love about the convenience of the cloud without any of the privacy or cost drawbacks.** You can buy these on [www.amazon.com](http://www.amazon.com) and they come in multiple sizes including 1 and 2 TB. A 1 TB device starts at \$252.
  3. WD My Cloud: There is a personal and business version of this product. The business version is called the My Cloud EX4. Prices start as low as \$150.
  4. Seagate Business Networked Attached Storage: Seagate makes an array of network attached storage devices that allow access via the Internet.
- N. Anti-Spam and Email Security: Google Message Security Powered By Postini is anti-spam software that actually screens your email before it gets to you. It also removes viruses from email. Best of all, it actually works and is uncannily good at keeping the junk out of your inbox. Unfortunately, Google has stopped selling Postini service as a stand-alone application and now makes it available only through Google Apps. If you have Microsoft Exchange or Lotus Notes, you can **still use Postini even though it's a part of Google Apps. The only drawback is that stand-alone Postini used to be \$2/user/month and now as part of Google Apps, it's \$5/user/month. Not a big deal really, AND you get all of the other Google Apps benefits** (see paragraph VI.X. below for more information about Google Apps).
- O. Project Management:
1. Basecamp: [www.basecamphq.com](http://www.basecamphq.com)
  2. Teambox: [www.teambox.com](http://www.teambox.com)
  3. Projecturf: [www.projecturf.com](http://www.projecturf.com)
  4. Apollo: [www.apollohq.com](http://www.apollohq.com)
  5. Teamwork PM: [www.teamworkpm.net](http://www.teamworkpm.net)
  6. Huddle: [www.huddle.com](http://www.huddle.com)
  7. GlassCubes: [www.glasscubes.com](http://www.glasscubes.com)
  8. GoPlan: [www.goplanapp.com](http://www.goplanapp.com)

9. Lighthouse: [www.lighthouseapp.com](http://www.lighthouseapp.com)
  10. PBWorks: [www.pbworks.com](http://www.pbworks.com)
  11. Zoho Projects: [www.zoho.com/projects](http://www.zoho.com/projects)
- P. Task Management:
1. Evernote - [www.evernote.com](http://www.evernote.com) - designed for note taking and task lists.
  2. Wunderlist - [www.wunderlist.com](http://www.wunderlist.com) - my favorite!
  3. Remember The Milk - [www.rememberthemilk.com](http://www.rememberthemilk.com)
- Q. Remote Access Services: These services allow you to "take over" another computer via the internet.
1. LogMeIn: [www.logmein.com](http://www.logmein.com) - this is the least expensive option at \$69.95/year.
  2. Gotomypc.com: [www.gotomypc.com](http://www.gotomypc.com). Take over any other PC via the Internet. Unlimited remote access to your PCs from any other Internet-connected computer; ability to swap host PCs at will; unlimited software and service upgrades; unlimited technical support and maintenance. Absolutely amazing service which we highly recommend.
  3. TeamViewer: [www.teamviewer.com](http://www.teamviewer.com) - there is a free and a pay option for this.
- R. Encrypted Email:
1. EchoWorx Encrypted Mail: [www.echoworx.com/products/encrypted-mail](http://www.echoworx.com/products/encrypted-mail)
  2. Hightail: [www.hightail.com](http://www.hightail.com) - this service was formerly known as YouSendIt.com. It's designed for sending enormous attachments, but also offers encryption for those attachments. Incredibly easy to use and inexpensive.
  3. Hushmail: [www.hushmail.com](http://www.hushmail.com)
  4. Protected Trust: [www.n-krypt.com](http://www.n-krypt.com) - I really like this one.
  5. RPost: [www.rpost.com](http://www.rpost.com) - registered email service which can prove delivery + encrypted email
  6. SenditCertified: [www.privacydatasystems.com](http://www.privacydatasystems.com) and note that they offer discounts through several bar associations (including the Ohio State Bar Association).

7. Symantec Desktop Email Encryption: See <http://tinyurl.com/bcjuawp> for more information.

8. ZixMail: [www.zixcorp.com/products/zixmail](http://www.zixcorp.com/products/zixmail)

S. Backup Services:

1. Mozy Pro: <http://mozy.com/pro> - \$3.95 + \$0.50/GB per month. Therefore, to backup 40 GB of data would only cost \$23.95 per month.

2. Mozy Home: <http://mozy.com/home> - \$4.95 per month - unlimited storage.

3. Carbonite: [www.carbonite.com](http://www.carbonite.com) - \$54.95/year - unlimited storage.

4. iBackup: [www.ibackup.com](http://www.ibackup.com) - at the time of this writing, 100 GB is \$9.95/month or \$99.50 per year paid in advance.

5. SOS Online Backup: [www.sosonlinebackup.com](http://www.sosonlinebackup.com) - pricing determined by how much data you intend to backup. 40 GB is \$72/month or \$720/year (\$60/month if paid in advance). Highly rated service.

T. Web Conferencing Services:

1. Join.Me (<http://join.me>)

2. GoToMeeting ([www.gotomeeting.com](http://www.gotomeeting.com))

3. WebEx MeetMeNow ([www.webex.com](http://www.webex.com)):

4. Adobe Acrobat Connect (<http://tinyurl.com/2nbcwt>)

5. Skype ([www.skype.com](http://www.skype.com))

6. Microsoft Office Live Meeting (<http://tinyurl.com/yyugt2>): Very inexpensive - contact [www.EventBuilder.com](http://www.EventBuilder.com).

U. E-Discovery & Litigation Support:

1. Verve by Kroll Ontrack: ([www.krollontrack.com/e-discovery-software](http://www.krollontrack.com/e-discovery-software))

2. NextPoint: (<http://www.nextpoint.com>)

3. Relativity by kCura (<http://kcura.com/relativity>)

4. Lexbe Online ([www.lexbe.com](http://www.lexbe.com)) is a web-based litigation document management and review tool. Lexbe e-Discovery is an Electronic Discovery service which enables you to quickly, accurately and cost-efficiently convert email, office and other electronic stored information (ESI) for legal review and delivery of discovery productions.

## V. Microsoft Exchange:

1. What Is Microsoft Exchange: Microsoft Exchange is a program that must run on a Windows server and allows Outlook users to warehouse their data (email, contacts, calendars, tasks, etc.) on the server as a backup. Here are the benefits:
  - a. Share Data: Exchange also allows users to share information in Outlook. For example, I could allow someone else in my office to access my calendar electronically and add appointments.
  - b. Anywhere Email Access: Exchange also allows users to gain access to office email while out of the office in many different devices. For example, I can see my inbox, calendar & contacts on my iPad (or any tablet), on any Windows or Mac computer connected to the Internet, or on my smartphone. I can use Outlook Web Access (which comes with hosted Exchange) via a browser; or I can run Outlook natively on my laptop (for example) and as long as I'm connected to the Internet, I'm also connected to Exchange.
  - c. Full Backup: Everything in Outlook is backed up in Exchange (email, contacts, calendar & tasks).
  - d. Smartphone Sync: Exchange will wirelessly sync with any smartphone running Android, iOS, Blackberry OS or Windows Phone 7.
2. Exchange Options:
  - a. Get Your Own Server: Of course, you would also need to have Exchange running on that server.
  - b. Hosted Exchange: This is essentially renting Exchange on a server you access through the Internet. It is exactly the same as having it in-house except for the fact that you avoid the expense of buying and maintaining a file server, Windows and Exchange. In other words, rather than paying \$8,000 + ongoing maintenance, **you're paying \$10/month/user. Depending on the size of your office and physical setup of remote offices or telecommuters, hosted Exchange Server is often much less expensive than having Exchange Server on-site.** Other benefits of hosted Exchange Server: multiple internet connections, multiple power sources, guaranteed uptime, no cost for backup or maintenance.
3. Options for Hosted Exchange: There are hundreds but here are a few:
  - a. Microsoft - <http://tinyurl.com/bleasx7>
  - b. [www.godaddy.com](http://www.godaddy.com)

- c. [www.1and1.com](http://www.1and1.com)
- d. [www.mailstreet.com](http://www.mailstreet.com)
- e. [www.apptix.com](http://www.apptix.com)
- f. [www.exchangemymail.com](http://www.exchangemymail.com)
- g. [www.appriver.com](http://www.appriver.com)

W. Microsoft Office 365: Before I talk about functionality, we first need to define a few things to make sure we're on the same page.

1. Microsoft Office 365: I'll let Microsoft describe this for you:

"Office 365" refers to subscription plans that include access to Office applications plus other productivity services that are enabled over the Internet (cloud services), such as Lync web conferencing and Exchange Online hosted email for business, and additional online storage with OneDrive and Skype world minutes for home.

Many Office 365 plans also include the desktop version of the latest Office applications, which users can install across multiple computers and devices. The Office 365 plans that are online-only are a great choice for certain business needs, and they are compatible with desktop versions of the latest version of Office, Office 2010, Office 2007 (with slightly limited functionality), Office 2011 for Mac, and Office 2008 for Mac.

All Office 365 plans are paid for on a subscription basis, monthly or annually.<sup>9</sup>

2. Microsoft Office: "Microsoft Office" is the name we still use for our familiar productivity software. Office suites have traditionally included applications such as Word, Excel, PowerPoint, and Outlook. All the new Office suites (for example, Office Standard 2013) include the latest versions of these applications. These suites can be installed on only one PC and do not come with any cloud-based services included in Office 365.<sup>10</sup>
3. Office Online: This was previously known as Office Web Apps and is a stripped down version of Word, Outlook.com, Excel, PowerPoint, and OneNote. It also provides a contact manager (People), a calendar and access to OneDrive.<sup>11</sup> Surprisingly, this works in Internet Explorer, Firefox, Chrome and Safari. This service is free, regardless of whether you have an Office 365 subscription.

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<sup>9</sup> See Office 365 for Business FAQ - <http://tinyurl.com/cq7ajhs>

<sup>10</sup> See Office 365 for Business FAQ - <http://tinyurl.com/cq7ajhs>

<sup>11</sup> See <http://office.microsoft.com/en-us/online/>

4. Office 365 Security: In a nutshell, Office 365 offers top-notch security. It has the same user-level security options and Trust Center as the desktop version of Office. Rights management Service (RMS) supports encryption and lets you set permissions. Offsite, files are saved in specialized data centers where security is a primary concern. As a result, small to medium businesses will have better security using Office 365 than they can probably afford on their own. Here are just a few details:

- Office 365 applications use encryption; transmissions intercepted by anyone without authorization can't be read.
- Microsoft Office 365 is certified as compliant by accepted industry (ISO) standards.
- Controls are in place to comply with HIPPA and FERPA.

**Kirk Koenigsbauer, Corporate Vice President at Microsoft said, "...Office 365 supports the most rigorous global and regional standards such as ISO 27001, SAS70 Type II, EU Safe Harbor, EU Model Clauses, the US Health Insurance Portability and Accountability Act (HIPAA), the US Family Educational Rights and Privacy Act (FERPA), and the US Federal Information Security Management Act (FISMA). To meet evolving needs, we also plan to support IPv6 in Office 365 for Government by September of this year, and we're taking steps to soon support Criminal Justice Information Security (CJIS) policies."**<sup>12</sup> If you glazed over at all of the acronyms, just know that Office 365's security is impressive.

According to Microsoft, here are Office 365's Top 10 Security and Privacy Features:

- We (Microsoft) restrict physical data center access to authorized personnel and have implemented multiple layers of physical security, such as biometric readers, motion sensors, 24-hour secured access, video camera surveillance, and security breach alarms.
- We enable encryption of data both at rest and via the network as it is transmitted between a data center and a user.
- We don't mine or access your data for advertising purposes.
- We use customer data only to provide the service; we don't otherwise look in your mailbox without your permission.
- We regularly back up your data.

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<sup>12</sup> [10+ things you should know before buying Office 365](http://tinyurl.com/m2e2zc4) by Susan Harkins in 10 Things, November 26, 2013. TechRepublic - see <http://tinyurl.com/m2e2zc4>.

- We won't delete all the data in your account at the end of your service term until you have had time to take advantage of the data portability that we offer.
  - We host your customer data in-region.
  - We enforce "hard" passwords to increase security of your data.
  - We allow you to turn off and on privacy impacting features to meet your needs.
  - We contractually commit to the promises made here with the data processing agreement (DPA). For more information about the DPA, visit the Data Processing Agreement section of the Independently verified page.<sup>13</sup>
5. Office 365 Running Offline: You can use Office 365 offline (without internet access) if you download and install the desktop version of Office with your plan. You have to connect to the internet every 30 days to maintain your subscription and Office 365 tells you when it's time to connect.
  6. Office On Demand: Office on Demand is a feature that provides online access to Office desktop applications, including Word, Excel, and **PowerPoint, when you're using a PC or other device that doesn't have Office installed.** Office on Demand is available to anyone who has an Office 365 subscription that includes the Office application suite. Office on Demand is a helpful option if you want to use your Office applications on **an additional device or on a device that you don't own, such as when you're logged in as a guest using someone else's computer.** When you use Office on Demand, the applications are streamed to the PC you're using as you need them. Office on Demand doesn't get installed. There's no offline access to Office on Demand.<sup>14</sup>
  7. Microsoft Exchange: This is included in most of the Office 365 plans. I would argue that this feature alone is worth the price of admission. Microsoft Exchange is a program that, among other things, allows Outlook users to back up their data (email, contacts, calendars, tasks, etc.) on a server. For a full explanation of what Exchange offers, see paragraph VI.V. on page 25 above.
  8. Yammer: This is a company Microsoft bought in 2012 for \$1.2 billion and as you'll see below, it is included with several versions of Office 365. Here's

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<sup>13</sup> See <http://tinyurl.com/oo8ltp7>

<sup>14</sup> See <http://tinyurl.com/nuwj2eq>

an explanation from PCWorld.com. I am friends with a few lawyers whose firms use this and it received high praise from them.

**A Social Network for Your Business:** Yammer is essentially a social **network that's entirely focused on your** business. In order to join your business's Yammer network, an applicant must have a working email address from your company's domain. You can also create external networks to allow non-employees, such as suppliers and customers, to communicate with your company.

**The Ticker:** The similarity between the Yammer and Facebook user interfaces is surely no accident. As with Facebook, new posts—complete with Likes—**appear in Yammer's primary screen, which is known as the Newsfeed.** Icons indicating private messages and other notifications appear in the upper left-hand corner. You can also create groups, which is helpful for segregating talk that's relevant only to specific internal teams. If a group conversation takes a turn that requires assistance from other employees, you can share it with a specific person via instant message or with another group entirely. Sharing a post with specific groups is a breeze thanks to handy-dandy drop-down menus below the Update box (which is **similar to Facebook's Status box**).

**Hashtags:** The overuse of hashtags on Twitter can make your eyes bleed, but they're very useful on Yammer. Yammer's robust search function digs up hashtagged posts lickity-split, so be sure to slap a #2013projections or #KeyCorporateAccount hashtag on the end of your posts for future search posterity. @mentions are also supported.

**Contact Coworkers:** You can create external networks and invite non-employees (suppliers and clients, for instance) to join them. The People Directory automatically creates a searchable database of every person enrolled in your Yammer, making it especially easy to find contact information for the people in your company. Even better, profiles have Skills listings that are also searchable in the People Directory. You'll never have to scramble to find the right person for the job again.

**Sharing Files:** Anyone can attach a file to a post to quickly share information without forcing recipients to slog through clogged inboxes. You can also upload files—including images and videos—to a file repository, where other Yammerers can download and update them. Groups have their own separate file repositories that augment the main one, and employees can receive automatic notifications whenever critical files are updated.

**Collaborating:** In addition to the previously mentioned file repositories, teams can also collaboratively create Pages (Pages are essentially documents) in a group setting. Admins have the ability to lock down Pages (and all other files) as official or read-only.



Mobile Platforms: Yammer has apps for iOS, Android, BlackBerry, and—of course—Windows Phone.

Less Email: Yammer claims that companies using Yammer generate about 40 percent less email.<sup>15</sup>

9. Office 365 Versions and Services: This changes constantly so the best thing to do is go to their website: <http://tinyurl.com/ldpeakf>
- X. Google Apps for Business: If you are on a limited budget, Google Apps Premier Edition costs only \$50/year and provides:
  1. Gmail for business: Gmail for business offers 25 GB of storage per user, powerful spam filtering, sync with BlackBerry, iPhone and Android smartphones, sync with Outlook, and a 99.9% uptime SLA.
    - a. Email, IM, voice and video chat: Each user gets 25 GB of email and IM storage (50 times the industry average).
    - b. Anytime, anywhere access to your email: Gmail is securely powered by the web, so you can be productive from your desk, on the road, at home and on your mobile phone, even when you're offline.
    - c. Sync with Outlook & BlackBerry: Get the benefits of Apps on familiar platforms.
    - d. Search and find emails instantly: Spend less time organizing email and find emails quickly with Google-powered search for your inbox.
    - e. Get less spam: Powerful Gmail spam filtering helps you stay focused on what's important. Postini filtering lets you customize your spam protection.
  2. Google Calendar: A web-based calendar application that enables employees to work together efficiently and helps minimize costs and IT hassles.
    - a. Easily schedule appointments: Overlay multiple calendars to see when people are available. Google Calendar sends invitations and manages RSVPs.
    - b. Integrate with your email system: Google Calendar is integrated into Gmail and interoperable with popular calendar applications.

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<sup>15</sup> [What the Heck Is Yammer?](#) by Brad Chacos, PCWorld, Aug 7, 2012. See <http://tinyurl.com/8plp6xs>.

- c. Share project calendars: Calendars can be shared company-wide or with select co-workers. A range of sharing permission controls help maintain security and privacy.
  - d. Access with your mobile device: View and edit event details, add new events, and invite guests on mobile devices like the BlackBerry and iPhone. Even receive calendar notifications via SMS.
  - e. Publish calendars: Publicize external company events by publishing a calendar to make it searchable in the Google Calendar gallery. Easily embed calendars into web pages.
3. Google Docs: Web-based documents, spreadsheets, and presentations that let users edit the same file at the same time so you always have the latest version.
- a. Anytime, anywhere access to your work: Google Docs is securely powered by the web, giving you the flexibility to be productive from your desk, on the road, at home and on your mobile phone, even when you're offline.
  - b. Works across operating systems: Google Docs works in the browser on PC, Mac, and Linux computers, and supports popular formats such as .doc, .xls, .ppt, and .pdf.
  - c. Secure access controls: Administrators can manage file sharing permissions system-wide, and document owners can share and revoke file access at any time.
4. Google Sheets: Manage spreadsheet data faster with click-to-edit charts and discussion style comments.
5. Google Slides: Create presentations together, embed videos, and never press save again.
6. Google Drive:
- a. Access Your Files Anywhere: Google Drive on your Mac, PC or mobile device (or your browser) gives you a single place for up-to-date versions of your files from anywhere. In addition to any file type you choose to upload, Google Docs are also stored in Google Drive.
  - b. Bring Your Files To Life: Share individual files or whole folders with individual people, your entire team or even customers, vendors and partners. Create and reply to comments on files to get feedback or add ideas.

- c. Buy What You Need & Grow Flexibly: Start with 5 GB of included storage for each of your users. Need more? For as little as \$4/month for 20 GB, administrators can centrally purchase and **manage up to 16TB (Yes, that's 16,000 GB!) of additional storage** for each user
7. Google Sites: Google Sites is an easy way to create secure web pages for intranets and team projects. No coding or HTML required.
- a. Organize information in a central place: Use Google Sites to centralize documents, spreadsheets, presentations, videos, slideshows and more to help keep teams organized.
  - b. Anytime, anywhere access: Google Sites is securely powered by the web, so you can access company pages from your desk, on the road, at home and on your mobile phone.
  - c. Works across operating systems: Google Sites works in the browser on PC, Mac and Linux computers.
  - d. System and site-level security controls: Administrators can manage site sharing permissions across the business, and authors can share and revoke file access at any time.

Y. Instant Messaging for Lawyers:

1. What It Is: Typically abbreviated as IM, this is a type of communications service that enables you to create a kind of private chat room with another **individual in order to communicate in real time over the Internet**. It's analogous to a telephone conversation but using text-based, not voice-based, communication. Typically, the instant messaging system alerts you whenever somebody on your private list is online. You can then initiate a chat session with that particular individual. IM systems often also include video (users can see each other via webcam), file-sharing/transfer capabilities, and phone (users can talk to each other using microphones connected to or built into their computers).
2. Why IM Is A Valuable Communication Tool: When you and your colleagues are spread out geographically, this can be invaluable (and it's typically free). For example, someone in one office might need a quick answer from someone in another office. It's often difficult to reach someone on the phone and email queries are easily lost among the torrent of daily incoming email that each person has to deal with. This is when instant messaging is the perfect solution. With one click, the individual who needs an answer can determine if the person they need to communicate with is online and available. If that person is available, the asking individual can pop his/her question up on the computer screen of the person who can answer it. As long as the recipient can type (even if they're on the phone), they can quickly reply without interrupting what

they are already doing. No phone call or email is necessary. One of our clients who started using IM commented:

"This is also critical when working with support staff who are working through issues on a phone call with an external party. By having access to the supervising attorney in real time, issues can be resolved immediately, rather than through several follow up calls or emails as questions go back and forth. I often use a paralegal in another office for litigation support and this has assisted me in working seamlessly with her, despite the fact that she is 45 miles away."<sup>16</sup>

3. Consumer-Grade IM: Common services include:
  - a. AOL AIM ([www.aim.com](http://www.aim.com))
  - b. Google Talk ([www.google.com/talk](http://www.google.com/talk))
  - c. IBM Lotus Sametime (<http://tinyurl.com/62nvm2>)
  - d. Microsoft's Live Messenger (<http://explore.live.com/messenger>)
  - e. Skype (<http://tinyurl.com/3hbdr7y>)
  - f. Yahoo! Messenger (<http://messenger.yahoo.com>)
  - g. Apple iChat (<http://tinyurl.com/3lxdld6>).
4. Secure IM Options: Some businesses elect to deploy a secure instant messaging system. These systems are typically closed (limited to intra-company communication only), secure and can be monitored. Options include:
  - a. Microsoft Lync: See <http://tinyurl.com/358j58j>
  - b. IBM Lotus Sametime: See <http://tinyurl.com/62nvm2>
  - c. IceWarp Instant Messaging Server: See <http://tinyurl.com/66roosj>
  - d. Cisco Jabber: See <http://tinyurl.com/65wqyf5>
  - e. Bopup Messenger from B-Labs Software: See [www.bopup.com/products/messenger](http://www.bopup.com/products/messenger)

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<sup>16</sup> Erin Stewart, attorney in the office for the General Counsel of the University of North Texas

- f. BigAnt: See [www.bigantsoft.com](http://www.bigantsoft.com)
  - g. Brosix: See [www.brosix.com](http://www.brosix.com)
- Z. Phone Answering: This isn't really a "cloud" service, but it *is* virtual. Some prefer an auto-attendant and some prefer a live human to answer their phones. Here are some options for phone answering services where real people will answer your phone:
- 1. Ruby: See [www.callruby.com](http://www.callruby.com). This service is typically rated #1 in the reviews I read on these things.
  - 2. TotalAttorneys:<sup>17</sup> From their site: Total Attorneys knows that it matters who answers your phone. That's why every virtual receptionist on the Total Attorneys team is thoroughly trained specifically to handle law firm calls. Our Chicago-based telephone answering service is flexible enough to handle any needs, including: Full-time answering service; After-hours coverage, including late-night; and Short-term coverage for holidays, office closure and staff leave.
  - 3. Instant Answering Service: See <http://tinyurl.com/cf38bvx>. This is a general answering service that has a sub-specialty of law firms.
  - 4. Attorney Answering Services: Alert Communications provides this service - see [www.attorneyanswering.com](http://www.attorneyanswering.com).
  - 5. Map Communications: See <http://tinyurl.com/83qybcj>.
  - 6. Hosted Receptionist: See <http://tinyurl.com/8yw4h99>.
  - 7. Grasshopper: See [www.grasshopper.com](http://www.grasshopper.com). This service is interesting because you get all of the benefits of a VoIP phone system and call management without buying any phones (it works with whatever phones you already have).
  - 8. VoIP Providers: Just about every VoIP provider offers some kind of call management feature.
- AA. Internet Faxing Services:
- 1. RingCentral: [www.ringcentral.com](http://www.ringcentral.com). With RingCentral, you get a toll free or local number; you can receive faxes on your PC, via email or with a mobile app; and you can send faxes via email or your PC from any application. Prices start at \$7.99/month for 500 pages and go up from there.

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<sup>17</sup> See <http://www.totalattorneys.com/services/virtual-receptionist/>

MOST POPULAR			CORPORATE PLAN
<b>Fax 500</b>	<b>Fax 1000</b>	<b>Fax 2500</b>	<b>Fax ProUnlimited</b>
500 FREE Pages included monthly**	1000 FREE Pages included monthly**	2500 FREE Pages included monthly**	Unlimited Pages** included monthly†
\$7.99 / MONTH*	\$19.99 / MONTH*	\$49.99 / MONTH*	\$39.99 / MONTH* Includes 2 fax numbers Add'l fax numbers \$4.99 / mo
<b>FREE TRIAL</b>	<b>FREE TRIAL</b>	<b>FREE TRIAL</b>	<b>CONTACT SALES</b>
<b>BUY NOW</b>	<b>BUY NOW</b>	<b>BUY NOW</b>	<b>1-888-389-0854</b>
5.9c for additional pages** Includes All Features	4.9c for additional pages** Includes All Features	3.9c for additional pages** Includes All Features	

2. Myfax: [www.myfax.com](http://www.myfax.com) - pricing shown below. Toll free number and faxes are emailed as PDFs attached to email.

BEST VALUE	MOST POPULAR	FAX MORE
Send 100, receive 200 free pages/month	Send 200, receive 200 free pages/month	Send 400, receive 400 free pages/month
<b>\$10</b> PER MONTH	<b>\$20</b> PER MONTH	<b>\$40</b> PER MONTH
<b>30 DAY TRIAL</b>	<b>BUY NOW</b>	<b>BUY NOW</b>

3. EFax: [www.efax.com](http://www.efax.com) - This is a more expensive option. Pricing shown below:

eFax Plus	eFax Pro
<b>Annual Membership</b> ⓘ \$14.13/mo. (Save 2 months)	<b>Annual Membership</b> ⓘ \$16.63/mo. (Save 2 months)
<b>Monthly</b> \$16.95/mo.	<b>Monthly</b> \$19.95/mo.
<b>Setup fee</b> \$10.00	<b>Setup fee</b> \$19.95
<b>Receiving faxes</b> 150 FREE pages every month! Then \$0.10/pg	<b>Receiving faxes</b> 200 FREE pages every month! Then \$0.10/pg
<b>Sending faxes</b> 150 FREE pages every month! Then \$0.10/pg	<b>Sending faxes</b> 200 FREE pages every month! Then \$0.10/pg

4. GreenFax: [www.greenfax.com](http://www.greenfax.com) - Includes a local dedicated fax number for receiving faxes in the city or area of your choice. Pricing is \$12.95 per month (billed quarterly). One time setup-charge: \$10.00. Plan includes 250 inbound pages received per month. Pages received in excess of 250 per month are billed at 3 cents per page.

5. MetroFax: [www.metrofax.com](http://www.metrofax.com). \$7.95/month for 500 total pages.
  6. Onebox: [www.onebox.com](http://www.onebox.com) - See their website for pricing information.
  7. faxZERO: \$1.99 per fax
- BB. Rent A Server: If you need a server, you certainly don't have to buy one. Now there are many companies from which you can rent a server which you access via the Internet. You can send them your programs and data and they'll set it up for you on one of their servers. Most of these companies also provide 24x7 technical support and data backup. Your applications are "streamed" to you so that you can use any computer, tablet or phone connected to the Internet to access your programs and data. The remote access associated with this is pretty amazing. Since these companies have their servers in data centers, the possibility that you'll lose access to your programs and data due to Internet or power outages is extremely remote. A few companies to consider:
1. ProCirrus - [www.ProCirrus.com](http://www.ProCirrus.com) (our favorite)
  2. MindShift - [www.MindShift.com](http://www.MindShift.com)
  3. RackSpace - [www.RackSpace.com](http://www.RackSpace.com)
- CC. Sharing Files Without A Server: If you just want to share files (word processor documents, PDFs, etc.) with others in your office, you don't need to buy a server and there are many ways to rent this capability. You have several solid, inexpensive options here.
1. Microsoft Office 365 or OneDrive for Business: OneDrive is Microsoft's cloud storage offering and it can be purchased as part of an Office 365 plan or separately. You get 25 GB for \$2.50/user/month which is accessible from virtually any phone, tablet or computer, Windows or Apple. For the OneDrive plans, see <https://onedrive.live.com/about/en-us/plans/>. I personally like this option the best.
  2. Google Apps for Business: This service is \$5/user/month or \$50/user per year and gets you 30 GB of online storage among other features. See your options here: <http://tinyurl.com/kcwt2fk>
  3. Dropbox Pro or Dropbox for Business: Dropbox Pro gets you 100 GB of storage for \$10/user/month and Dropbox for Business gets you unlimited storage for \$15/user/month (minimum 5 users). See this: <https://www.dropbox.com/business/pricing>
  4. SpiderOak Professional: This service offers complete encryption so thorough that not even SpiderOak employees can get to your data. For \$10/user/month, you get 100 GB of storage. See this for more: [https://spideroak.com/business\\_pricing/](https://spideroak.com/business_pricing/)

5. Syncplicity: See [www.syncplicity.com](http://www.syncplicity.com).
6. Box.com: [www.box.com](http://www.box.com)
7. Sugar Sync: See [www.sugarsync.com](http://www.sugarsync.com). This service offers online backup of your files and file synchronization among multiple PCs and smartphones. You can access your files anywhere you have Internet access thanks to apps for BlackBerry, iPhone and Windows Mobile.
8. ShareFile by Citrix: [www.sharefile.com](http://www.sharefile.com) - This is a fantastic service that allows you to create virtual "rooms" for others and share documents with them securely. You decide what rights each user has to the collection of documents. Simple and powerful.
9. TrueShare: [www.trueshare.com](http://www.trueshare.com) - Similar to ShareFile, a little less expensive, a little more difficult to use.
10. FileGenius: [www.filegenius.com](http://www.filegenius.com) - similar to TrueShare and ShareFile.

DD. Voice Over Internet Protocol (VoIP) Phone Systems:

1. Explanation and Benefits of Hosted VoIP: The following is from [www.VoIP-Info.org](http://www.VoIP-Info.org) which is the most succinct explanation I've come across:

Hosted VoIP: Hosted VoIP is another term for Hosted PBX. "Hosted" means to say that the hardware and PBX is hosted at an off-site location from where the VoIP telephone service is being used. An office can have VoIP telephone service that powers their phones in the office, but their PBX could be hosted at their VoIP providers data center, thus the term: hosted VoIP.

Benefits of Hosted VoIP: There are many benefits to using Hosted VoIP rather than a traditional phone system, or an on-premise VoIP system. The main benefit is cost- a Hosted VoIP system costs much less to set-up than an on-premise PBX. In many cases, there are no set-up fees for a hosted VoIP system. Hosted VoIP phone systems fall under operational expenditure rather than capital expenditure, which also make hosted VoIP systems attractive to businesses.

Another benefit to a hosted VoIP system over an on-premise PBX is that hosted VoIP providers will take care of all the set-up and installation, meaning you do not need to be a telecom or VoIP expert in order to get hosted VoIP.<sup>18</sup>

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<sup>18</sup> See <http://www.voip-info.org/wiki/view/Hosted+VoIP>



2. How VoIP Works: VoIP phone systems simply need an Internet connection in order to work. As such, anywhere you have an Internet connection, you can be connected to your office phone system. You can make and receive calls; calls can be transferred to you and you can transfer them to others; and voice mails are emailed to you as sound files so you can receive and listen to them anywhere. The list of standard features on VoIP phone systems are so long, you'll be shocked. Further, they're inexpensive.
  
3. Sample Budget: Here's a quote for a completely mobile phone system one of our clients recently obtained from [www.RingCentral.com](http://www.RingCentral.com):
  - a. Recurring monthly fees for 3 users (unlimited calls): ..... \$83.97
  
  - b. Phones & Hardware (one time fees)
    - i. Receptionist Phone ..... \$159.00
    - ii. User phones (2) ..... \$238.00
    - iii. Shipping fees ..... \$18.98
    - iv. Discount ..... (\$90.00)
    - v. Total one-time fees: ..... \$325.98

This includes a fancy receptionist phone and two other hard phones which can be used anywhere as long as they're connected to the Internet. Total cost per month is only \$83.97 and it doesn't change. Further, the foregoing service includes a softphone service which allows you to use your computer (Windows or Mac) or Android or iOS device as your office phone. It has an incredible array of features you can check out here: <http://tinyurl.com/mub5xak>

Having helped several clients get service from RingCentral, if you want to contact them, I'd recommend going straight to the incredibly helpful person I worked with there. Her contact information is: Narissa Rocha @ 800.372.7765 x 0187 or [narissar@ringcentral.com](mailto:narissar@ringcentral.com).

4. VoIP Providers: There are many other VoIP providers out there including the following:
  - a. RingCentral - [www.ringcentral.com](http://www.ringcentral.com)
  - b. Vonage - <http://tinyurl.com/onf25yz>
  - c. Proximiti - [www.proximiti.com](http://www.proximiti.com)
  - d. Vocalocity - [www.vocalocity.com](http://www.vocalocity.com)
  - e. Jive - [www.getjive.com](http://www.getjive.com)
  - f. 8 x 8, Inc. - [www.get8x8.com](http://www.get8x8.com)
  - g. PBXtra - <http://pbxtra.fonality.com>

- h. Hover Networks - [www.hovernetworks.com](http://www.hovernetworks.com)
- i. Easy Office Phone - [www.easyofficephone.com](http://www.easyofficephone.com)
- j. AVAD Technologies - [www.avadtechnologies.com](http://www.avadtechnologies.com)

EE. On Demand Office Space: If you don't want to pay for a full-time office, you can rent an executive office suite. If you are close to a metropolitan area, you probably have many choices with this. A good example is Regus ([www.regus.com](http://www.regus.com)) which is a national company. For a small monthly fee, you can have access to an office, conference rooms, mail service, phone answering and a variety of other services. For example, I just conducted a Google search on "executive office suites, Columbus, Ohio" and found literally dozens of options. There is also a fantastic website which allows you to search by metropolitan area for executive office suite options - see <http://us.instantoffices.com>.

## VII. SAVING MONEY ON BACK UP SYSTEMS:

A. Don't Cut Corners Here: This is not an area where you want to be cheap, but there are ways to protect yourself and not spend a lot of money.

B. Backup Device/System Options: We do NOT recommend that you rely solely on an Internet back up option. Instead, we recommend that your primary back up is on-site (either external hard drive(s) or network attached storage (see below)) and that you use an Internet option as a secondary backup. Here are a few suggestions:

1. External Hard Drives: There are external hard drives designed specifically as backup devices and this is our recommendation. They hold much more data than the REV drive described above (500 to 1,000 GB compared to 120 GB) and they are very inexpensive. The annoyance is that you have to unplug one of them and take it home with you every day (they need to be rotated so you always have one full backup offsite). Other than that, they're very fast and reliable. Look for at least 1 TB of storage and a 7,200 rpm drive. If your computer supports USB 3.0, Thunderbolt or FireWire, look for drives that will allow you to take advantage of the faster speeds those interfaces offer. There are many options.
2. **Network Attached Storage ("NAS"):** Without getting too technical, NAS is storage (usually an external hard drive) attached directly to your network rather than to an individual PC or server. The benefit is that all computers connected to the network can access the NAS regardless of which computers are on or off. Furthermore, higher-end NAS devices employ RAID (Redundant Array of Independent Disks). RAID is a configuration in which multiple hard drives are arranged so that data is stored across all of them simultaneously. Even though multiple drives are involved, your computer sees the RAID as a single drive letter on the network. RAID gives you better performance (surprisingly), capacity and reliability than a single large drive. There are **a number of different "levels"**

of RAID, including RAID 1 (straight mirroring when two drives both containing the same data) and RAID 5 (Rotating Parity Array - all data is distributed across all drives and there are at least 3). For a good explanation of RAID and what the levels mean, see <http://tinyurl.com/mmqrqf>. The main drawback of a NAS device is that you cannot really take it off-site. However, it can contain multiple backups of **your data and if RAID is employed in the device, it's extremely unlikely that you'll have a simultaneous crash of all** of the drives contained inside the NAS.

3. Internet Backup Options: This is becoming more and more common as a *secondary* backup method. Some use it as a primary backup but we recommend against this because internet connections frequently go down.

- Mozy Pro - <http://mozy.com/product/mozy/business>
- Mozy Home - <http://mozy.com/product/mozy/personal>
- CrashPlan - <https://www.code42.com/crashplan/>
- Carbonite - <https://www.carbonite.com/en/cloud-backup/personal-solutions/personal-plans/buy/>
- SOS Online Backup - <https://www.sosonlinebackup.com/>

No matter what you do, you must get a backup system. It is not optional. Losing all of your data can cripple your practice and cause you to commit malpractice. The risk is simply not worth it.

C. Recommendation Regarding Backup Hardware and Software: If you just want to make sure your laptop or desktop is getting backed up, it's hard to beat Carbonite's Personal Plus plan for \$99/year. Buy any external hard drive and Carbonite will back up your files to their secure cloud servers and make a full mirror of your internal hard drive on the external drive you connect at the same time. Further, it works in the background to make sure that everything is backed up and you don't have to remember to do anything.

#### VIII. PRINT, SCAN & FAX:

A. Generally: If you have the budget for it, you're better off buying a printer to print and a scanner to scan. However, if you need to save money, then a multifunction machine is a very economical option.

B. Printer Recommendations:

1. InkJets Are Expensive: For example, the HP OfficeJet Pro 8600 printer offers a high-yield (less expensive per page) cartridge which holds 53 ml of black ink and costs \$37. Therefore, you're paying 69.8 cents per milliliter (excluding taxes). Since there are 3,785.41 milliliters in a gallon, that black

ink costs \$2,642.22 per gallon. If you're trying to save money, then spending \$2,642 for a gallon of printer ink probably isn't a good use of your money. In case you're wondering, the color ink is \$6,235 per gallon. No, I'm not kidding.

2. On a Tight Budget, Consider a Multi-Function Machine: If you're on a tight budget, then it's hard to beat a multifunction or "all-in-one" machine. These machines will typically copy, print, scan and fax. The main drawback is that they tend to break down if you put a high volume through them. Whatever you do, avoid HP multifunctions based upon our experiences and those of our clients. Brother, Dell and Canon make good options.
3. Printing Considerations:
  - Keep in mind that your lowest cost per page is always going to be network printers designed for higher volume (or copiers which are also network printers). The highest cost per page is always going to be **personal printers (small, slower printers connected directly to a user's computer)**.
  - Unless you have a fleet of exactly the same type of printers, personal printers usually require you to keep several different toner cartridges in stock. This is annoying and expensive.
4. Recommended Personal Printer: Regardless of the cost, many lawyers want their own printers for convenience. If you're in that camp, then it's hard to beat the new Dell B2360dn monochrome laser printer. For only \$240, you get 40 ppm performance, the ability to print front-and-back simultaneously, Windows 8 compatibility, a built-in network adapter (wired), and for \$50, you can add wireless connectivity. It comes with a 1 year warranty and is one of the few small printers that offers warranty upgrades directly from the manufacturer (up to 5 years). Adding a 3 year warranty with on-site service is only \$60 more.
5. Recommended Network Printer: **You've got some choices here depending upon what speed you want and how much you're willing to pay.** Staying within the Hewlett Packard line, consider:
  - a. Dell B2360dn: See paragraph VIII.B.4. above.
  - b. HP P2055DN: Prints 35 ppm, network adapter & duplex printing - \$390 from [www.costcentral.com](http://www.costcentral.com) (part #CE459A#201)
  - c. HP M601DN: Prints 45 ppm - \$869 from [www.costcentral.com](http://www.costcentral.com) (part #CE990A)

- d. HP M602x: Network adapter, extra paper tray and two sided printing. Prints 52 ppm - \$1,407 from [www.costcentral.com](http://www.costcentral.com) (part #CE993A).
- e. HP M603xh: Network adapter, extra paper tray and two sided printing along with an internal encrypted hard drive for storing documents. Prints 62 ppm - \$2,315 from [www.costcentral.com](http://www.costcentral.com) (part #CE996A).

C. Scanner Recommendations:

1. Recommended Flatbed Scanners:

- a. Xerox DocuMate 3220: Scans 23 ppm, has a 50 sheet ADF and will scan color, b&w, and gray scale. \$308 from [www.amazon.com](http://www.amazon.com) - Mnfg. Part #XDM32205M-WU. Part number is the same in Canada, but the price is \$510 from [www.amazon.ca](http://www.amazon.ca).
- b. Fujitsu fi-6230z Scanner: Scans b&w one-sided (simplex) at 40 pages per minute or double-sided (duplex) at 80 pages per minute. Also capable of color scanning; and handles letter or legal sized paper. This scanner connects to your computer via USB 2.0. This scanner is small and quiet, handles color, black & white and grayscale. Best of all, it has a 100 sheet automatic document feeder (ADF). Comes with Kofax® VRS® Professional, Adobe® Acrobat® Standard, and ScandAll Pro. Part number PA03630-B555, \$1,307 from [www.costcentral.com](http://www.costcentral.com). Canadian part number is PA03630-B552 - \$1,281 from [www.pc-canada.com](http://www.pc-canada.com).
- c. Fujitsu fi-6240z Scanner: Scans b&w one-sided (simplex) at 60 pages per minute or double-sided (duplex) at 120 pages per minute. Also capable of color scanning; and handles letter or legal sized paper. This scanner connects to your computer via USB 2.0. This scanner is small and quiet, handles color, black & white and grayscale. Best of all, it has a 100 sheet automatic document feeder (ADF). Comes with Kofax® VRS® Professional, Adobe® Acrobat® Standard, and ScandAll Pro. Part number PA03630-B505, \$1,908 from [www.costcentral.com](http://www.costcentral.com). Canadian part number is PA03630-B502 - \$1,918 from [www.pc-canada.com](http://www.pc-canada.com).

2. Recommended Sheet-Fed Scanners:

- a. Fujitsu ScanSnap iX500 Sheet-Fed Scanner: Sheet-fed, scans 25 ppm simplex, 50 ppm duplex, no TWAIN driver, but comes with Adobe Acrobat X Standard and works fine with it. The US mnfg. part number is PA03656-B005 and it costs \$425 from [www.pcnation.com](http://www.pcnation.com). This scanner is both Windows and Mac compatible.

- b. Fujitsu Fi-7160 Sheet-Fed Scanner: Up to 60 ppm/120 ppm duplex black and white or grayscale. Rapid power up time in less than 4 seconds; large capacity 80 page feeder; plastic and embossed credit card scanning; long document support up to 18.3 feet; scan sticky notes, taped receipts, and labels while securing against multifeeds; innovative acoustic paper protection; Interactive, Multi-Line LCD Panel; Auto rotation, Auto size, Blank page removal, Auto color detection, and Assisted scanning features; TWAIN and ISIS drivers The US part number is (PA03670-B055, and it's \$875 from [www.amazon.com](http://www.amazon.com).
  - c. Fujitsu fi-7180 Sheet-Fed Scanner: Up to 80 ppm/160 ppm duplex black and white or grayscale. Rapid power up time in less than 4 seconds; large capacity 80 page feeder; plastic and embossed credit card scanning; long document support up to 18.3 feet; scan sticky notes, taped receipts, and labels while securing against multifeeds; innovative acoustic paper protection; Interactive, Multi-Line LCD Panel; Auto rotation, Auto size, Blank page removal, Auto color detection, and Assisted scanning features; TWAIN and ISIS drivers The US part number is (PA03670-B005, and it's \$1,514 from [www.amazon.com](http://www.amazon.com).
- D. Faxing Recommendations: See paragraph VI.AA. above.
- E. PDF Manipulation Software Recommendations: If you don't want to spend big bucks on Adobe Acrobat, here are some legitimate and less expensive competitors. Furthermore, you might be able to get Adobe Acrobat bundled with MS Office on a new computer or included with a new scanner.
- 1. Foxit PhantomPDF for Business: Very strong feature match with Acrobat Pro for \$129. Also includes a 30 day free trial. For more information, see <http://tinyurl.com/7ybcjwu>.
  - 2. Nitro Professional: Most of the features present in Acrobat Standard for only \$159. Has a free trial and you can buy it at <https://www.gonitro.com/pro>.
  - 3. Foxit Phantom PDF Standard: Strong match with Acrobat Standard for \$95. Free trial - for more information, see <http://tinyurl.com/74om7np>.
  - 4. Power PDF Advanced: \$150 - see <http://tinyurl.com/mseh79d>

## IX. WORD PROCESSING:

- A. Note Regarding Purchasing: It is almost always cheaper to have your office suite included with a new PC than it is to buy it after the fact. If you can't get your office suite included with the new PC you're considering, then buy your new PC somewhere that offers it.

B. Inexpensive Options:

1. Microsoft Office 365: Microsoft offers subscriptions for the desktop versions of MS Office. See paragraph VI.W. on page 26 for more information.
2. Apache OpenOffice (see [www.openoffice.org](http://www.openoffice.org)) - FREE!! - Includes the **following: WRITER is OpenOffice.org's word processor: use it for anything** from writing a quick letter to producing an entire book with embedded illustrations, cross-references, tables of contents, indexes, bibliographies... Auto-complete, auto-format, and real-time spelling check make light work of the hardest task. Writer is powerful enough to tackle desktop publishing tasks such as creating multi-column newsletters, brochures – the only limit is your imagination. Use CALC to bring your numbers under control. This powerful spreadsheet has all the tools you need to calculate, analyze, summarize, and present your data in numerical reports or sizzling graphics. A fully-integrated help system makes entering complex formulas a breeze. Sophisticated decision-making tools are just a few mouse clicks away. Pull in external data using the Data Pilot, and sort it, filter it, and produce subtotals and statistical analyses. Use previews to select from thirteen categories of 2-D and 3-D charts including line, area, column, pie, XY, stock and net with dozens of variants. IMPRESS is the fastest, most powerful way to create effective multimedia presentations. Your presentations will truly stand out with special effects, animation and high-impact drawing tools. DRAW will produce everything from simple diagrams to dynamic 3D illustrations and special effects. New to Version 2, BASE enables you to manipulate database data seamlessly within OpenOffice.org. Create and modify tables, forms, queries, and reports, either using your own database or **Base's own built-in** HSQL database engine.
3. Google Docs (<http://docs.google.com>) - free online word processor, spreadsheet & presentations.
4. Zoho Writer (<http://writer.zoho.com>) - free online word processor which I personally feel is even better than Google Docs.

- X. REMOTE ACCESS: There are many, many options for accessing the office computer systems or network remotely and this is extremely important for lawyers on the go. We'll focus on the particularly cost effective methods here. We haven't included this in our budget because remote access isn't mission critical. However, it is wonderful to be able to access your office computer from home or anywhere else. The best deal in this area is LogMeIn.com which is only \$60/year. If you need to be able to access a computer at your office when you're on the road, this is the best free option out there. It gives you the ability to easily control the mouse and keyboard of any remote PC. You can open remote files, check your email, run programs, run system diagnostics, access from any browser, access from wireless Pocket PC and it's all easy to use.
  
- XI. WEB MEETINGS/CONFERENCING: It makes little sense to waste time and money traveling around the city or country for meetings when you can often accomplish the same thing from your office via web meetings. These meetings usually do not involve web cameras so the others in the meeting can't see your face. However, they can hear your voice and see whatever you want to show them on your computer. This is often all you need for a successful meeting. Fortunately, you have a really good, free option in [www.Join.Me](http://www.Join.Me).



## Exhibit A Tech Leasing for Lawyers

Keeping pace while keeping your cash flow.

By Dennis Kennedy  
Oct/Nov 2004 Issue of Law Office Computing Magazine

Remember the first time you realized the reason your neighbor was driving a new BMW? It was not because he was embezzling money from his employer; it was because he was leasing it. Nowadays, we take for granted many people with new cars are leasing them, as attitudes toward leasing and the culture of ownership change.

The next time you notice an opposing party with another new notebook computer or a competitor law firm with all new hardware, you might be seeing evidence of the growing trend of technology leasing in the legal profession. The adoption of technology leasing by lawyers and law firms should not surprise you. Many small businesses lease technology as a common practice. As many as 80 percent of all businesses use or have used technology leasing to one degree or another.

### The New Popularity of Technology Leasing for Law Firms

Computer technology leasing is an attractive option because computer systems get outdated quickly. There are good reasons to keep pace with technological change. Experts consistently recommend replacing computers on a three-year schedule. After three years, the typical computer has little or no market value and no longer will be covered by warranty. Hardware costs, especially for servers, add up quickly. Large cash outlays for new purchases might be required.

All of these factors combined create a situation similar to the new car sales business before leasing became so prominent. As a result, many individuals started looking for comparable leasing opportunities for computer systems.

A new car lease is an excellent analogy when considering technology leasing. There are financial aspects of the decision — effective rates, time value of money and total costs, for example. There are economic considerations such as cash on hand and available credit. There are need factors — potential growth, future requirements, likely usage and more. Finally, there are some X factors — "moving up" to a platform you can't afford to buy, having newer and better equipment, meeting prestige or other requirements and simply getting what you want.

While some people can make the lease vs. buy decision purely based on financial factors, most of us will make the decision as a result of more complex considerations.

The good news is: 1) Many creative leasing options are available to small businesses and individuals; 2) one or more of these options might make good economic sense for you; and 3) the so-called "smart leases" or "value leases" extend the benefit of leasing by, in certain cases, letting you bundle hardware, software and consulting services into a single monthly payment.

If you strip the business of a law practice of all its subtleties, we ultimately are in a cash-flow business. The main goal of both a new firm and an existing practice is to reach and maintain a

positive cash flow. In that light, technology leasing deserves a close look as a way to spread out expenses and create a more predictable cash flow, while also offering the benefit of keeping you current on technology.

Leasing is especially attractive to law firms that want to stay closer to the cutting edge in technology. It smoothes out their cash flow and protects their working capital while avoiding large periodic expenses for new technology purchases.

### Technology as a Utility Cost and Other Financial Considerations

St. Louis-based legal technology consultant Bill Coplin explained the benefits of leasing a few years ago, and the same principles apply today. His approach goes to the root of the issue. He said leasing allows law firms to "fix their costs per seat" for technology on an ongoing basis. He further said, "All firms should begin to look at computer costs as utility costs and not capital costs." A lease allows you to stay at an appropriate level of technology for a set monthly cost you can budget for ahead of time.

However, the lease analysis often is far less sophisticated or subtle. Studies consistently show technology expenses have grown to roughly 5 to 6 percent of the average law firm's total expenses. At these levels, paying cash might no longer be a viable option.

Even firms that traditionally only pay cash or wait to purchase technology until the proverbial "good year" will look at leasing options once they see the dollars required for a purchase and factor in software, training, support and other services. Often those firms will relieve costs by cutting corners on other parts of the package — most often training — and not realize all the hoped-for benefits of a technology upgrade. This is being penny wise but pound foolish.

"Smart" leases give you a way to roll services, hardware and software into your monthly lease payment. This type of bundling allows a firm to consider an appropriate monthly cost of technology and aim a little higher on hardware, without cutting corners on training and support. For example, a bundled lease might even provide a way for a smaller firm to afford a high-level consulting firm, better software or a robust network infrastructure.

Can you just walk into a leasing company and expect to obtain a lease? Not necessarily. You still have to show credit worthiness. Be aware that some technology leasing companies might require more financials than a small or new law firm can provide. On the other hand, vendors such as Dell, Hewlett-Packard, Microsoft and others offer leasing options to their small business customers as a standard option and might prove to be better alternatives for certain firms. In each case, however, leasing companies and vendors probably will be more willing to work with you than traditional banks.

### The Leasing Mentality

In many law offices, the newest and best technology usually are the copy machines, which typically are the only pieces of equipment a firm is leasing. Lawyers, however, tend to think of computers as capital costs or as equipment they must own. Are copiers really so different?

A lessee is a user, not an owner. We often are caught up in the notion of ownership. However, in the case of the office itself, copiers and our cars, we are quite comfortable with leasing. Technology leasing requires a similar approach, or a "leasing mentality."

In other words, if you currently are leasing your car, you might be very receptive to leasing your computer. If, on the other hand, you are proud of telling people your car has 150,000 miles on it, and you have not yet noticed you tend to start out many conversations with "My mechanic was saying the other day ..." you might have more difficulty.

As a general rule, younger lawyers, lawyers starting a solo- or small-firm practice and those with small bank accounts will tend to have a leasing mentality.

## Leasing Advantages and Disadvantages

Advantages of leasing include:

- reducing your initial investment and capital expenditures
- spreading out your technology costs over time
- making your technology costs more predictable for budgeting and other purposes
- giving you favorable tax treatment in certain cases
- making it easier for you to upgrade computers and systems
- allowing you to bundle software and service costs into monthly lease payments
- reducing the impact on your cash availability and credit limits
- qualifying for a lease more easily than for a loan
- lessor handles disposal of old equipment
- better terms than those available for bank loans or other financing
- giving you the convenience of a one-stop shop.

Disadvantages of leasing include:

- not owning your equipment
- potentially larger total outlay of funds over the term of the lease
- cancellation fees that likely will apply if you want to get out of a lease
- onerous provisions that might not be applicable to your firm's needs
- financial viability of lessor might affect your lease arrangement
- making it too easy to add additional equipment
- not getting desired tax benefits if the lease isn't carefully crafted
- pricing, which might be based on prices substantially higher than what you could buy the equipment for
- high finance rate
- becoming "captive" to one provider in the case of vendor leases.

## Getting Your Toes Wet

Some law firms test out the idea of leasing with notebook computers before moving to leasing desktop computers. The duration of leases for notebooks is typically 18 to 24 months, while leases for desktop computers typically last 24 to 36 months.

Leases can be creative, customized and flexible. A leasing arrangement might involve a master lease schedule with a phase in of equipment. Another type of lease might allow you to add equipment on an as-needed basis and simply incorporate new items into the lease arrangement.

As mentioned previously, leasing companies, hardware vendors and some consulting firms can put together a package that includes hardware, software and consulting services into a single monthly lease payment. Some leasing companies, however, might require a fixed percentage of the lease to be based on the hardware.

Another good starting point to experiment with leasing is with a new network server. I know of several lawyers who received quotes for server setups they wanted, but the quotes greatly exceeded what they had set aside for their entire technology budget. Buying a server is far more complicated than simply buying the "box." As a result, firms often cut corners on memory, backup, redundancy and other important features when they make the initial purchase. More effort is spent trying to eke service out of badly outdated servers as replacement time approaches. Given the vital importance of stable and well-run networks to today's law firms, this approach creates vulnerabilities at precisely the place you want to be strongest. A lease arrangement for your server will let you experiment with the leasing concept in a limited way, but will allow you to take advantage of cost-spreading and other benefits of leasing to help you get the sufficient and reliable network infrastructure you need.

### End of Lease Options

What happens at the end of a lease? Despite the available purchase option, the purchase of three-year-old, heavily used equipment at the end of a lease term is relatively uncommon. Typically, a lessee simply will order new replacement equipment and have the lessor take away the old equipment. In other cases, the lease term is simply extended with the monthly payment maintained at the same rate for any new equipment. In effect, the lease never ends. The lessee typically will work out the various details and options for implementing a new technology package with a leasing company well before the lease term expires.

By working under a master lease agreement or by staggering the terms of multiple leases (sometimes referred to as "layered leases"), you can get new equipment when you need it, without ever incurring a large capital investment for purchasing equipment. In some cases, you might even be able to upgrade all of your equipment with no change in your monthly cash outlay for technology.

A lease also eliminates the growing concern regarding how to dispose of old computers properly. The leasing company will take back your computers and handle disposal. On the other hand, it's vital you have your data "wiped" or electronically "shredded" from hard drives before turning computers back to the lease company.

### Tax Issues

Leases, especially those that bundle hardware, software and services, raise a number of tax issues. I want to highlight two key points about taxes.

First, there are some significant tax consequences arising out of the different methods of leasing. I highly recommend consulting your tax advisor before entering into a lease, especially since tax laws relevant to the leasing decision have changed recently. One reason to use a computer leasing company is its expertise on tax issues and its experience and flexibility in structuring leases. As a general matter, you will want an "operating lease" rather than a "capital lease" and a fair market value end-of-lease purchase option rather than a \$1 end-of-lease purchase option. Bundling software and services into a hardware lease also might have significant tax consequences.

Second, calculating the relative costs of buying versus leasing requires you accurately consider the impact of taxes and the time value of money. Simply adding up the total of all lease payments and comparing it to the cash payment required will not give you accurate information with which to make a decision. In addition, changes in Section 179 raised the total amount of equipment that can be expensed in the first year of a business, which might lead to completely different financial conclusions for a start-up and an ongoing firm.

### Evaluating Leasing Companies

As I suggested above, entering into a leasing arrangement probably will result in a long-term business relationship. In doing your due diligence on a leasing company, look closely at:

- The length of time a leasing company has been in business and its reputation in the market.
- The leasing company's financial strength and credit worthiness.
- Does a firm keep its financial paper? A company that services its own leases is preferable to a lease broker.
- The expertise of the leasing representative.
- Make sure there are not hidden costs, such as closing costs, "documentation fees" or other service charges.
- The administrative abilities of the lessor, particularly its record of paying vendors on time. A leasing company with a bad track record with vendors might make those vendors less willing to work with you.
- Knowledge of the legal business. A leasing company with expertise and experience in the legal industry should be able to come up with more creative options and customize a leasing arrangement for you with a greater sensitivity to lawyers' concerns.

### Don't Cut Corners

Clients are putting pressure on firms to keep current with technology. Once a firm spends a significant amount of money on computers, there is a reluctance to make the same kind of cash outlay within a few years. As a result, firms have a tendency to hang on to outdated technology or to cut corners on training and support.

For existing firms, leasing offers a path to make those upgrades and maintain a good technology platform without making significant capital expenditures every few years. For new firms and solos, leasing offers a great way to reduce initial start-up costs, acquire enough technology to create a competitive advantage and create positive cash flow.

The advantages and disadvantages of leasing might result in firms reaching different conclusions for different technology at different times, so it's important to analyze the leasing option carefully each time and not make a permanent decision always to buy or always to lease.

In many cases, a mixed approach to buying and leasing will make good sense. The path to avoid is the one that doesn't consider any leasing at all. Technology leasing, including bundled arrangements, might be one of the wisest decisions you make for your law firm.

### Nine Leasing Tips

1. Consider the bundling option. Interestingly, a hardware vendor, a software vendor or a consultant each might have the ability to combine hardware, software and services into a single lease payment. Ask each of them what options are available.
2. A diversified approach makes the best sense. A combination of leases, purchases, durations and providers often will produce the best overall results.
3. If you are committed to certain providers, the convenience of dealing with one arrangement might outweigh other benefits of diversification for you, but be sure to revisit this issue from time to time.
4. Learn about leasing options from Web sites and other resources before you ask the vendor about them.
5. Proceed as if you will make a purchase and arrive at a final price before announcing you want to consider leasing to get a better price.
6. Leasing will work best for you if you use it as a way to upgrade and keep your technology current.
7. If you don't have a leasing mentality or can't see technology as an ongoing monthly cost of doing business, much like a utility, reduce your stress and stay in your comfort zone by continuing to purchase equipment. However, remind yourself you might give up competitive advantages by sticking to your old ways.
8. Keep in mind the powerful impact leasing can have on your cash flow and consider whether leasing will enable you to free up money for other needed investments, such as in people or marketing. What are the opportunity costs of using large amounts of cash for technology purchases? What else might you do with that money? Why not use leasing as a way to do both?
9. Make sure you understand the lease arrangement and that the lease agreement actually reflects what your agreement is.

### Key Terms In Leases

Once, when leasing a car, a salesperson asked me if, as a lawyer, I wanted some time to read all the provisions carefully. I asked, "Will we be able to change anything I don't like?" Sheepishly,

the salesperson said, "I really doubt it." In that case, I said, it probably would not be an effective use of my time to do a complete review of the lease agreement.

In some cases, you or your firm will have limited, if any, flexibility in negotiating a technology lease. In other cases, you might have enough leverage to get some concessions. Here are a few provisions to pay attention to:

- duration of lease — is it appropriate for the leased equipment
- total cost of lease and all additional charges
- cancellation options and penalties
- assignment provisions for both you and the lessor
- automatic renewal provisions
- permissible rate increases
- ability to exchange or update to more modern equipment
- service or maintenance charges or plans, especially mandatory plans
- contract language required for desired tax treatment.

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## CHAPTER SIX

**MARKETING ON A SHOESTRING/EFFECTIVE  
MARKETING STRATEGIES FOR A SMALL FIRM**

July 2016

**Leslie Meagley  
Meagley Strategic Marketing LLC**

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**LESLIE MEAGLEY** is a principal with Meagley Strategic Marketing LLC, a consulting firm that began in 2003 in response to the need to help professionals strengthen their marketing and business development programs and build profitable firms. Leslie's career includes both in-house and consulting positions as a marketing officer and strategic advisor to both professional service firms, as well as a legal tech company, MetaJure. From 2009-2013, Leslie she served as Director of Marketing with Perkins Coie. Prior to that time, she led the marketing department for Preston Gates & Ellis (now KL Gates) for almost eight years and spent six years as a shareholder of a public relations firm.

Leslie is the immediate past Board Chair of Seattle's Leadership Tomorrow (2013-2015) and a former Member at Large of the Legal Marketing Association International Board of Directors (2013-2015). She is a founding member and past president of the local chapter of that organization and a past president of the local chapter of the Public Relations Society of America. Leslie holds an MBA in marketing and finance from the University of Washington and a BA from Pomona College.

## **Marketing on a Shoe String– Effective Marketing Strategies for a Small Firm**

### **A. The Market Shift**

How legal services are delivered and marketed is changing radically, significantly and quickly. And, small and solo firms are on the front line. Lawyers used to be able to assess their competitive environment pretty easily...similar-sized firms providing direct services at an hourly rate.

But, no longer. Today's clients are downloading legal forms and connecting with attorneys for fixed fee services at any hour of the day.<sup>1</sup> Sometimes they engage with online providers like [LegalZoom](#) and [Rocket Lawyer](#) and sometimes with other lawyers and firms, including large ones like [Perkins Coie](#) and small ones like [MDFamilyLawyer](#). Clients are researching cases on the Internet, trying to solve their problems themselves, collecting impressions and ratings of lawyers from sites like [Avvo](#) and [Yelp](#), and choosing unbundled services that are delivered electronically.<sup>2</sup>

Despite this new kind of competition, opportunities abound for the small law firms and solo practitioners. Clients still need the expertise, consultations and personalized advice that lawyers provide—assuming you understand how today's clients think and act. That means delivering legal services and advice how and when clients want and need them and marketing to them where they read, listen and hang out. For example, paying to be listed in the Martindale directory makes little when most prospects simply look up a lawyer's bio on her firm's website or on LinkedIn to determine if she has the relevant experience needed to address a specific problem. On the other hand, including checklists, fact sheets, glossaries and other helpful information on your website can be very productive.

That's why the most effective marketing strategies are those aimed at developing trusted relationships with targeted clients and referral sources, both online and offline. And because no two clients are exactly alike, it means keeping an open mind about the best ways to build those relationships, recognizing that doing so requires a little creativity, discipline and hutzpah. It also may take a little experimentation for your firm to get it right. But once you do, the payoff is personally and financially rewarding.

"Marketing on a shoe string" therefore isn't about being cheap (though, sometimes that helps!), it's about putting your time and money where you can expect the most return.

### **B. Pay Attention to the Three Fundamental Marketing Principles**

***1. Effective marketing programs are based on a deep understanding of your legal customer***

From your buyer's point of view, hiring a lawyer is a big risk. Legal services are costly and often intangible. A client's job, property, relationships or entire future may be on the line and she or he wants certainty that his or her lawyer will solve his/her problem - a certainty that lawyers cannot provide.<sup>3</sup>

How do clients get around those concerns? First, they look for a lawyer or a firm with a deep understanding of their legal issue(s) and who has the capabilities to do their work. They want someone who's competent and experienced with their specific problems. Knowledge, approachability, and reputation are key to whom they hire.

Second, they want a lawyer whom they believe will look out for their interests or the interests of their company. They want someone who understands their pain points; knows what keeps them up worrying at night. Most of all they want a lawyer who can help reduce or limit that pain and who communicates regularly and openly with them whether the news is good or bad. Chemistry, authenticity, and integrity are critical to their decision. It's personal to them.

So, Marketing is about two things:

1. **STANDING OUT** from the crowd. You must make it into the client's awareness and stand out from your competition. And, that takes an intimate knowledge of your client.
2. **Building TRUST**. That's why so much business comes from relationships and referrals.

## ***2. Identifying your legal niche is essential to efficiently spending your marketing time and effort***

It's important to identify and stay focused on your niche. First, buyers of legal services expect you to be competent in a particular area, not in many areas. A reputation for expertise and knowledge in a specific area boosts your credibility. Second, remember the old advertising rule: clients need to hear a message dozens of times before it sticks. It takes time to build a reputation and the more targeted you can be, the faster it will happen. Finally, a focus gives you an idea as to who your prospective clients are, what industry groups they belong to, what blogs or publications they read and who the thought leaders are. It can take up to two years and multiple connections to develop a true relationship. Establishing a niche will help you pinpoint the people you need to target and stay focused on the activities to cultivate those relationships.

Your niche can be a geographic or practice or industry area. For example, you could be a litigator who only focuses on the oil & gas industry; or an IP attorney who serves healthcare clients, etc. or a general practice attorney who serves the needs of your small community.

How do you go about selecting a niche for yourself or your practice? Here are some ideas:

- Go with what you know or are passionate about. Your passion will come through in all you do.
- Look for new, emerging industries like medical devices or wind energy, or even longstanding industries like crop science, where the rules and regulations are still being developed or are evolving quickly. These fast-moving areas are often places where a lawyer can come up to speed quickly, become a go-to resource for clients and create opportunities to position yourself as a knowledgeable leader.
- Fill a certain economic niche, like developing a family law practice focused on serving high net worth individuals in complex matters.
- You could also define a niche along geographic lines, say, to position yourself as the premier advisor on issues related to family-owned businesses in the Yakima Valley.
- Finally, it also pays to think about the competitive landscape. If there is a very well-known boutique in your part of the state that is completely focused on water rights and they own the majority of the work in your market, consider a different niche.

The bottom line is: Be known for something. <sup>4</sup>

### **3. *It is far more efficient to develop business from existing clients than gather new ones.***

That's why delivering great service, and particularly unexpectedly great service, is at the heart of every successful practice. Today's clients expect that you will respond quickly to their emails and calls, as well as communicate with them politely and respectfully. They also want you to be proactive about helping them manage their expectations, which means taking the time to help them understand costs and how a case will unfold.

But, there are always a few things that will get people talking about you, little things that surprise and delight clients, and that improve relationships. In some internal research, Avvo reported two strategies that stood out for today's clients:<sup>5</sup>

1. Anticipating needs and addressing them. This can be accomplished quickly and generally at little cost. Whether related to their case or on a personal level, proactively reaching out to clients about future issues or sending hand written thank you notes, emailing links to articles or events that particularly interest them, supporting their special projects, etc. can go a long way for you.
2. Providing services on demand that result in fewer office visits and more use of technology to support communications. For many small and solo practices, changing one or two ways in how you serve your clients (such as offering online forms; offering to review a document; legal help lines; unbundled services, fixed fees/flat rates, etc.) will help you stand apart in ways that truly delight – and often surprise--your clients. See “Encouraging referrals from your existing clients” below for more ideas.

### **C. What HAS Changed: Buyers of Legal Services Function Like Consumer Shoppers**

How people shop online for consumer products has carried over to how they shop for legal services. Here are some statistics about buyers of all services from GNGF:

- 97% of consumers research their purchases and local services online before they fulfill that at a local business
- 85% of consumers read online reviews for local businesses<sup>6</sup>

Avvo's research released at their annual [Lawyernomics](#) conference early this year confirms this pattern:

- 42% of consumers research their legal issue online
- 31% research lawyers online
- While 25% get referrals from friends/family, almost half of them (45%) still research lawyers online. Typically, if someone receives a referral, they'll Google the name immediately – often from their phone, then decide what step to take next.<sup>7</sup>

Perhaps even more interesting, 37% try to resolve their situation first themselves when an issue arises. With so much information available on the Internet, consumers now have a multitude of options for finding answers to their questions – from free advice to forums, forms, fixed fee consults, etc. The number of people researching information about their legal issue is climbing and will continue to grow. No wonder Do It Yourself legal services are so popular. (In fact, according to this research, “1 in 5 legal consumers believe that, with enough research, they can know what a lawyer knows.”) While this statistic can be somewhat daunting, of those 37%, 25% of those people ultimately do end up hiring an attorney to resolve their issue.

What does this mean to today's lawyers?

- First, you need to invest marketing time in developing your reputation as a thought leader, as well as expanding and deepening relationships both online and offline. Luckily, taking a strategic approach to both means your efforts in one arena will boost your presence in the other. And, that means you want to pick just a few strategies and do them well.
- And, second, technology has created new opportunities and expectations for how you deliver your services. And those can be key to your success.

### **D. Your Best Online Marketing Investments**

Today, your online presence includes your website, plus everything you publish, information others create about you, directory listings, review sites (Yelp, Avvo, Google+, Facebook, BBB, and Best Lawyers), LinkedIn comments and much more. The question every firm faces is where to focus.<sup>8</sup>

Your goal is to ensure that your information is showing up at the right time in the right place whenever someone searches for the type of work you offer. That means you are on the first page of the search results. Top influencers include:

1. Your website. Your site is the place to communicate specifically and clearly who you are and the work you do.
2. Directory listings. Directories help Google (and potential clients) see that you are a reliable business. The top three for lawyers are:
  - a. Google+
  - b. Avvo
  - c. Yelp
3. Your LinkedIn profile. For business lawyers, in particular, this is important.
4. Your posts on blogs and forums that demonstrate your knowledge to the potential clients you are trying to reach.

### **E. Your Best Offline Marketing Investments**

Despite all the attention to online marketing, in-person networks and reputations are still the foundation of every practice.

#### **Relationships build slowly**

It can take years and many contacts to go from making a first impression to working with you. In fact, studies suggest 80% of buying occurs between the 5th and 12th contact.<sup>9</sup> That is why it is important to focus on a few areas and a few people with whom you want to develop relationships. If you do too much too soon, you may have trouble keeping up the consistency in months 3 or 4. Whatever you decide, be intentional.

For example:

- You might send a LinkedIn request to someone you meet at an industry event the day after you are introduced.
- Several weeks later, you might forward a blog post on a topic relevant to something you heard together at the event or that pertains closely to their business.
- A month later, you could invite that person to an event at your firm, or arrange a coffee to talk shop.
- From there you might introduce them to someone you know who might be an asset to their business.
- Etc.

#### **How do you get started?**

Here are a few suggestions:

1. Bar groups are good place to begin, if you are just starting out or need to establish yourself as well regarded in your area, or if your practice depends on referrals from other attorneys. But, don't spend all of your time here.
2. Discover the industry, trade or special interest groups that align with your niche and get involved. You just may be one of the few lawyers in the room.

- Focus on building relationships first. Don't sell. Tell people, "I'm here to learn the industry so I can better represent my clients" and mean it.
  - Join a committee to become visible.
  - Work toward becoming a leader as this will put you in direct contact with other leaders and decision makers who could become future clients or referral sources.
3. Offer to write for their blogs, publications, participate on panels and speak at their conferences or seminars.
  4. Research who the opinion leaders are in your space. Find ways to collaborate with them at conferences, co-authoring articles or inviting them to be a guest contributor on your blog or newsletter. This kind of association positions you as a thought leader, as well.

### **Encouraging referrals**

Whether you are looking to encourage referrals from other professionals or from your clients, the true secret to building a strong network is 1) listening to their needs and then 2) helping them build their business or solve their issues. Give more than you receive. Here are some ideas to get you started:

#### **From your existing clients<sup>10</sup>**

- Always strive to exceed expectations delivering your services
- Take a deep interest in your client's business and who their ideal client is. Then look for people you can refer to them.
- Organize networking lunches where you and your client bring a guest
- Have a plan for each client so they hear from you monthly
- Make it easy for your clients to share information about your practice. Encourage them to pass along your blog posts or articles to others they think might also appreciate the information.
- When you come to the end of an assignment, hold a review meeting. Happy clients are nearly always happy to help with introductions. This is a great time to thank them, let them know you are growing your practice and tell them to feel free to pass along your name, should they know friends or colleagues needing the same type of service.

#### **Building your network<sup>11</sup>**

David Freeman is one of the well-recognized national consultants focused on lawyers. Here are tips from him for developing your referral base:

- Identify your favorite areas of practice
- Identify the companies and people who refer work or hire counsel in those areas
- Get specific contact information (name, position, phone, email) for key decision-makers
- Develop a context for reaching out to build or deepen relationships by demonstrating value and expertise
- Start with people you know

- Get introductions to people they know
- Note that contexts could include research you can share, documents you can review, presentations you can give, roundtables or programs you can invite them to, groups you want to form, visit on site, etc. This is not directly soliciting their business.

### **F. Maintain Your Momentum with a Plan**

I'm a true believer in having a written plan to keep you focused. As you've seen, to be successful you need to be consistent and relentless in your marketing. It's far too easy to become distracted by the next "shiny" technology and having a plan can help you know what is important to do every day. Here are some suggestions to help get started:

1. Have measurable goals
2. Do some business development every day
3. Create a strong "elevator speech" -- a few sentences to intrigue someone to ask more about your practice and that you can tell them in the time it would take to ride an elevator together
4. Create metrics for yourself:
  - Regularly ask your clients for feedback, make any needed changes, continue to innovate and track their responses.
  - Track where your clients are coming from and why. That will give you the data you need to know where to focus future efforts. Focus on repeating your success.

Finally, as Harry Beckworth wrote in [Selling the Invisible](#), "For all the art and science of marketing—much of growing a business is where you happen to sit on a flight to New York one afternoon...Just get out there. Get in opportunity's way. Let it hit you."

# # #



## References and Resources

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<sup>1</sup> Robert A. Young, Esq, from the paper published following Managing Partner Forum 2016 – “Competing in a Changing Marketplace” *Available at:* <http://www.managingpartnerforum.org/tasks/sites/mpf/assets/image/MPF%20FEATURED%20ARTICLE%20-%20Competing%20in%20Changing%20Marketplace%20-%20YOUNG%20-%2006-9-16.pdf>

<sup>2</sup> Consider that:

- [LegalZoom](#), the leading provider of online legal services, has served more than two million customers since it began 15 years ago
- [Avvo](#) now provides fixed-fee legal services online, including, for example, reviewing a consulting or prenuptial agreement (\$149), starting a single-member LLC (\$595), or filing an uncontested divorce (\$995).

In fact, according to the ABA’s Commission on the Future of Law Services, online legal services are valued today at approximately \$4.1 billion. See footnote #14 in the Managing Partner Forum paper referenced above.

<sup>3</sup> See David Maister, “How Clients Choose” 1991 *Available at:* <http://davidmaister.com/articles/how-clients-choose>

<sup>4</sup> From Remarks by David Bowerman, Director of Business Development, K&L Gates, Seattle as part of a presentation, “Getting Your Practice Known: Practical and Ethical Practices,” WSBA Legal Lunchbox Series, April 29, 2014

<sup>5</sup> From a presentation by Sachin Bhatia at Evolve Law in Seattle, “Darwin Talk: KPIs for the New Legal Customer”, April 21, 2016 <http://evolvelawnow.com/videos/>

<sup>6</sup> Jabez LeBret, Advanced Marketing Tactics for Law Firms, LexisNexis Webinar July 22, 2015 *Available at:* <https://www.youtube.com/watch?v=-qHHj2oS80c>

<sup>7</sup> Nika Kabiri, “Sink or swim: How to adapt to the New Legal Consumer”, *Available at:* <http://lawyernomics.avvo.com/client-relationships/adapting-to-the-new-legal-consumer.html>

<sup>8</sup> Note that much of the information below is from Jabez LeBret, Advanced Marketing Tactics for Law Firms, LexisNexis Webinar July 22, 2015 *Available at:* <https://www.youtube.com/watch?v=-qHHj2oS80c>

<sup>9</sup> David Freeman’s website is full of excellent information. <http://www.davidfreemanconsulting.com/client-development-tips/#growyournetwork>

<sup>10</sup> From Remarks by David Bowerman, Director of Business Development, K&L Gates, Seattle - From “Getting Your Practice Known: Practical and Ethical Practices,” April 29, 2014, WSBA Legal Lunchbox Series

<sup>11</sup> <http://www.davidfreemanconsulting.com/client-development-tips/>

# From Shoe String to Top String

LESLIE MEAGLEY  
JULY 22, 2016

## It's a **NEW** day

---

- **2** drivers
- What's changed and what hasn't
- **6** offline and online strategies
- Examples





# Today's legal buyers

## WANT...

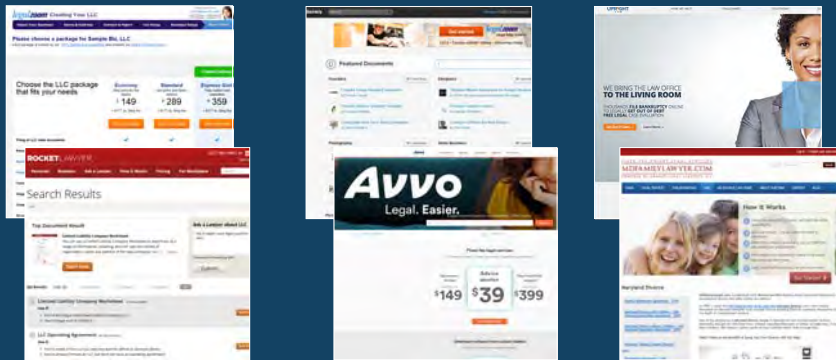
- Cost-effective legal services
- Convenience
- Lawyers who care about them

## AND...

- Active involvement
- That's technology-enabled
- Who can help them when stuck

The screenshot shows the 'Law Sites' website, which is a directory of legal technology startups. The page features a navigation bar with links for HOME, ABOUT, CONTACT, ADVERTISE, and LEGAL STARTUPS. The main content area is titled 'Legal Startups' and includes a brief introduction and a table of startups. To the right of the table are two advertisements: one for 'mycase' offering online client payments, and another for 'synchrony' offering high-yield savings at 1.05% APY. At the bottom of the screenshot, there is a blue banner with the text 'New Competitors - Legal Tech'.

Company	Description	Country	Status
lymesol.5th Blvd			
Maatram Technologies			
Maatram			
MaatramCooperty	An all-in-one platform for the planning and real estate community covering Toronto and the Region of York	Canada	
matterEaze			
MatterMap	Client and Matter Management		
MatterMap	Life is complicated. Managing your law firm shouldn't be. Welcome to Matter: legal practice management that works just as hard as you do.	U.S.	
Mataaz	Automated document & email management developed by lawyers for law firms & departments.		
matricoon			
Mattie			
MataaIn.com Inc.			
Matty	Mighty connects plaintiffs awaiting a fair legal settlement with the financing they need to continue living their lives.		
Minecast			
MineCRM			



Automate – Connect – Displace

The New Landscape

What's a lawyer to do?

6 Strategies

# #1

## Know Your Target

Understand their

- Demographics
- Industries
- Influencers

Clients want

- ✓ Competency
- ✓ Chemistry

# #2

## Narrow Your Niche

A focus

- ✓ Boosts your credibility
- ✓ Makes repetition easier
- ✓ Improves your ability to target

Include

- Geographic area
- Practice areas
- Industry areas

# #3

## Delight Your Clients

Take care of the basics

Then, be proactive

- Anticipate & address their needs
- Make their experiences easier
- Ask for feedback and act on it

# #4

## Build a Strong Online Presence

Priorities:

- ✓ Website
- ✓ Profiles & reviews
  - Google+
  - Avvo
  - Yelp
- ✓ LinkedIn
- ✓ Other social media



## ✓ Your Website

---

Strong brand

Call to action

Show you know your clients' problems

- Cases, testimonials
- Your bio

Mobile is critical

## ✓ Profiles & Reviews

---

Claim your profiles

- Google+
- Avvo
- Yelp

Review - tips

## ✓ Social media

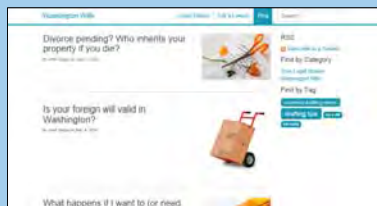
**67%** of GCs use LinkedIn as their “go to” network



Greentarget / Zeughauser

## ✓ Blogs & Forums

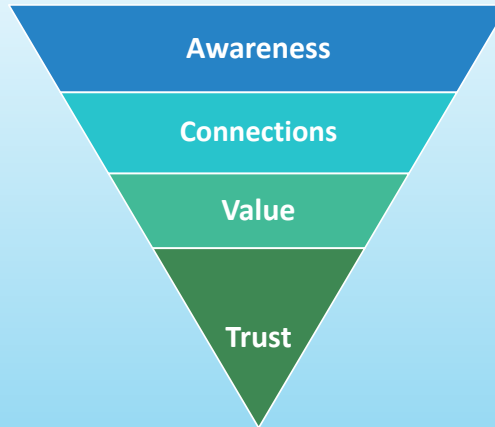
**53%** GCs believe quality blogs influence hiring decisions



**54%** B2B BUYERS follow discussions to learn more about their purchase

# #5 Build your network

Take the long view



Focus on key people  
Be intentional

## √ Getting started

---

1. Pick an Industry or Trade group
  - Year #1 - build relationships
    - “I’m here to learn the industry so I can better represent my clients.”
  - Join a committee & become visible
  - Offer to write for publications
2. Get to know “opinion leaders”
3. Read industry publications, blogs

## √ Networks & relationships

### INDIVIDUAL RELATIONSHIPS

- Help on business issues
- Send interesting articles
- In-house seminars
- Sports, music, civic events
- Lunches or dinners
- Social Media

### NETWORKS

- Receptions, dinners
- Conferences & Seminars
- Boards
- Civic/Community Projects
- Bar Activities
- Industry Groups
- Social Media Groups

## #6 Write Your Plan

### Just 1 or 2 pages

1. Measurable goals
2. Metrics
  - Client feedback
  - Where your clients come from
3. Strategies
4. Elevator speech

# New Approaches to Legal Practice

The screenshot displays the website for the Law Offices of Peter N. Brewer. At the top, the firm's name and tagline "Real Estate Law - From the Ground Up" are visible, along with social media icons and a "ACCEPTING PayPal" badge. A navigation menu includes Home, Blog, Practice Areas, Testimonials, Firm News, Payments, and Contact Us. The main content area features a "Meet My Law Firm" video player with a play button and a "Peter Brewer Esq." profile picture. Below the video, a text box describes the firm's expertise in real estate law. To the right, a "Do You Have a Dispute?" form asks for contact information (First Name, Last Name, Email, Phone) and a brief case description, with a "Submit" button. A "Brewer Firm Monthly Newsletter" subscription form is also present, asking for the user's first name.

Law Offices of Peter N. Brewer  
Online Intake and focused referral network

**WASHINGTON WILLS**  
the free online library to help residents of Washington state draft their own last will and testament

**WRITE A DOCUMENT**  
Write your own simple will and other basic estate plan documents with our free forms and instructions.  
[Get Started](#)

**GLOSSARY**  
Look up the meaning of the legal terms you'll commonly encounter in Washington wills.  
[Find a Word](#)

**ASK A LAWYER**  
Send an email to the lawyers at Vicesimon with your legal questions.  
[Contact Us](#)

**OUR BLOG**  
Read the latest updates, stories, and perspectives from the Washington Wills crew.  
[Read the Blog](#)

**GET UPDATES**  
Sign up for email updates about new free model forms, instructions, and more.  
[Sign Up](#)

**Washington Wills**  
DIY form with instructions, online legal library, conversations

**SOUND IMMIGRATION**  
Working with us - Resources - For lawyers - [Ask a question](#) - [Book a consultation](#) - 253-293-3170

**Immigration made easier.**  
That's why we're here. This firm was built from the ground up to make your life easier. Our clients are busy people who don't have time to waste.  
Use our secure client portal to work with your immigration lawyer without ever leaving home. Or meet with us at our convenient Tacoma or Bellevue locations. Let us worry about your immigration case so you don't have to.

**Ask a question of our experienced immigration attorneys:**  
Ask a question  
First Name \*

**Explore our many immigration law resources**  
[Citizenship](#) [Removals & Appeals](#)  
[DACA](#) [I-Visas](#)  
[Employment \(E-Visas\)](#) [U.S. Border Entry Requirements](#)

**Sound Immigration**  
Online communications, case management, webinars

## Monday Morning 10...

---

1. Describe your niche
2. Identify your ideal client
3. Review your website
4. Claim your Avvo, Google+, Yelp profiles
5. Complete your LinkedIn profile
6. Set up feedback lunch with your top 3 clients
7. Ask 3 or 4 clients which blogs/pubs they read & subscribe
8. Attend an industry or trade group meeting
9. Find out where your clients are coming from
10. Start your plan

Thank you.

LESLIE MEAGLEY  
JULY 22, 2016

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## CHAPTER SEVEN

**IT'S TIME FOR A CHANGE –  
BETTER METHODS FOR DRAFTING COMPLEX DOCUMENTS**

July 2016

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# It's Time For A Change - Superior Methods for Drafting Complex Legal Documents

I. LEGAL DRAFTING METHODOLOGIES: There are six primary methods lawyers utilize when drafting documents. They are broadly classified as follows:

A. Find, Rename and Modify: When creating new documents, most lawyers simply start with the last document they created for a similar client and then modify it (cut-and-paste, search-and-replace) to suit the new client. Although this is the most common approach, it has several significant disadvantages:

1. High Margin for Error: The margin for error (and therefore malpractice risk) arises from the fact that Find, Rename and Modify is unstructured, relies on memory, assumes the word processor will "catch" all of the items in need of replacement and requires many steps. Memories fail, word processors don't catch everything and more steps create more mistakes and slower drafting.
2. Slow: Transcribing voice recordings or hand written notes and cobbling together provisions from other documents makes the process slow.
3. Errors of Omission: It's easy to leave something out you should have added to the starting point document.
4. Errors of Inclusion: It's easy to leave something in that you should have taken out.
5. Compromised Documents: In adversarial areas of practice, it's likely that the last document you drafted of a particular type was compromised during the negotiation process. Unless you have a photographic memory and can recall every single change that was made, the document you're starting with is fundamentally flawed.

As a result of the foregoing, Find and Fix is characterized by disorganization, mistakes, and inefficiency; and should be avoided whenever possible. This seminar is all about good alternatives to this approach.

B. Gold Standard Templates: A much better approach than "Find, Rename & Modify" described above is to pull together the best of what a law office knows into precedent forms. These forms are thereafter always used as the starting point when drafting new documents. The Gold Standards identify changeable text and contain every optional provision in the order they could occur, fully annotated. How to build these Gold Standards and the benefits of this approach are more fully described in Chapter III on page 7 below. This approach is vastly better than Find, Rename & Modify and costs nothing but time to create.

- C. Gold Standards + Word Processor Automation: Some lawyers take the Gold Standards they've built and then improve them by adding in automation features available in their word processor (typically WordPerfect or Word). This can mean utilizing merge functions, "prompt" or "fill-in" fields, macros to expedite the insertion of optional language, and/or better use of Word's AutoText or Quick Parts features or WordPerfect's QuickWords feature. It's fairly easy to create templates and utilize the tools that Word or WordPerfect provides you for automating those templates. Automating the fill-in of names and the like is fairly easy. However, unless you're a programmer, gathering lists (beneficiaries, trustees, personal representatives, etc.), making language conditional and calculating things (such as he/she, him/her, verb conjugation, list punctuation) is extremely difficult, particularly in MS Word. This approach also assumes that you have a mastery of your word processor and know, for example, how to utilize automatic paragraph numbering, auto-calculating cross references, automatic tables of contents and other higher-end features. If these things aren't built into your templates, then you end up spending a lot of time wrestling with formatting issues and paragraph numbering which can significantly off-set any efficiencies you may have otherwise gained by utilizing word processor automation features. Having said all of that, you should be utilizing this approach at a minimum. This approach is far superior to Find, Rename and Modify and a nice improvement on Gold Standards.
- D. Gold Standards + Case/Matter Management Software: Case Management software primarily aids lawyers in organizing case information and items related to a case like documents, emails, and phone calls. A sometimes overlooked fact is that most case management vendors offer integration options for your Word or WordPerfect templates. In Amicus Attorney, Practice Master and Time Matters, for example, you can store your templates within the case management system. When a document is created within a specific matter, the equivalent of merge codes grabs key information (client names, pleading captions – indeed nearly any of the case related database fields). For high volume practices such as Social Security or Workers Comp, a library of word processing templates with linked case or document management fields can streamline workflow, and make document generation take just seconds.
- E. Subscription Drafting Systems: Having become frustrated with the inefficiency of Find, Rename & Modify, or the amount of time necessary to develop and maintain the Gold Standards or the Gold Standards Plus approaches, some lawyers simply subscribe to a commercial system.

Subscription systems are widely divergent in terms of sophistication. For example, there are estate planning drafting systems which enable the user to generate incredibly complex, customized documents which are valid in all 50 states. On the other end of the spectrum, I have seen systems which are nothing more than the most basic and simple forms with fill-in-the-blank technology. In my experience, **there's no real link between price and sophistication when it comes to subscription systems. I've seen powerful systems that are fairly inexpensive; and I've seen simple systems that are pricey.** Most Subscription Drafting Systems contemplate that you enter information about your client and in return, the system generates customized documents for that client. Some work in Word or WordPerfect; and

some utilize their own custom-built word processor environment. Examples of these systems would be IndianaDocs<sup>1</sup> or Wealth Docx<sup>2</sup>

F. Gold Standards + Document Assembly Software: Finally, some will take the Gold Standard Templates approach and raise it to another level by utilizing third-party document assembly software in conjunction with their word processor. In effect, these individuals are creating their own commercial drafting systems. In fact, many of the Commercial Systems available are exactly that: a combination of Word and/or WordPerfect and a home-grown or commercially available document assembly program.

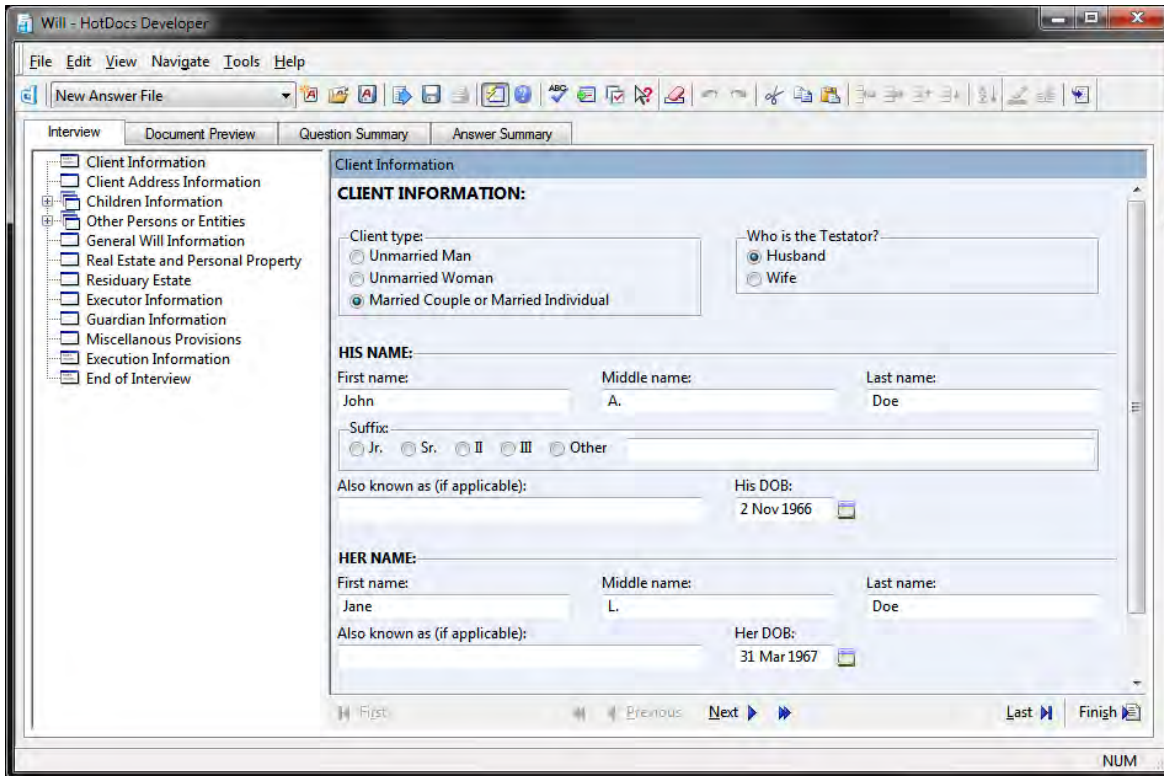
1. What Is Document Assembly? Most document assembly programs integrate with your word processor and enable you to create sophisticated templates. Those templates typically generate an interview (series of questions) presented to the user. Upon answering the questions, a customized document is instantly generated. In addition to simply filling in blanks, document assembly programs support conditional logic (i.e., include the guardianship paragraph if the client has minor children or adult disabled children), infinite lists, and the ability to calculate text, numbers and dates.

The on-screen interview is quite powerful because the template designer can control everything about the sequence and content of the interview. With practice, you can reproduce your entire decision tree in the template and build in safe-guards that walk even novice users through the assembly process. An example of how an interview looks is shown below:

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<sup>1</sup> See <http://www.inbar.org/?page=IndianaDocs>

<sup>2</sup> See <https://www.wealthcounsel.com/software-for-attorneys/wealthdocx>



2. How It Works - Big Picture: Using HotDocs as an example, the program allows users to replace changeable text with variables (i.e., «Testator Name», «Testator Street Address»), make the inclusion of text (words, sentences, paragraphs, etc.) conditional, gather (infinite) lists, and automatically calculate dates, text and numbers.

By "lists", I mean that the template can gather and process multiple records. This is particularly important with legal documents because there are almost always parties and you never know how many there will be. For example, in a deed, you have grantors and grantees. There could be more than 1 of each. In estate planning documents, there may be multiple children listed, executors/personal representatives, beneficiaries, guardians, or trustees. All of those things are lists. Good document assembly software lets you enter as many parties as necessary and based upon how many you enter, the template will produce correct language. For example, depending upon what the user enters into a list of children in a Will, the document may say:

"Barron Henley has no children." or

"Barron Henley has one child, Ariel, age 20." or

"Barron Henley has two children, Ariel, age 20 and Alexis, age 18."  
or

"Barron Henley has three children, Ariel, age 20, Alexis, age 18 and Rylee, age 16."

The point is that whatever the user enters, the template produces the correct language and verb conjugation; and it doesn't matter how many there are.

With each new variable, you create a corresponding question (prompt) which is presented to the user during the assembly process. Generating a new document is a simple matter of answering the questions presented by the template. After the questions are answered, the completed document appears on the screen (in Word or WordPerfect), ready edit, save, print, etc.

After a document is assembled, HotDocs allows users to save the *answers* entered for one document so that they can be used to assemble other documents which use the same information. In this manner, users simultaneously decrease the margin for error while eliminating time wasted on redundant data entry. The document produced by HotDocs is a plain word processor document and can be edited and stored like any other document.

3. Document Assembly Options: There are several available document automation applications and while each has its own unique way of handling the task, they all are very capable and able to achieve the objectives we discuss below. Each of them work with Word or WordPerfect or both. Some provide the ability to automate PDF forms. Because HotDocs continues to dominate the market and both of us are most familiar with it we refer to and show examples from HotDocs throughout this article but we could just as easily be referring to any of these applications. It is highly recommended that you explore the various options and decide for yourself which application best meets your practice needs in terms of availability, functionality and cost. Here are some options:

- HotDocs - [www.hotdocs.com](http://www.hotdocs.com)
- TheFormTool & Doxserá - [www.theformtool.com](http://www.theformtool.com)
- ContractExpress - <http://contractexpress.com>
- Rapidocs - [www.rapidocs.com](http://www.rapidocs.com)
- Pathagoras - [www.pathagoras.com](http://www.pathagoras.com)
- Perfectus - [www.dpa-technologies.com](http://www.dpa-technologies.com)
- ActiveDocs - [www.activedocs.com](http://www.activedocs.com)
- Smokeball - [www.smokeball.com](http://www.smokeball.com)

- Exari - [www.exari.com](http://www.exari.com)

## II. "DISRUPTIVE" LEGAL TECHNOLOGIES:

- A. Disruptive Technology In General: Yes, I know that Wikipedia is not necessarily correct on some issues, but this definition is built from multiple sources and is one of the best I've seen of the general term "disruptive technology":

"Disruptive technology and disruptive innovation are terms used in business and technology literature to describe innovations that improves a product or service in ways that the market does not expect, typically by being lower priced or designed for a different set of consumers.

...

Disruptive technologies are particularly threatening to the leaders of an existing market, because they are competition coming from an unexpected direction. A disruptive technology can come to dominate an existing market by either filling a role in a new market that the older technology could not fill (as cheaper, lower capacity but smaller-sized flash memory is doing for personal data storage in the 2000s) or by successively moving up-market through performance improvements until finally displacing the market incumbents (as digital photography has largely replaced film photography)."<sup>3</sup>

A few examples:

Disruptive Technology	Displaced Technology
Desktop publishing	Traditional publishing
Steamships	Sailing ships
Telephones	Telegraphs
Word processor	Typewriter
Semiconductors	Vacuum tubes
Contact lenses	Eye glasses
Refractive eye surgery	Contact lenses
Accommodating lens implants	Refractive eye surgery
Internet store	Bricks & mortar store

- B. Disruptive Legal Technology Definition: As it relates to law, an excellent and brief discussion of this term comes from Richard Susskind:

"My experience of working with law firms and in-house legal departments leads me to claim that there is remarkable scope for greater and beneficial deployment of technology. I also contend that for some lawyers there are existing and emerging technologies whose widespread adoption will effectively render them redundant. (Much the same has happened in many

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<sup>3</sup> See [http://en.wikipedia.org/wiki/Disruptive\\_technology](http://en.wikipedia.org/wiki/Disruptive_technology).

other sectors; lawyers are not immune from the destructive effects of the internet and IT revolutions.)

I call technologies that threaten the work of today's lawyers and law firms 'disruptive legal technologies'. They do not support or complement current legal practices. They challenge and replace them, in whole or in part."<sup>4</sup>

- C. Document Assembly Is Disrupting the Legal Market: Document Assembly is disruptive because it significantly reduces the amount of time that lawyers spend drafting documents. For lawyers who only bill hours, this obviously reduces the amount they can charge (one of the big reasons Document Assembly isn't a standard drafting method for all private law firms). For lawyers who adopt a flat-fee billing approach, Document Assembly can push their effective hourly rates into the stratosphere (see paragraph X.E. below for examples of this). For in-house or corporate lawyers, the revenue penalty is avoided while cost savings are achieved; so it is positive on all fronts. It is still disruptive technology to in-house lawyers because it will fundamentally change the way documents are generated.

III. WHY TEMPLATE BUILDING IS CRITICAL FOR ALL LAW OFFICES: In order to capture your office's intellectual capital and put it into a usable form, you need to spend time creating "gold-standard" templates which represent the best of what your firm knows.

- A. Word Processor Based (Inexpensive and Easy): You want your templates to be word processor documents so they can easily be edited and updated later.
- B. Error Reduction: Building Gold Standards eliminates all of the potential causes of error described above under Find, Rename and Modify.
- C. Drafting is a Mission Critical Function for Most Lawyers: There are many practice areas in which drafting is the primary task engaged in by the lawyer; and in many cases, the service rendered is primarily a set of documents (estate planning, etc.). The Find, Rename and Modify drafting method described above is incredibly inefficient, slow and has a high margin for error. One could argue that it is inappropriate to rely on such inadequate drafting methods considering the importance of the task.
- D. The Hyper-Competitive Legal Market Penalizes Lawyers Who Work Slowly: For many years, the legal industry had little incentive nor ability to change the inefficient Find, Rename and Modify method of drafting. With hourly billing predominant, one who takes a bit longer to get a set of documents together isn't penalized (in fact, they might be rewarded). Furthermore, there were few alternatives from a technological standpoint.

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<sup>4</sup> Susskind, Richard, "Only A Foolhardy Lawyer Will Fail To Embrace Change, In the final part of The End of Lawyers?, The Author Addresses His Critics And Says They Have Missed The Point." Times Online, November 26, 2007, <http://business.timesonline.co.uk/tol/business/law/article2931356.ece>



However, the emergence of flat fee billing and other non-hourly methods began creating an incentive to generate documents more quickly. Competition has increased significantly in the legal industry in the last 25 years; and technology has enabled firms to handle much higher volumes than they could in past decades thereby forcing administrative tasks like drafting to become more efficient. The paradigm shift is that lawyers are now *looking* for ways to generate documents in a quicker fashion without sacrificing accuracy. Sophisticated form building is a great way to achieve those objectives. Document assembly technology allows you to take it even further in terms of efficiency.

- E. Speed Gains: Imagine a tool that could save you hours each day. If you're buried in drafting and it's a primary stressor in your work load, then template building can make a big difference. Here's an example regarding Will drafting:
  - 1. Draft a Will Using Find, Rename & Modify: This can easily take an hour depending upon complexity and has a high margin for error.
  - 2. Draft a Will Using a Gold Standard Template: This can take half the time (30 minutes) and improve accuracy.
  - 3. Draft a Will Using Document Assembly: This may take 3 - 5 minutes and offers the highest accuracy.
  
- F. Templates Allow You To Share What You Know With Others: Knowledge Management is the ability of a lawyer to share what she knows with others in her firm. Unfortunately, a lot of what most lawyers know is wrapped up in documents they've created. Processes and drafting methodologies are often never written down anywhere. However, building templates allows you to take much of what you and your colleagues collectively know about a practice area and perform a "brain dump" into an expert drafting system. For example, assume you have 5 lawyers in your real estate department and they collaborate to build sophisticated gold standard templates for leases. New associate Jim needs to draft a lease in which your firm represents the landlord of a strip mall and the proposed new tenant is a restaurant business. The templates and drafting guides could skillfully guide Jim through the process, making sure that he a) is using the latest and best form your firm has prepared; and b) addresses all issues that should be addressed in a lease of this type (strip mall, food service tenant, your firm is representing the landlord, etc.). Review by the partner takes minutes instead of hours because the first draft was so well done, even by a relative rookie. The drafting system ensures that the firm's collective knowledge is utilized in every deal; even though the documents are generated in much less time than the old Find, Rename & Modify method.

#### IV. RULES FOR TEMPLATE BUILDING:

- A. One Document Per Instrument: Let's say you have multiple model documents you rely on for Wills which are supposed to be the same but for some fact pattern variation. For example, you might have a dispositive will, a pour-over will, a married person will, a single person will, a married with kids will, a will that

contains a special needs trust, etc. Unless you're assigned someone to the specific job of template maintenance and this individual has obsessive attention to detail, I can promise you that the documents contain unintended differences. In my professional experience, it's impossible to maintain a set of documents over time with perfect consistency except for the provisions that are supposed to be different. The way to avoid this is to create one template per type of instrument. Going back to the Will example, you want a single Word document which contains every single provision that could occur in a Will, in the order it would occur. You then identify changeable text and annotate the document so anyone using the template knows when an option starts and ends. For example, consider the following example of an annotated Will:

## **Last Will and Testament of <Testator Name>**

I, <Testator Name>, declare this to be my Last Will and revoke all other Wills and Codicils that I have made.

### **Option 1: Unmarried with children**

At the time of making this Will I am single, and have <Num Children> <child/children>: namely, <Child 1 Name>, born <Child 1 DOB>, and <Child 2 Name>, born <Child 2 DOB>. **Adjust accordingly if only one child or more than two.**

### **Option 2: Unmarried with no children**

At the time of making this Will I am single and I have no children.

### **Option 3: Married with joint children**

At the time of making this Will I am married to <Spouse Name>, and we have <Num Children> <child/children>: namely, <Child 1 Name>, born <Child 1 DOB>, and <Child 2 Name>, born <Child 2 DOB>. **Adjust accordingly if only one child or more than two.**

### **Option 4: Married with children from separate marriages/relationships**

At the time of making this Will I am married to <Spouse Name>, and we have no children together. I have <Num Testator Children> <Testator child/children> from a previous relationship: namely, <Testator Child 1 Name>, born <Testator Child 1 DOB>, and <Testator Child 2 Name>, born <Testator Child 2 DOB>. My <wife/husband> has <Num Spouse Children> <Spouse child/children> from a previous relationship: namely, <Spouse Child 1 Name>, born <Spouse Child 1 DOB>, and <Spouse Child 2 Name>, born <Spouse Child 2 DOB>.

For another example:

VI  
TAXES

**If Will Type = Pourover**

All taxes, including any interest or penalties thereon, which become payable by reason of my death, shall be apportioned and paid as is provided in the Trust Agreement. Those taxes which are the responsibility of my estate shall be paid as an administration expense or, at the option of my Personal Representative, with assets available for this purpose from the Trust as directed by my Personal Representative. To the maximum extent permitted by law, my Personal Representative shall seek and enforce the contribution and reimbursement rights provided in the Trust Agreement

**Otherwise if Will Type = Simple**

All estate, inheritance and other death taxes, including any interest or penalties thereon, which become payable by reason of my death, whether in respect to property passing under this Will or otherwise, shall be paid as an administration expense without apportionment.

**End pourover or simple option**

**If Will Type = Pourover AND Include GST Tax Provision**

My Personal Representative shall have the discretionary power to allocate any portion of my exemption under Section 2631(a) of the United States Internal Revenue Code of 1986, as amended, or any similar successor provision, to any property as to which I am the "transferor," including any property transferred by me during my life as to which I did not make an allocation prior to my death.

**End Pourover GST option**

- B. Finding Your Documents: You may have read the foregoing point and thought to yourself, "that would be great if I could FIND all of my past work!" This is where search utilities can help you out. Search utilities are software applications that will allow you to search through all of the documents (Word, WordPerfect, etc.) that you've ever created and locate specific ones based upon the words they CONTAIN rather than what you called them or what folder they're stored in. For example, let's say you need to draft an Oklahoma Discretionary and Special Needs Trust but you can't remember the last client for whom you drafted one. You may remember that such trusts are authorized by 60 O.S. §§175.81 - 174.92 and that 60 O.S. §175.82 is mentioned in the text of the trust. You could do a search for "60 O.S. §175.82" and instantly find every single document you've ever created which contains that phrase. Anyway, here is a quick summary of some options for a search utility:
1. Windows Options: Even if you've created a good file naming convention, you'll still need help finding some documents. Now that you've created

searchable PDFs, you can search through all of them at once, quickly, by searching for particular words. Here is a survey of your options:

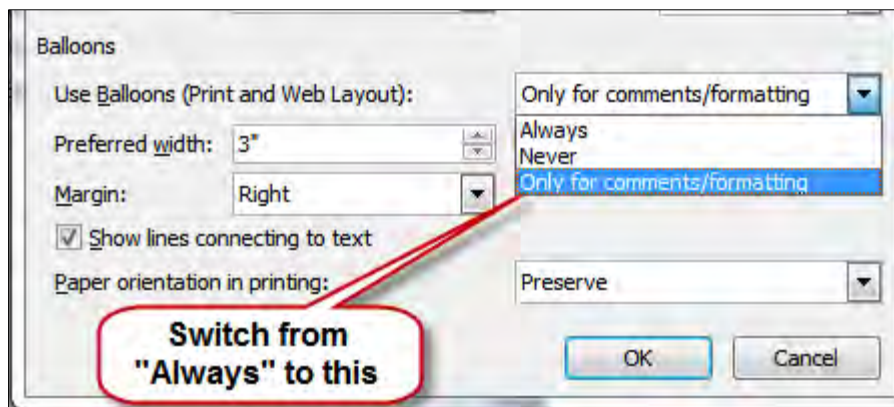
- a. Copernic Desktop Search: RECOMMENDED - See [www.copernic.com](http://www.copernic.com). There are three versions of Copernic, Home (FREE), Professional (\$49.95) and Corporate (\$59.95). Unless you're installing it in a very large firm, you only need the Professional version. You can try the free home version, but one of the limitations of the free version is that it does not search network drives. So unless you're keeping all of your files on the C:\ of the computer you're using (I certainly hope you're not doing this), the Home version will not help you very much. Copernic will search all of your files (Word, Excel, PowerPoint, PDF, HTML, WordPerfect, text and another 150 types of files). It will also search Outlook or Outlook Express email and any attachments to email.
  - b. dtSearch: RECOMMENDED: See [www.dtSearch.com](http://www.dtSearch.com) - \$199 - one of the most sophisticated and fast search engines I've ever seen. It provides the most search options and file types that it can recognize. If you need industrial strength search capability involving enormous numbers of documents, this is your program.
  - c. Filehand: See [www.filehand.com](http://www.filehand.com) - FREE. Instantly search for files on your computer, by content. See the extracts of the files you found, even for PDF files. Scroll through the extracts so you can quickly find the information you're looking for. Find the file you are looking for, even when many files match, because Filehand Search sorts the results by relevance. Do complex Boolean searches and searches by phrase. Use it all the time because it is so simple to use!
  - d. Windows Instant Search (Windows Vista and Windows 7): For more information on this, see <http://tinyurl.com/6j584x>. This is included with all versions of Vista.
2. Apple/Mac Search Program Options:
- a. Path Finder: \$40 - see <http://www.cocoatech.com/pathfinder/>
  - b. Spotlight Search (Mac OSX): This is included with the Mac OSX operating system. For more information, see <http://support.apple.com/kb/HT2531>
  - c. EasyFind: Free - see <http://tinyurl.com/d6se856>
  - d. HoudahSpot: \$15 - see [www.houdah.com/houdahSpot](http://www.houdah.com/houdahSpot)
3. What Search Programs Do: Briefly, they read through all of the documents you've created in a word processor or scanned as PDFs, and

they build an index of the text contained therein. Once the index is built, you can search through all of those documents by either file-name OR the words contained inside them. When searching for words contained inside the documents, you can use the standard Boolean logic (and, or, not, etc.). If you try a search utility, it will not *instantly* be able to search through all of your documents. You have set up the programs so they know where your documents are and then give the program a chance to build the index. This can take an entire day to build it initially depending upon how many documents you have. After the index of words is built in the first place, the search utility will easily be able to maintain it going forward.

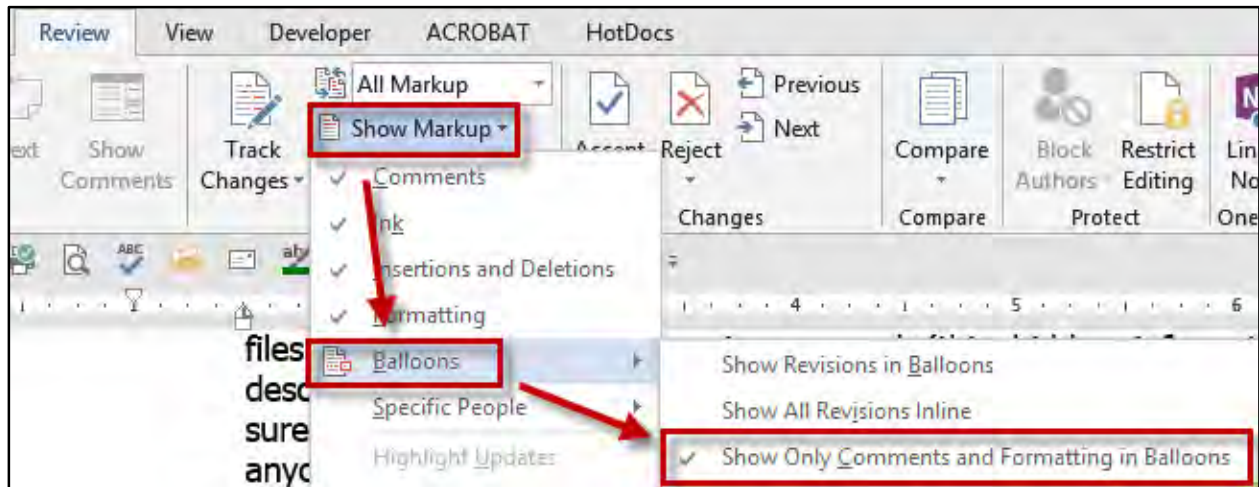
C. Ascertaining Differences Between Documents: The *only* way to do this accurately is to compare versions of documents using your word processor to produce a redline. Here's how you do it with Microsoft Word:

1. Step 1 - Fix Balloons: By default, Word shows deleted text in balloons in the right margin. Most people find this annoying. If you would like to see deleted text red-lined in the body of the document, follow these steps:

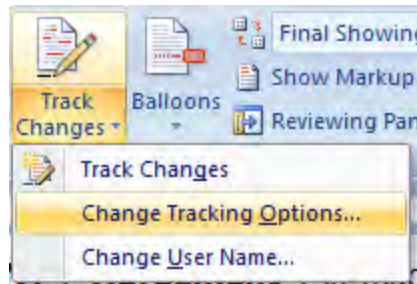
Word 2007/10: Click the Review ribbon → Tracking group → click the bottom half of the Track Changes button → **Change Tracking Options...** → choose Only for comments/formatting for the Use Balloons option.

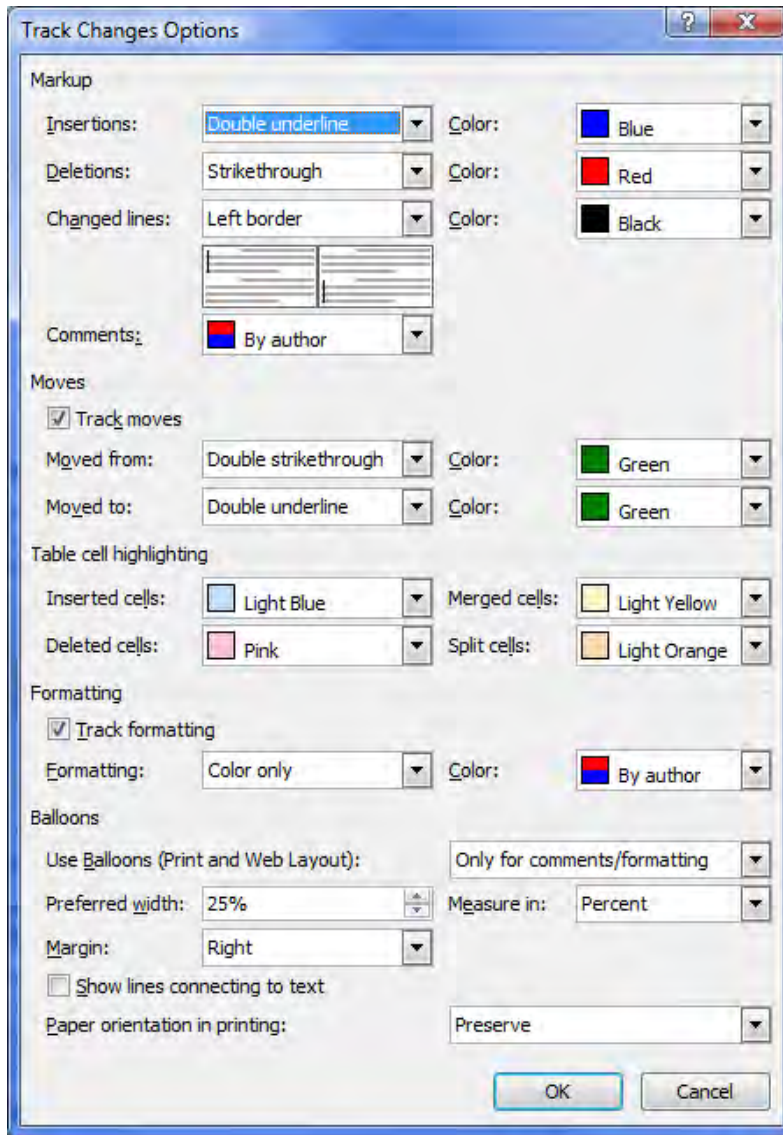


Word 2013/16: Click the Review ribbon → Tracking group → Show Markup button → Balloons → Show only comments and formatting in balloons.



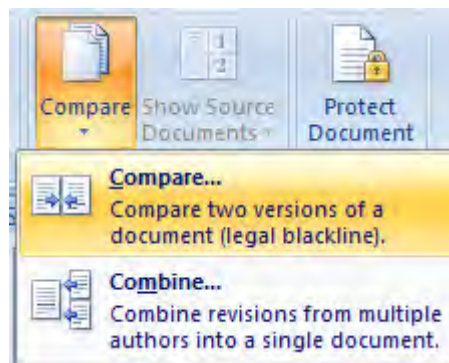
2. Step 2 - Set Your Compare Options: You have total control over how Word indicates changes between two documents. To make any changes to the default preferences, in Word 2007/10, click the Review ribbon → Tracking group → bottom of the Track Changes Button down arrow → **Change Tracking Options...** In Word 2013/16, click the Review ribbon → Tracking launcher. The option dialog is much smaller in Word 2013/16, but you can pull up the options from Word 2007/10 by clicking the **Advanced Options...** button.



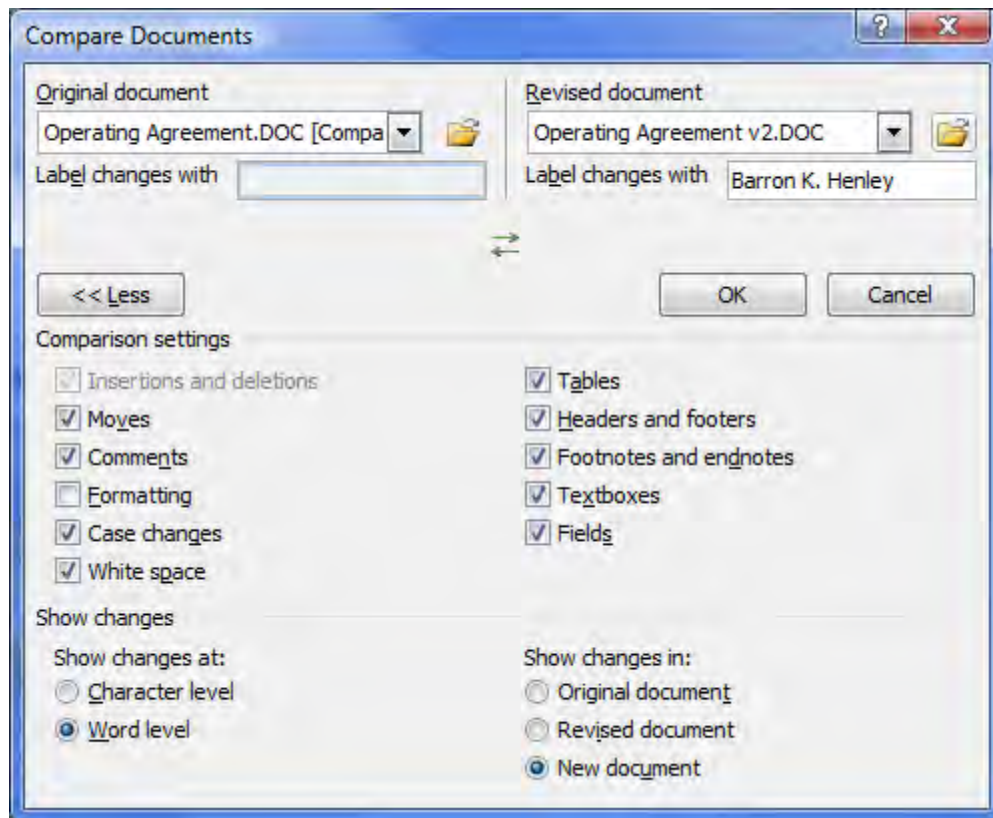


3. Step 3 - Compare Versions:

- a. Click the Review ribbon ➔ Compare group ➔ Compare button ➔ **Compare....**

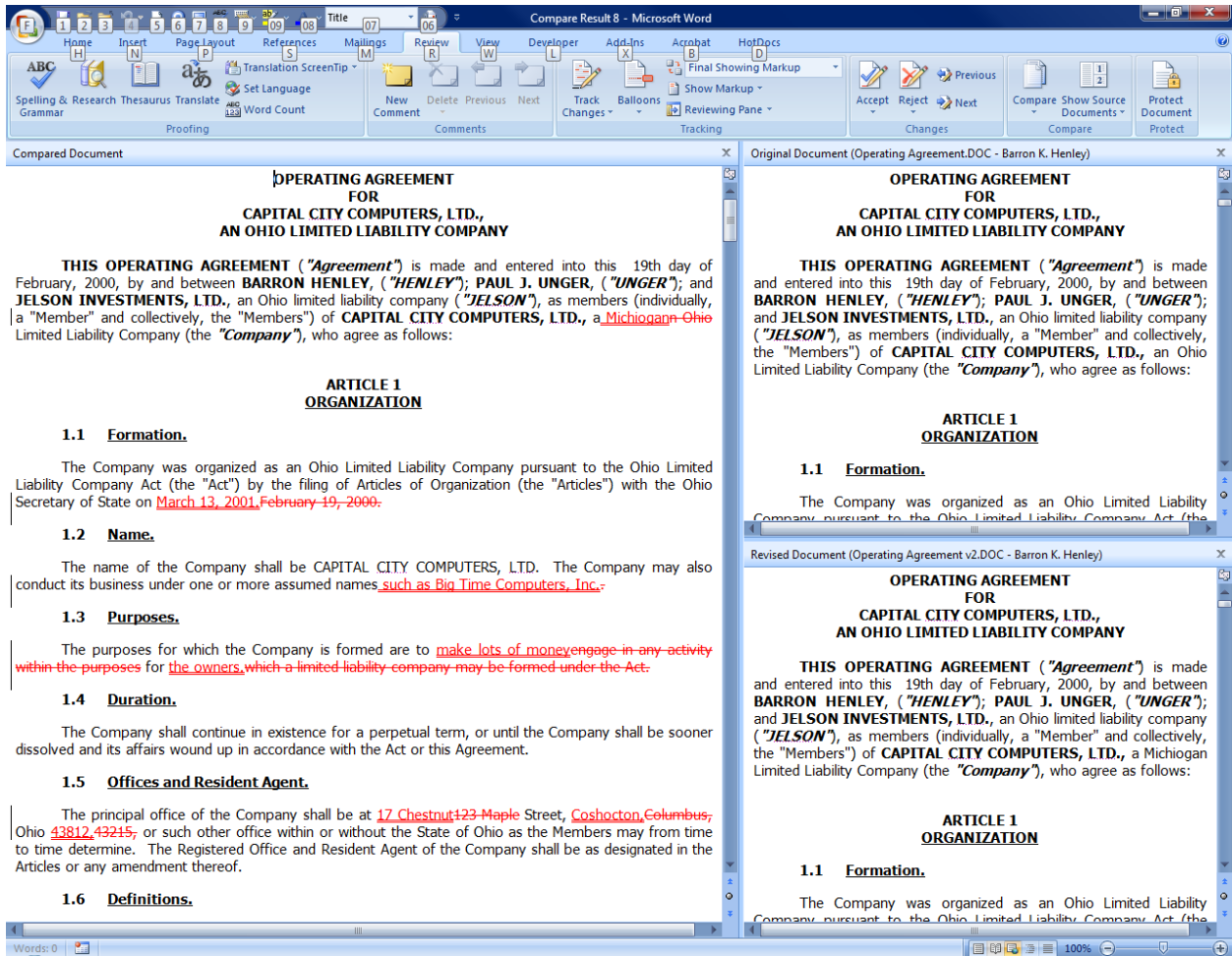


- b. Click the browse button on the left side of the subsequent dialog and choose the original document. On the right side, click the browse button and choose the document that has been modified. Click the More button. I also normally uncheck Formatting because I really don't care if they changed formatting.



- c. Click OK.
- d. Word will then create a new document by merging the original and altered documents and highlighting the differences between the two. At this point, you may want to print or save the new, merged document with a new name.
4. Step 4 - Show or Hide the Source Documents: If you want to, you can click the Review ribbon ► Compare group ► Show Source Documents button (Word 2007) or Compare button ► Show Source Document button (Word 2010/13/16) and you'll be able to see the compare document, plus both documents you compared; and they will scroll synchronously.





D. Annotating Your Master: You can use one of two approaches for this. We call them "chunking it out" or "blending." Don't ask how we came up with those terms, particularly the first one.

1. Chunking It Out: Chunking it out means that you show entire paragraphs in your gold standard as they would look under changing fact patterns. This is easy to follow but makes your templates take up a lot more pages (sometimes 4 times as many). Here's what it looks like:

## ARTICLE XI APPOINTMENT OF GUARDIAN OF MINOR CHILDREN

[if sole initial guardian]

A. \_\_\_\_\_. [if married client] If my spouse is deceased and I am survived by minor children, [END IF] I nominate [Guardian Relationship to Testator], \_\_\_\_\_, of \_\_\_\_\_, \_\_\_\_\_, to serve as the Guardian of the Person of my minor children.

[otherwise if co-guardians who can serve alone]

A. \_\_\_\_\_ and \_\_\_\_\_. [if married client] If my spouse is deceased and I am survived by minor children, [END IF] I nominate [Guardian Relationship to Testator], \_\_\_\_\_, of \_\_\_\_\_, \_\_\_\_\_, and [Guardian Relationship to Testator], \_\_\_\_\_, of \_\_\_\_\_, \_\_\_\_\_, to serve as the

Guardian/Co-Guardians of the Person of my minor children. If either \_\_\_\_\_ or \_\_\_\_\_ is unable or unwilling to act as Co-Guardian of the Person of my minor children, then the one who is able to serve shall serve as the sole Guardian of the Person of my minor children.

[otherwise if co-guardians who cannot serve alone]

A. \_\_\_\_\_ and \_\_\_\_\_. [if married client] If my spouse is deceased and I am survived by minor children, [END IF] I nominate [Guardian Relationship to Testator], \_\_\_\_\_, of \_\_\_\_\_, \_\_\_\_\_, and [Guardian Relationship to Testator], \_\_\_\_\_, of \_\_\_\_\_, \_\_\_\_\_, to serve as the Guardian/Co-Guardians of the Person of my minor children. It is my intention that these nominees act as Guardian of the Person of my minor children only if they are able to act together.

[end options]

2. Blending It: As you can see below, blending it takes up much less space and the idea is to combine the language where possible and annotate so you can see where the differences lie. This is a much better approach, but requires that you break down your language in a more granular manner.

#### ARTICLE XI APPOINTMENT OF GUARDIAN OF MINOR CHILDREN

A. [Guardian name] \_\_\_\_\_ and \_\_\_\_\_ [if co-guardians]. [if married client] If my spouse is deceased and I am survived by minor children, [END IF] I nominate [Guardian Relationship to Testator], \_\_\_\_\_, of \_\_\_\_\_, \_\_\_\_\_, [could be co-guardians] to serve as the Guardian/Co-Guardians of the Person of my minor children. [if Co-Guardians and remaining guardian may serve alone] If either \_\_\_\_\_ or \_\_\_\_\_ is unable or unwilling to act as Co-Guardian of the Person of my minor children, then the one who is able to serve shall serve as the sole Guardian of the Person of my minor children. [end of option] [if Co-Guardians and remaining guardian may NOT serve alone] It is my intention that these nominees act as Guardian of the Person of my minor children only if they are able to act together. [end of option]

- E. Create Drafting Checklists for Complex Documents: This is part of documenting processes, building in malpractice avoidance into the way you work, and improving accuracy. For example, see below:

<b><u>FINAL DECREE CHECKLIST</u></b>	
Decree is	
<input type="checkbox"/>	agreed to proposed by <input type="checkbox"/> P <input type="checkbox"/> R
<input type="checkbox"/>	ordered; hearing date _____; <input type="checkbox"/> P attended; <input type="checkbox"/> R attended; <input type="checkbox"/> P& R attended
<b>1.</b>	<b><u>Type of Case</u></b>
<input type="checkbox"/>	Divorce granted to <input type="checkbox"/> P <input type="checkbox"/> R <input type="checkbox"/> parties
<input type="checkbox"/>	Legal separation granted to <input type="checkbox"/> P <input type="checkbox"/> R <input type="checkbox"/> parties
<input type="checkbox"/>	Civil Union Dissolution granted to <input type="checkbox"/> P <input type="checkbox"/> R <input type="checkbox"/> parties
<input type="checkbox"/>	Irreconcilable differences
<input type="checkbox"/>	Grounds in Petition; Cross-Petition, if any, dismissed
<b>2.</b>	<b><u>Parenting Plan and Uniform Support Order</u></b> <span style="float: right;">N/A</span>
<input type="checkbox"/>	Parenting Plan & USO attached
<b>3.</b>	<b><u>Tax Exemptions for Children</u></b> <span style="float: right;">N/A</span>
<input type="checkbox"/>	P claims _____ in all even odd years
<input type="checkbox"/>	R claims _____ in all even odd years
	Claim only if current on child support
<b>4.</b>	<b><u>GAL fees</u></b> <span style="float: right;">N/A</span>
<input type="checkbox"/>	See Order on Appointment
<input type="checkbox"/>	Other: _____
<b>5.</b>	<b><u>Alimony</u></b> <span style="float: right;">N/A</span>
<input type="checkbox"/>	P <input type="checkbox"/> R pays \$ _____ per _____
<input type="checkbox"/>	Termination: _____
<input type="checkbox"/>	Alimony Waiver: Yes No
<b>6.</b>	<b><u>Health Insurance for Spouse</u></b> <span style="float: right;">N/A</span>
<input type="checkbox"/>	Employer-sponsored:
<input type="checkbox"/>	P maintains for R; P pays
<input type="checkbox"/>	P maintains for R; R pays
<input type="checkbox"/>	R maintains for P; R pays
<input type="checkbox"/>	R maintains for P; P pays
<input type="checkbox"/>	Additional provisions: _____
<input type="checkbox"/>	Termination: _____
<input type="checkbox"/>	Not employer-sponsored:
<input type="checkbox"/>	<b>P maintains for R; P pays; termination:</b> _____

- F. Create "Real" Templates: Word processor templates have a different suffix (.wpt in WordPerfect and .dotx in Word) and they're typically stored in a special folder for templates. They can be made read-only so that users don't accidentally over-write them with changes. More importantly, they can be shared across your office so that everyone is using the same template every time. This also makes updating easier since there's only one template to deal with.

V. THE CASE FOR GOLD STANDARDS + WORD PROCESSOR AUTOMATION:

A. Benefits of Forms Plus:

1. An Excellent Starting Point for Examining Your Work Flow: This approach is an excellent testing ground for any further automation in that it starts your analysis process. As you break down a generic pleading template, standardize signature and Certificate of Service and replace core information with "click here and type" instructions, you begin to see the cross purpose use of the core template and how it relates to say, requests for production and answers/replies. Analysis of each of your form/document types and your choices for variable or fill-in-the blank information will help you decide on further information gathering/sharing needs and at a bare minimum help you rethink client/case intake procedures.
2. Learning How To Use What You Already Own Is a Great Investment: No matter what road you take in the future, the investment in a Word Processing package is a given. Leveraging as many features as possible keeps the initial costs of software down, and exploration of simple automation options is an educational experience that is not wasted even if you move on to expanded options.
3. Simplicity of Creation: While WordPerfect and Microsoft Word vary in their arsenal of automation options, from "click here" and "ask" fields in Word to keyboard merges in WordPerfect, the concepts are relatively simple to master and cost not much more than time and investigation. Very small libraries of terms, conditions and optional clauses can be maintained with the aforementioned AutoText/QuickWords and other tools.
4. Quick and Easy Training: Training on the use of Word Processor forms automation is also an easily assigned task, and when combined with detailed formatting/styling options can yield professional and consistent results.
5. Absolute Flexibility: Don't like the look of a form? Want to add new clause options? No programmer necessary here. This means that with some basic knowledge you have absolute control over the work product environment.

B. Drawbacks:

- You must have a strong grasp on jurisdictional rules and requirements. No one is going to warn you that the form does not meet the guidelines.
- Updates or changes in rules and regulations mean that you are responsible for a forms library overhaul.
- Though training may be a simple matter, it's in the hands of the firm.

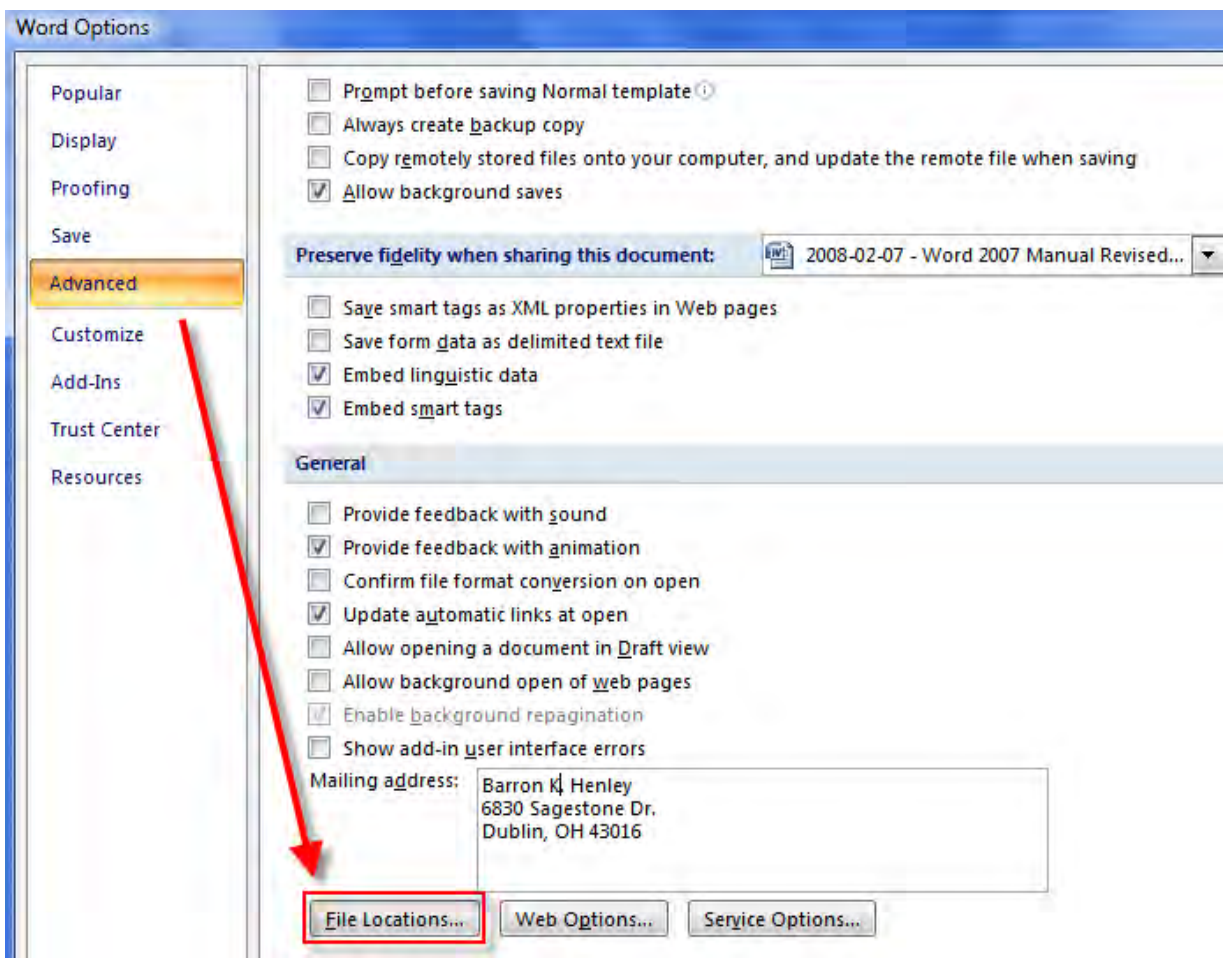
- Changes in core word processor technology are your problem. If a newer version of your favorite program alters, adds, or eliminates a feature, it's up to you to re-think your template/forms library.
- Decision based (if/then) logic can be well beyond the native capabilities of the Word Processor without programming knowledge.

## VI. HOW MICROSOFT WORD TEMPLATES WORK

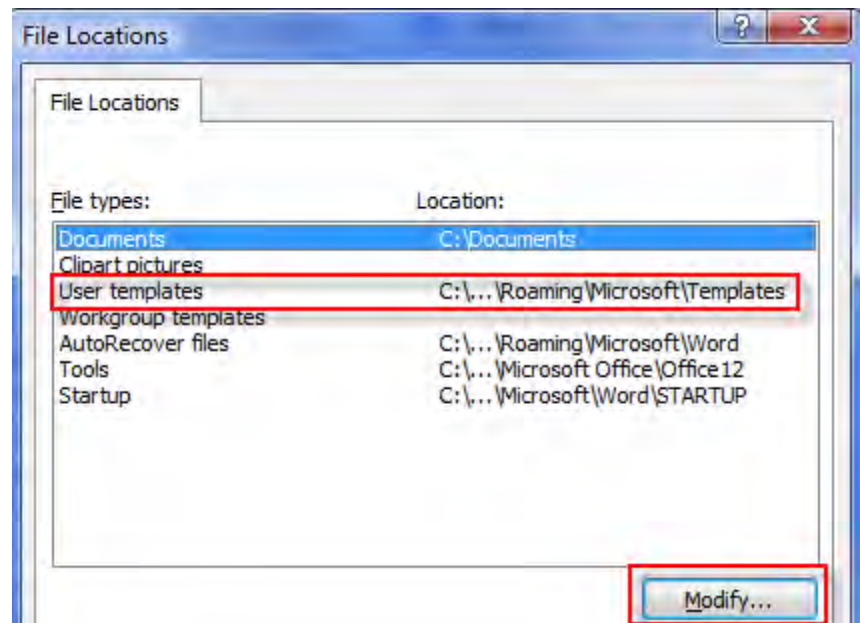
- A. **Template Definition:** A template is a special kind of file that provides a model for the underlying structure (or pattern) of a particular finished document (such as a Deed or Lease or Revocable Trust). Templates may also contain document settings such as AutoText entries, Quick Parts, fonts, key assignments, macros, menus, page layouts, special formatting and styles. When you create a new document based upon a template, you get a copy of the template, but not the template itself. In that manner, templates are protected and cannot be accidentally over-written with changes a user makes to a new document based upon one. In Word 2007, a template can be a .dotx file, or it can be a .dotm file (a .dotm file type allows you to enable macros in the file).
- B. **Why You Need to Use Templates:** Maybe you think you have never used templates before, but in reality, every single document you've ever created in Word was based on a template. More importantly, templates are the basic component of any forms system and, if you aren't using a forms system in your practice, you're missing out on one of the fundamental benefits of a word processor. A forms system is important because:
1. It saves an enormous amount of time;
  2. It ensures consistency in your firm's documents, the style of which is part of your firm's identity;
  3. It increases accuracy; and
  4. It helps you convey your knowledge to others in your firm and makes it easier for new employees to learn your firm's drafting style.
- C. **Two Basic Types of Templates in Word:** The two basic types of templates are global templates and document templates.
1. **Global Templates:** Global templates contain settings that are available in every Word document. The Normal.dotm template is considered a global template. Remember that templates can store styles, AutoText entries, AutoCorrect entries, macros, toolbars, custom menu settings, and shortcut keys. If you have additional of those items (except styles) you would like to make available at any time in Word, then you can store them in global templates.

2. Document Templates: Document templates contain settings that are available only to documents based on that particular template. For example, if you create a fax cover sheet using a fax cover sheet template, you'll have access to the settings from both the fax cover sheet template as well as the settings in any global template. Word comes with many sample document templates and you can, of course, create your own.

D. Normal Template (Default): Unless you specify a different template, Word bases every new document on the Normal template. Calling the template Normal doesn't mean that it's just some ordinary template. The Normal template is actually a file called normal.dotm and it can be customized and modified just like any other. Since normal.dotm is the default global template, much of your Word customization is stored in it (such as AutoText entries, fonts, key assignments, macros, menus, page layouts, special formatting, and styles). If the file normal.dotm is deleted, Word simply creates a new one the next time you run it, but you'll lose all of your macros and other items which were stored in it. Therefore, it is a good idea to make a backup copy of normal.dotm just in case something happens. To determine where Word is storing your normal.dotm file, click the Office Button→Word Options→Advanced→File Locations button under the "General" heading.



If you click on User Templates, and then click Modify, you'll see the folder where normal.dotm is stored.

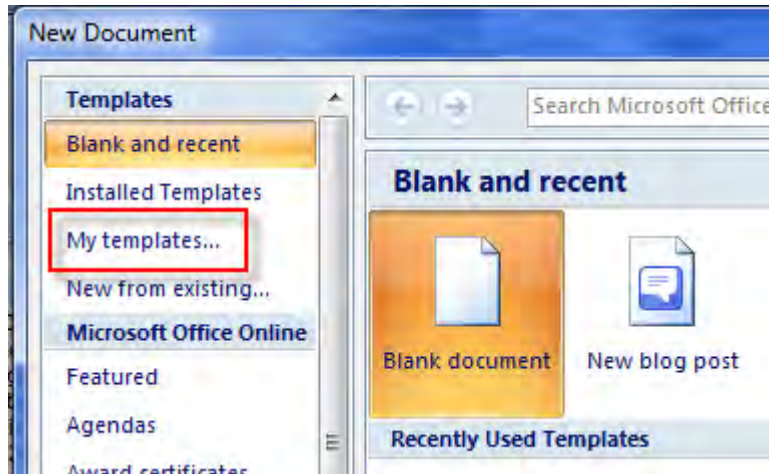


E. Creating Templates:

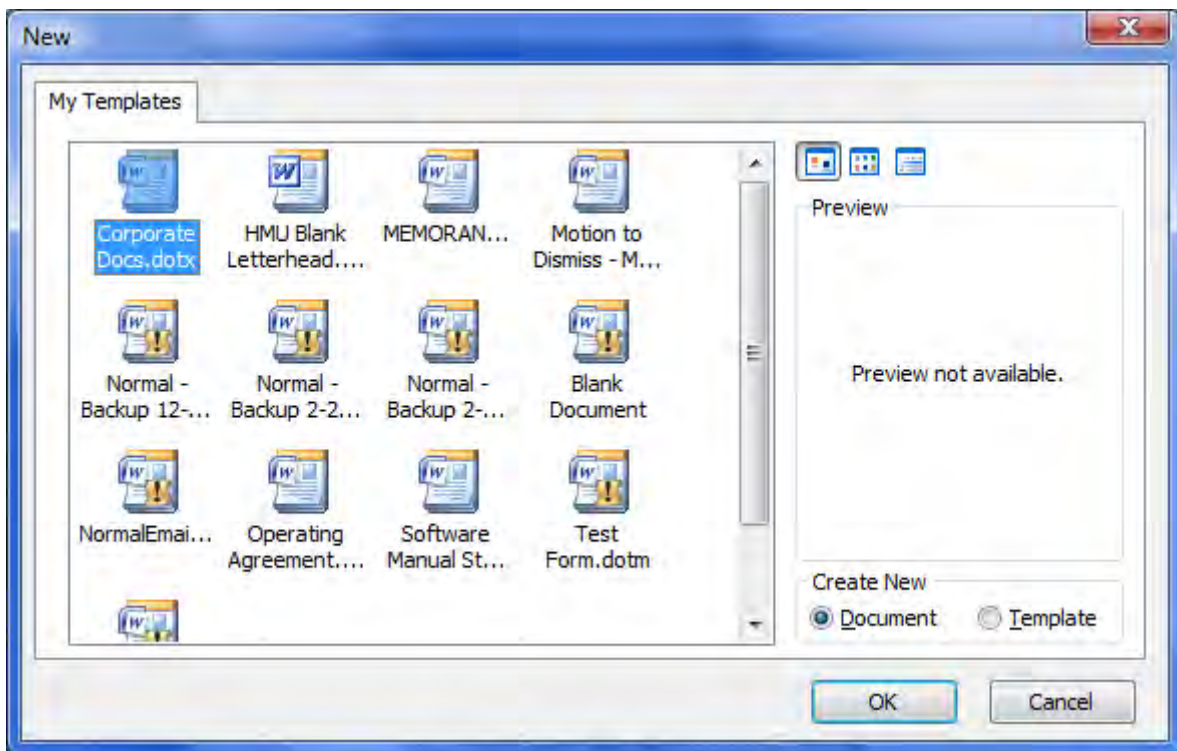
1. Create or open a document you would like to use as a template.
2. Click Office Button/File menu → Save As.
3. Change to the Trusted Templates folder (button on the left side of the Save As dialog)
4. Change the Save As Type drop down at the bottom of the dialog to .dotm or .dotx as appropriate.
5. Enter a file name.
6. Click the Save button.
7. Close the template before trying to use it.
8. Using Your Template

In order to create a new document based upon your template, you must follow these steps:

1. Click Office Button → **New....**
2. Click My Templates



You'll now see the following dialog. Choose your template and click OK.



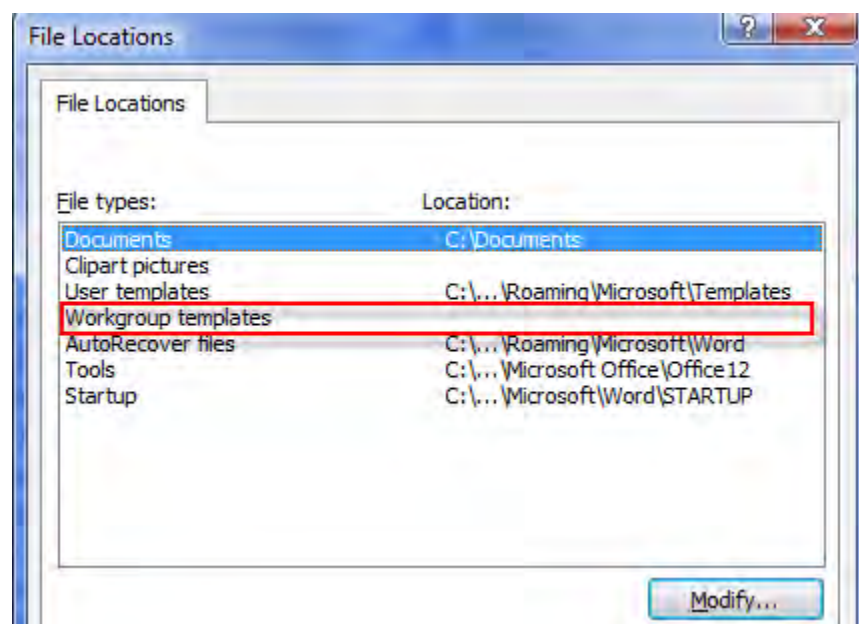
You'll now have a new, unnamed document on your screen which is based upon the template you chose.

- F. **Modify a Template:** To edit a template, go to **File**, then **Open...** and change the Files of type designation (at the bottom of the Open dialog) to All Files or Document Templates. Browse to the folder that contains the template want to edit. Click once on the name of your template and click Open. Make whatever changes you would like to the template, save it and you're done.



G. Sharing Templates: You can designate a "public" folder on your server where public templates are stored which are accessible by everyone. Follow these steps:

1. First, create the folder into which you'll save future public templates on a drive that everyone has access to (on your server). Note that only those who add or edit templates need full access to that folder. Everyone who simply uses those templates must only have read and list rights to the shared template folder. We recommend a folder name like x:\Word Templates (where "x" is a network drive.)
2. Now you need to tell Word where to look for these public templates. To do this, open a blank document in Word, click the Office button→Word Options→Advanced→File Locations button under the "General" heading. You'll see the following dialog:



3. Note that the Workgroup Templates location is blank. Simply click on that line, then click the Modify button below it. Choose the folder you created on the server and click OK.
4. Note, you'll need to repeat step #3, above, on everyone's computer who will need access to these templates.
5. Add a template to the public folder, then click File→New...→On my computer... **and make sure it shows up in the list of available templates.**
6. You're done!

VII. WORD PROCESSOR FUNCTIONALITY YOU MUST INCORPORATE INTO YOUR TEMPLATES: If you don't let the word processor work for you, then editing your templates will still be annoying and no one (including you) will want to use them. Getting the content pulled together is only half the battle. You also need to incorporate the best

of what your word processor can do into the templates so the documents are easy to edit and time isn't wasted manually updating paragraph numbers, cross-references, tables of contents or tables of authority. It's beyond the scope of this class to explain *how* to set up all of these functions, but this is the list of functions you should be using:

- A. Automatic Paragraph Numbering: It is never okay to type a paragraph number in any document, ever. You can't bill a client for manually renumbering 35 pages of numbered paragraphs because you added a new one at the beginning. Word and WordPerfect ("WP") can easily handle single level or multi-level paragraph numbering.
- B. Paragraph Cross References That Automatically Update: This is another huge time-waster if you have to do it manually. All versions of Word and WP can do this.
- C. Automatic Spacing Between Paragraphs: It is always wrong to create vertical spacing between paragraphs by adding extra hard returns. That only creates the distinct possibility that you'll have too much space or not enough space between paragraphs in your documents. There is a feature in Word and WP which handles this automatically and eliminates the possibility of alignment errors.
- D. Automatic Tables of Contents: Tables of contents should never be typed. Word and WP have features for generating them in a few seconds which also allows the tables to update themselves in the event the document is subsequently edited.
- E. Automatic Table of Authorities: Both Word and WP can generate these tables automatically from the document *and* they can be updated with two clicks to ensure that they're accurate no matter how much the document has been edited.
- F. Keep With Next and Block Protect: Keep with Next is the Word feature and Block Protect is the WP feature for holding headings or paragraphs together so that naturally-occurring page breaks can't separate text that should always be together on the same page. Captions, headings, certificates of service, signature lines, acknowledgments and the like should be "glued" together so that page breaks can't possibly separate them in an unacceptable or awkward way.
- G. Proper Defaults: Both Word and WP have the capability of setting up document defaults so that formatting is consistent throughout the document and editing it won't cause unexpected formatting results. This must be understood and properly set up in the templates you create.

#### VIII. HOW TO CREATE MICROSOFT WORD FILLABLE FORM TEMPLATES

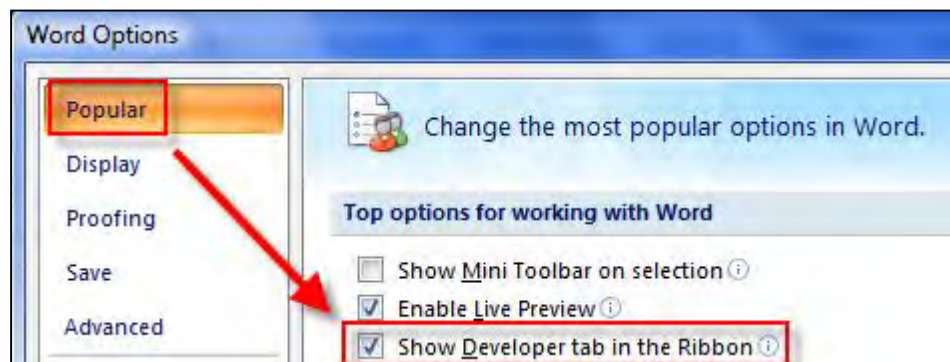
- A. What Are Fillable Form Templates? A fillable form is simply a template which utilizes Word form fields. In Word 2003, you created these forms by using the tools on the Forms Toolbar which looked like this:



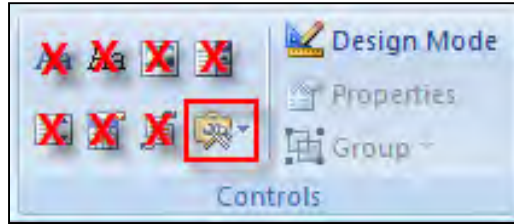
Users would be able to create a new document based upon a template using form fields and simply hit the Tab key to move from field to field. It was easy and slick. Unfortunately, Microsoft decided to change all of this with the release of Word 2007. You can still get to the old form fields from within Word 2007/10/13/16, but they are hidden (I'll explain below). They've clearly intended to replace those form fields with a new thing Content Controls. Content Controls are nice and offer a few new things that the old form fields did not. *However*, there are many aspects of them we do not like and as a result, we recommend you use the old types of fields that Word 2003 and prior used (they're still available in Word 2007/10/13/16).

B. Create a Form: In order to create a Word form, complete the following steps:

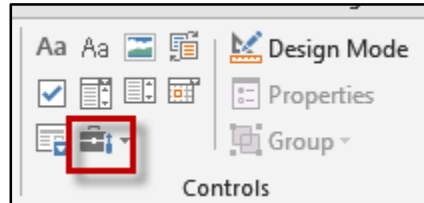
1. Create a template. It is probably easiest to pull up an existing document you created for a client which is a good representation of the variety you use most often. To create a template from an existing document, open **the document and click Save As..., in the Open dialog, change the Save as type box to "Word Macro-Enabled Template (\*.dotm)."**
2. Show Fields. It's really hard to create fields without being able to see them and you won't be able to see everything unless you toggle field codes on in Word. The speed key for this is Alt+F9 in all version of Word. Turn it on while you're creating your template and make sure you turn it off (just hit Alt+F9 again) after you save it or everything will look completely messed up when you try to use your template.
3. Enable the Developer Tab. This ribbon is not visible by default in Word 2007 (but is in Word 2010/13/16) and it is the only place you'll find the form fields you need to insert into your form. To turn it on permanently, click the Office Button → Word Options → Popular → check the box adjacent to Show Developer tab in the ribbon. You only need to do this once and the Developer ribbon will be permanently visible in Word.



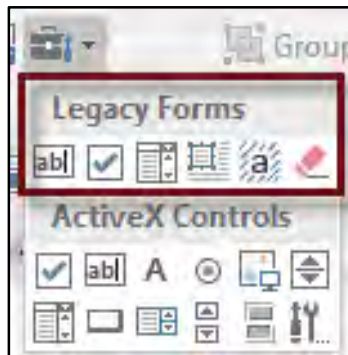
4. Insert fields. The fields you want to use are in the Controls Group of the Developer Ribbon. You do not want to use the Content Control buttons for the reason outlined above. You want to use the Legacy Tools button in Word 2007:



In Word 2010/13/16, it looks a little different but it's still called Legacy Tools if you hover over it:

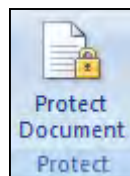


When you click on the Legacy Tools Button, you're going to see the following dialog appear. You want to use the Legacy Forms tools.

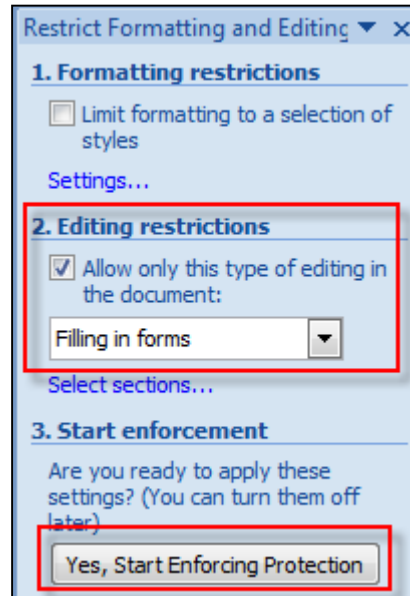


Place the fields where they need to go. Each type of field is more thoroughly described below.

5. Set field properties. After inserting a form field, double-click it to set or edit properties for each field. You can also add Help or automation to a form in the field properties.
6. Protect the form. Prepare the form for distribution and collection of information by protecting it. To do this, click the Protect Form button shown below:





A pane will appear on the right side of the screen. Check to enable Editing Restrictions, and choose Filling in forms from the drop down list below. Click the Yes, Start Enforcing Protection button and it's probably a good idea to give it a password.



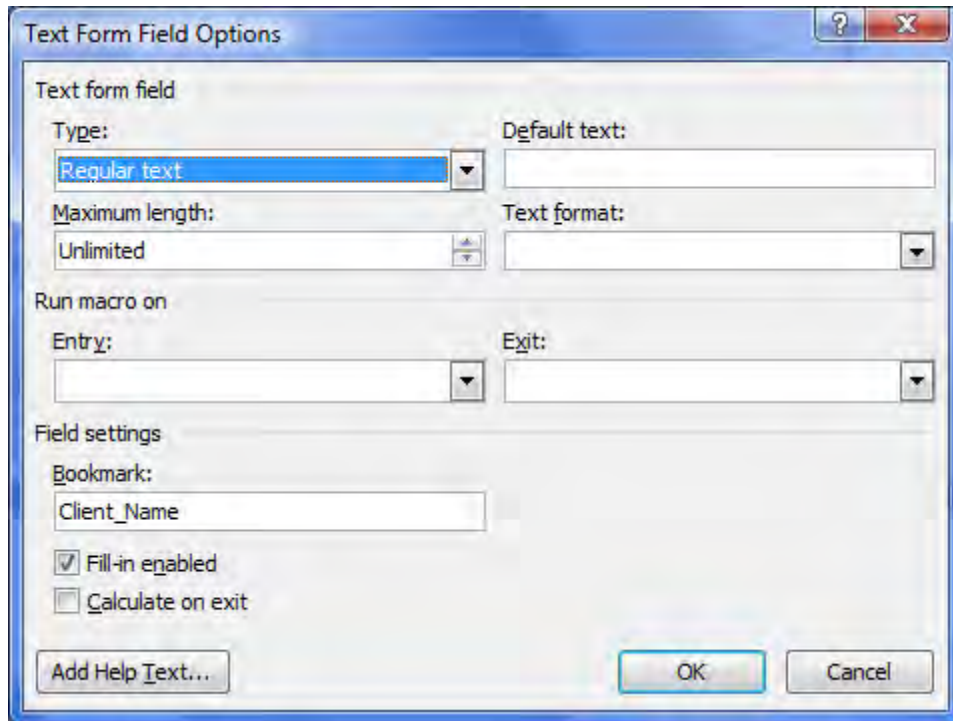
7. Distribute the form.

C. Form Field Descriptions and Uses: I realize that there six buttons on the Legacy Forms mini toolbar. You're only going to use the left-most three (which are described below).

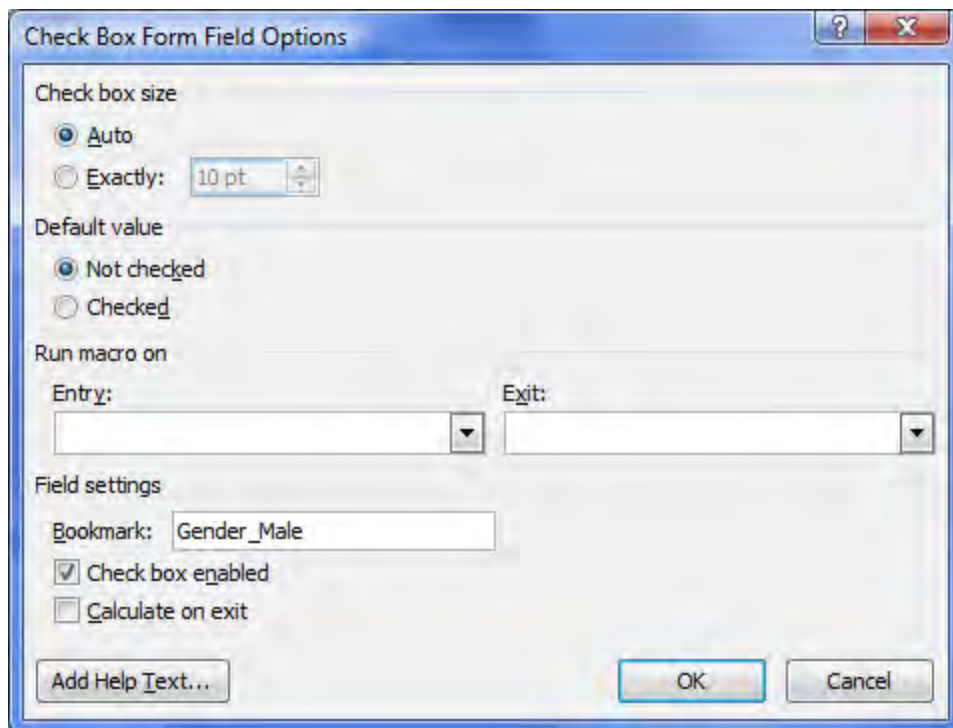
If you insert a field but you can't see it, then you need to click the Form Field Shading button - .

1. Text Form Fields:  - This field can be used for text, number, date, the current date, the current time or a calculation. As you can see from the Properties dialog below, you have many controls for text form fields. It is very important that you not leave the bookmarks as their defaults (like

Text1). You can't have spaces in the bookmark names, but you can use underscores.



2. Check Box Form Field:  - This field is used to create a box which can be checked or unchecked. See properties below:



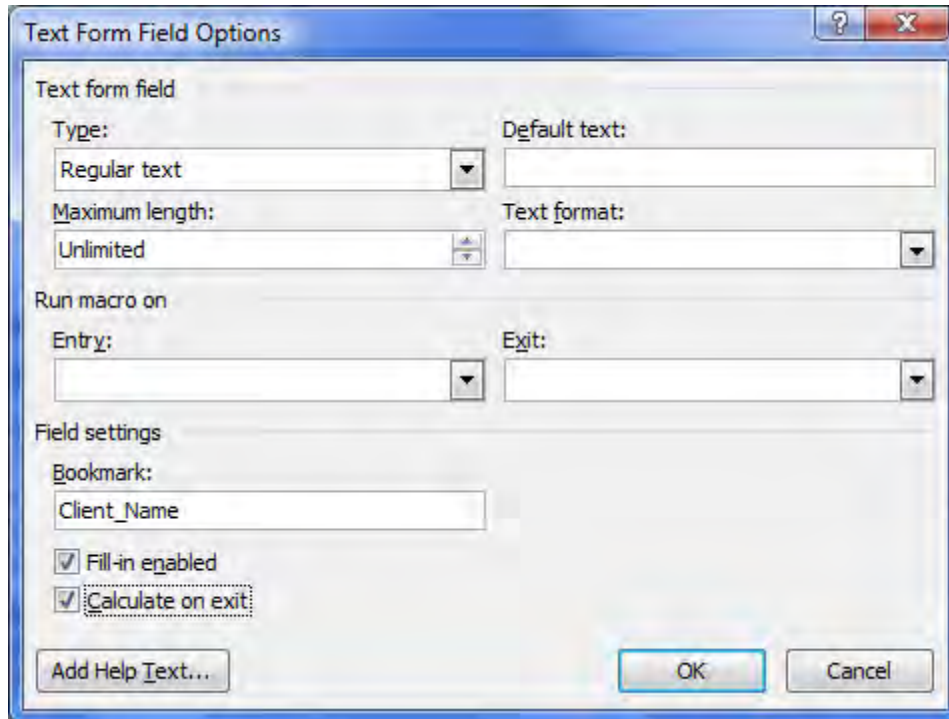
### 3. Drop Down Form Field



- This field allows you to create a multiple-choice for the user. Properties shown below:

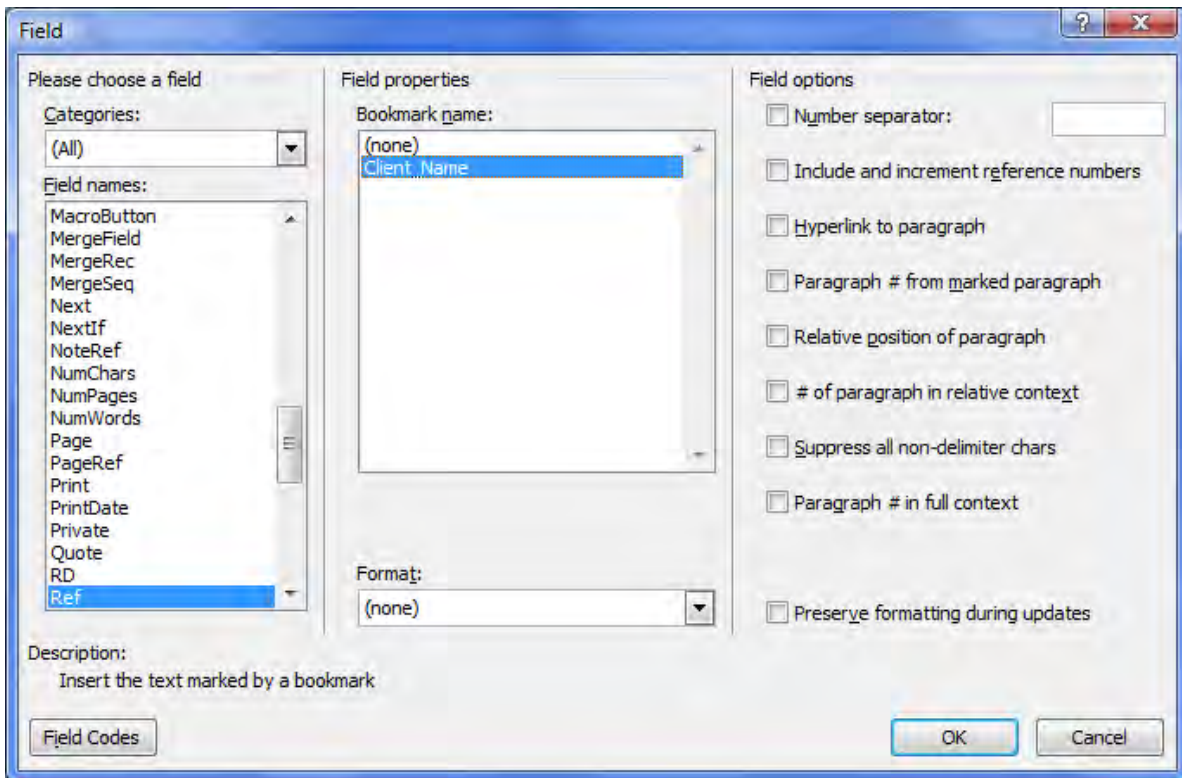
### D. Advanced Techniques:

1. Repeat the Result of One Field in Other Places in the Document:  
There are many times in which you want the same answer supplied in one field to appear in multiple other fields in the document. For example, when a client's name appears multiple times in a form, you only want to have to enter that name once. When you drop a text field into a template, Word automatically inserts a corresponding bookmark. You can use that bookmark to drop the result of that field elsewhere in the document. Just follow these steps:
  - a. Insert a text field into your template. After you've inserted the field, double click the field to view its properties in the Text Form Field Options dialog. Note the name of the bookmark (in this example below, Client\_Name) and check the Calculate on exit box.

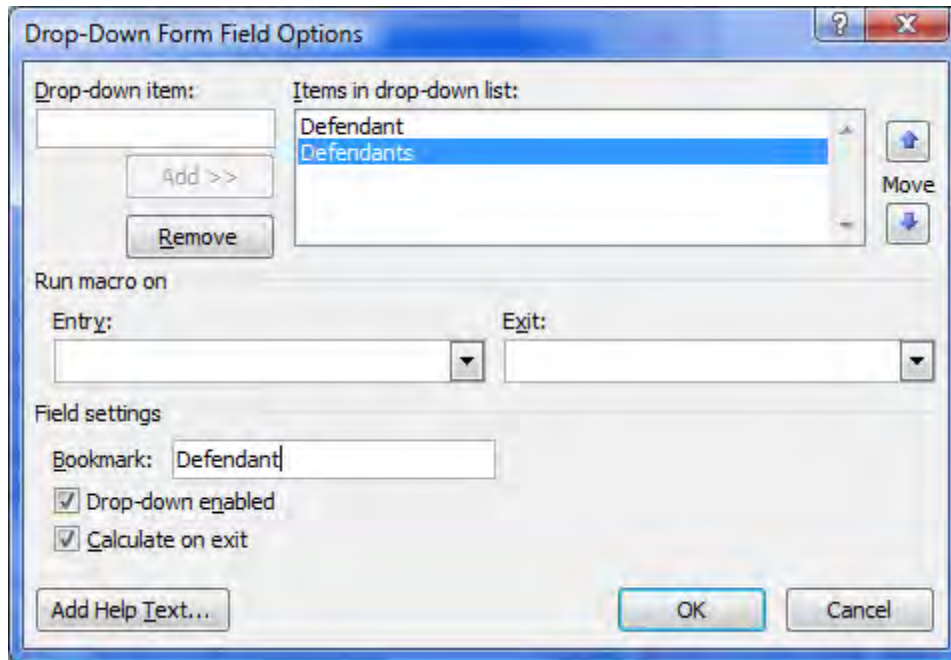


- b. Now place your cursor somewhere else in the form where you would like to repeat the answer to this field.
- c. On the Insert ribbon, click the Quick Parts button → Field → In the Field names list, click Ref.
- d. Next, click the Field Codes button at the bottom of the dialog, then **Options...**, then the **Bookmarks** tab. Choose the appropriate bookmark (Client\_Name), click Add to Field, then OK, and OK again.





- e. Don't forget to protect the form. Save the form template, close it and generate a new document from your template to test.
2. Making Fields Contingent Upon Another Answer: Let's say your form has a drop-down field which presents the user with the option of Defendant or Defendants. A sentence in the document says "The Defendant in this matter has been served with process." Of course, if there is more than one Defendant, the subject and verb of the sentence would change to this: "The Defendants in this matter have been served with process."

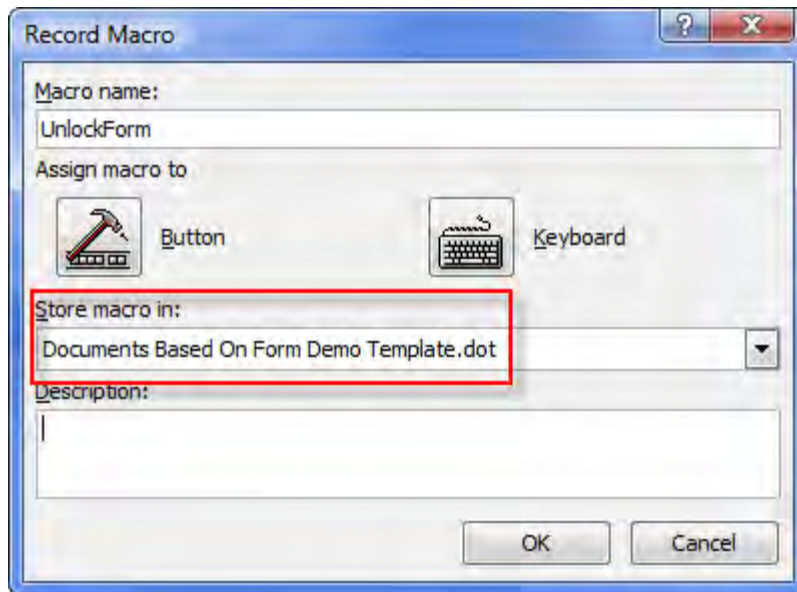



Of course, you can easily create a drop-down field for the Defendant/Defendants option. In the perfect world, that choice would automatically change the verb conjugation from has to have as appropriate. Well, you can set up your form to do that kind of thing. It's not exactly a user-friendly setup, but it works very well. Here are the steps:

- a. Setup a Drop-Down form field to replace the word Defendant. Add the two options, change the Bookmark name to "Defendant," and don't forget to check "calculate on exit" as this is necessary for it to work.
- b. Now delete the word "has" from the sentence. Position your cursor between the words "matter" and "been" and hit Ctrl+F9. A field will appear with brackets in them like this { }.
- c. Put your cursor between the brackets and type IF.
- d. Hit Ctrl+F9 again to insert another set of brackets (these being nested). Now it looks like this: { IF { } }
- e. Position your cursor between the nested brackets and type "Defendant" (the name of the bookmark you assigned to the drop down field).
- f. Now move your cursor outside the nested brackets and type: = "Defendants""have""has". The whole thing should look like this: { IF { Defendant } = "Defendants""have""has" }
- g. Protect the form, save it, close it and try generating a new document based upon your template. If you did it correctly, the

have/has will change automatically depending upon what you choose for Defendant/Defendants. Don't forget that you have to hit a TAB key in order for it to take effect.

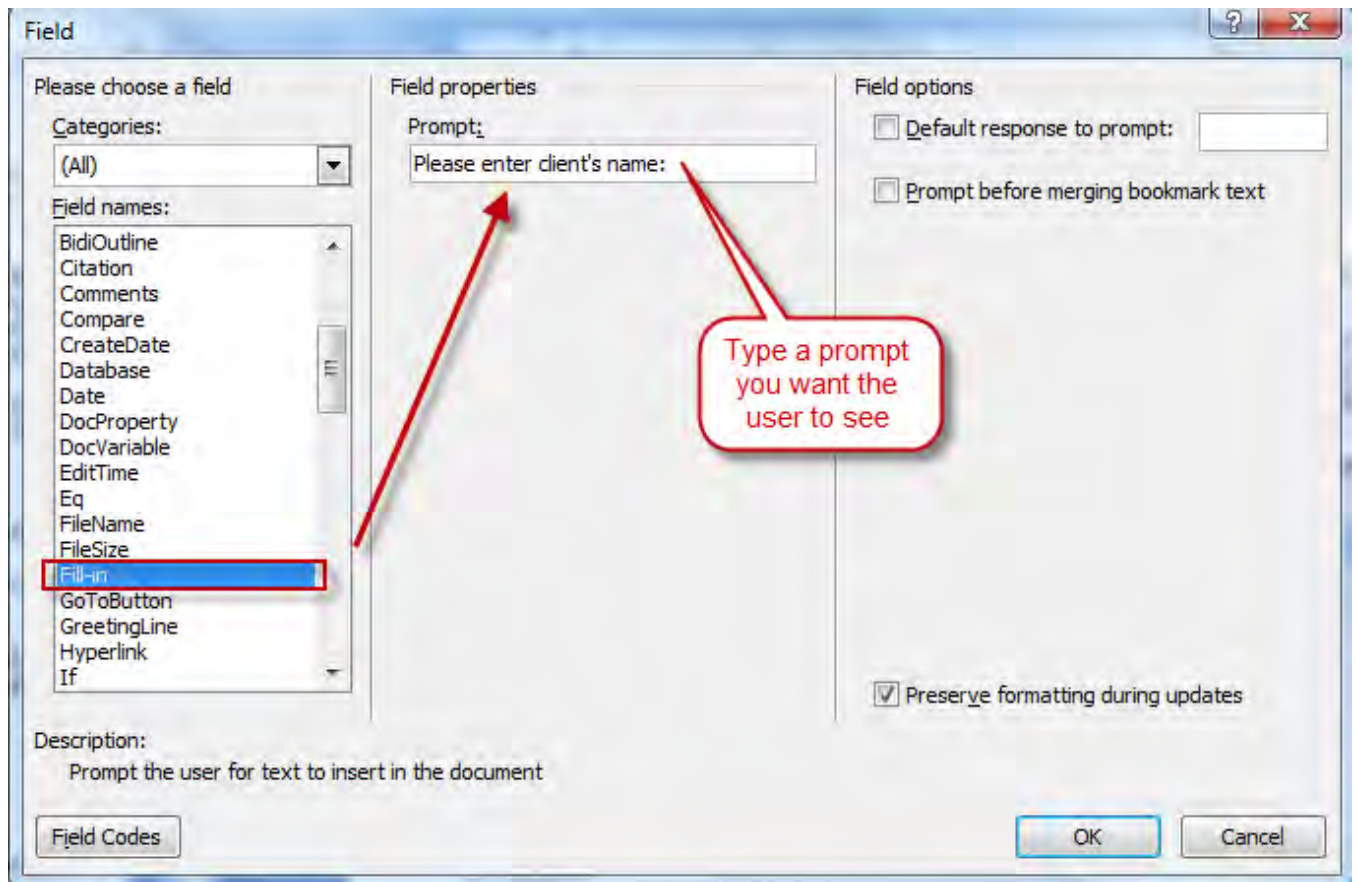
3. Automatically Unlock the Form: When the user exits the last field in the form, you can write a macro which automatically unprotects the form so that the user can type where ever they want. It's rather complicated, but here are the steps:
  - a. Edit your form.
  - b. Click the View ribbon→Macros button→Record macro.
  - c. In the next dialog, call the macro UnlockForm and make sure you Store macro in the template you're editing.



- d. As soon as the macro has begun recording, stop recording by clicking the  button on the status bar at the bottom of the screen.
- e. Now edit the macro by clicking Macros→View Macros→find the macro you recorded and click Edit. Between the Sub and End Sub lines, add this:

```
ActiveDocument.Fields.Unlink  
  
ActiveDocument.Unprotect  
  
Selection.HomeKey Unit: =wdStory
```
- f. Now click File menu→Close and return to Microsoft Word.

- g. Now locate the last field the user enters information into in your form and double click the field to open the properties.
  - h. Under "Run Macro On" click the drop down under Exit and choose the macro you created.
  - i. Protect the form.
  - j. Save the form.
- E. Fill a Form: In order to fill a form based on a form template, click the Office Button➔New➔click My Templates➔choose the template/form. In a protected form, you can advance from field to field by hitting the Tab key.
- F. Using Fill-In Fields: This is not as sophisticated as the foregoing, but Fill-In fields are a very easy way of entering information into blanks in a form. Just follow these steps:
  - 1. Create a template. It is probably easiest to pull up an existing document you created for a client which is a good representation of the variety you use most often. To create a template from an existing document, open **the document and click Save As..., in the Open dialog, change the Save as type box to "Word Macro-Enabled Template (\*.dotm)."**
  - 2. Show Fields. If you don't do this, you will not be able to see the fields you're entering. Just hit Alt+F9 to toggle the field codes on. After you're done inserting all of your fields, hit Alt+F9 again to turn the fields off.
  - 3. Place your cursor where you would like the user to enter information➔click the Insert ribbon➔QuickParts➔Field➔Fill-In. Type in a prompt you want the user to see.



4. Repeat the foregoing step until you have fields inserted everywhere you want them.
5. Save the template again and close it.
6. Fill in the form as described in the previous section. You'll see that the prompts pop up and ask you for each input.

IX. THE CASE FOR COMMERCIAL DRAFTING SYSTEMS ("COMMERCIAL SYSTEMS"):

A. Benefits of a Commercial Systems: Assuming a broad range of core document styles or many and varied clause options, Commercial Systems offer advantages over a forms-only convention in that they:

- May enable a user to draft extremely sophisticated documents with limited knowledge of the subject area
- Help minimize malpractice risk
- Good ones have an extremely fast "ramp up" time. In other words, you could buy a good Commercial Systems, spend a couple of weeks intensively studying the system and subject area, and you're ready to go.

- They can save you a tremendous amount of time compared to compiling template documents yourself.
- When the law changes, many Commercial Systems provide updates so you're always current with the latest developments.
- Some Commercial Systems provide free or fee-based educational seminars where you can learn more about the area of law they address.
- Most have a free demonstration.
- Some have list serves or other ways in which members or subscribers can connect and share information or help one another. This can be extremely valuable.
- Some Commercial Systems are customizable so you can modify the language they produce or add your own forms or templates.
- Technical support.
- Many Commercial Systems work in Word and/or WordPerfect.

B. Drawbacks of a Commercial Systems:

- They can be very expensive and many require that you pay annually.
- You only get the documents included in the system and it may be difficult or impossible to add additional ones.
- Some may not offer documents for every state.
- In a pure subscription arrangement, you don't own anything. You can't use the language contained in the documents for any other purpose and if you stop paying your annual fee, the system stops working.
- You're often stuck with the language the system provides and it is impossible or difficult to edit it.
- Some Commercial Systems cannot be customized so that the resultant documents come out the way you want without editing. If you can customize the system, it's often difficult to do so.
- Some users of high-end Commercial Systems complain that the system is so complicated that they're very difficult to fully grasp; and it may be impossible for a non-lawyer support staff person to ever figure them out completely.

X. THE CASE FOR ADDING DOCUMENT ASSEMBLY TECHNOLOGY TO YOUR TEMPLATES:

- A. **Unmatched Speed and Accuracy:** A document assembly system is the proverbial magic bullet for document-intensive areas of practice. If you're in such a practice (estate planning, real estate, banking, contracts, employee benefits, etc.), nothing else you can do will have a greater impact on your efficiency than automating your document production. It's one of the few technologies that can literally revolutionize the way you work. For example, assume you have a complex document with hundreds of optional paragraphs (such as a complex Revocable Trust) which presently requires four hours to create from first to final draft. After converting the document into a HotDocs template, the same document generation should take approximately ten minutes. The time savings are that dramatic.
- B. **Allows You To Safely Offer Flat Fees:** The time savings realized with document assembly systems are so significant that they require a move to flat fee or "value billing" instead of hourly billing. Of course, this doesn't mean that you should charge less for services rendered. It simply means that any uncertainty regarding the time necessary to generate the documents has been removed. Therefore, there is no risk in quoting a flat fee (at least for the document generation aspect of the service). The net effect is that fewer resources are consumed to produce better documents and clients are happier because they didn't have to worry about an unexpectedly high hourly fee.
- C. **You Don't Have To Build It Yourself:** You can learn to automate templates yourself, but it takes a significant investment of time. If you don't have the time to invest or would rather practice law, then you can always hire someone to build the system for you (using your documents, of course). For example, Affinity Consulting Group can teach you how to automate documents yourself or we can automate them for you.
- D. **Higher Accuracy:** Document assembly and word processor automation systems are much more accurate than Find, Rename & Modify because they only require the user to enter case-specific facts and the items that change (party names, etc.). The template does the work of including the appropriate paragraphs, excluding the irrelevant ones, verb conjugation, punctuating lists, calculating numbers and dates, correcting personal pronouns and replacing the items in need of replacement. For many people witnessing this method of document generation for the first time, it is nothing short of an epiphany.
- Documents generated from document assembly systems are more accurate though much less time is spent generating them; and training time for new employees is reduced since they must only be shown how to answer the questions.
- E. **Higher Profitability:** If you're generating more accurate documents in far less time and consuming far fewer resources in the process, profitability naturally goes up. The return on investment is fast and furious; usually only a few months for most projects. For example, let's assume that an estate planning lawyer and it takes you about 10 hours for the initial meeting and the time necessary to draft

an entire set of estate planning documents for the average client. Many transactional lawyers have switched to a flat-fee schedule so let's also assume that you charge a flat fee of \$2,000 for the average plan. Dividing that fee by the time it takes you to produce the documents means you're realizing about \$200 per hour. However, if you automated your document production, your total time spent could easily drop to 1.5 hours (including the initial meeting). That would raise your effective hourly rate to a whopping \$1,333 per hour. Now that's not bad!

Let's take that a step further and look at your cost savings. Assume that your cost of production works out to about \$100/hour (salary, benefits, materials consumed, etc.) for the time you used to spend. Therefore, if it was taking you 10 hours, then your cost of production was \$1,000. With a drafting system, your cost of production drops to \$150, or a savings of \$850 per transaction. If you're averaging just 6 new estate planning clients a month, then your monthly savings is \$5,100. You can use that figure to determine how much it would make sense to spend on automating your documents. You may have originally thought that a \$10,000 price tag for automating was completely out of the ballpark. Now you realize that you'd recoup that investment inside of two months. Since most experts say that project with a payback period of 12 months or less should be implemented, the idea of automating your documents pretty quickly moves from "that's way too expensive" to "when do we get started?"

It should also be noted that document assembly can pay big dividends even with the most simple documents. Let's say, for example, that your firm produces 50 letters a week of various types. They could be anything from a "confirming our initial appointment and here's what you need to bring" letter to a fax cover sheet to a simple "enclosed please find..." letter. If those letters presently take 8 minutes on average to complete, then that's 6.67 hours per week. Now let's assume they're automated, and the time necessary to complete drops to an average of 1 minute (very realistic). You're now down to .83 hours per week. If you multiply that time savings by \$100/hour, that's \$584/week, \$2,336 per month and \$28,032 per year. Regardless of the dollar savings, an extra 5.84 hours per week is nothing to sneeze at.

- F. **Faster and More Sophisticated Template Development:** Automation options native to Word and WordPerfect are very capable. However, to build sophisticated systems using only the tools within the word processor (Word, in particular) can be exceedingly difficult and slow. For example, I worked with a firm that had a Visual Basic programmer on staff who was working to automate several departments within the law firm using Microsoft Word's native functionality. Once they saw how efficient HotDocs could perform this task at a higher level, they immediately abandoned their Visual Basic coding. According to the gentleman who was doing the programming, he could create templates 3 times as fast using HotDocs (compared to Visual Basic) and had more advanced tools to work with.
- G. **Data Sharing:** For practice areas which typically require the production of several related documents, the entire set of documents can be automated so they share common information and may be generated simultaneously.



H. Form Consolidation: For example, let's say an estate planning attorney has 8 different form templates for a revocable trust. The differences between them could be fact pattern variations (for example, one might be a joint trust, one might be a single grantor trust; there may be different templates for a Marital outright, a QTIP or a General Power of Appointment). However, those templates would certainly share a lot of language not least of which was boilerplate text. Document assembly software would allow that lawyer to create a single Revocable Trust template which could produce any of the 8 original varieties based upon how the questions were answered in the interview. As such, there is only one template to edit and maintain; and if common language is edited once, it automatically affects all possible documents derived from that template.

I. Database Integration and Third Party Program Integration: Another great benefit of document assembly is that most applications can integrate with existing ODBC-compliant databases. For example, HotDocs integrates with Outlook, Access and many other common database programs. HotDocs also links with major case/practice management programs such as Amicus Attorney, Time Matters, Abacus Law, Practice Master, ProLaw and many others. Even accounting programs like PCLaw offer integration with HotDocs. Many of these programs come with included integration features which minimize the effort on your part to make it happen. It is also fairly easy to integrate with your own custom and other out-of-the box databases you may use in your practice.

The most obvious benefit of integration is that you already capture data about clients and matters in your existing practice management software. Using the integration tools and techniques allow you to pass that information along to your automated documents with little effort on your part. In addition, because the data does not need to be reentered the risk of inaccurate or incorrect data is greatly reduced. For example, a classic integration example is taking information entered into the practice management system and automatically generating an engagement letter. Another example is a large firm which does commercial loan work and has created a database which holds all of the pertinent loan information throughout the life of the loan. At any time, with a few mouse clicks, a lawyer will generate any or all (in this case about 30) available documents in a matter of five or six seconds. Before the integration was set up this process could take hours and the loan data was being reentered several times throughout the process.

J. Complete PDF Forms: If you have PDF forms to complete as part of your document assembly initiative, make sure the program you've chosen can fill in the fields in those documents as well. In the perfect world, you could fill out PDF forms as easily as you generate Word or WordPerfect documents. HotDocs, for one, is capable of this.

K. True Document Assembly Not Always Necessary: In spite of the foregoing, sometimes true document assembly is overkill. For example, if you're only generating documents with simple fill in fields and you don't really need to calculate anything or gather lists or do anything really "fancy," then you can probably get by with the automation tools already present in Word or WordPerfect.

Word makes this task a bit more difficult than WordPerfect, but it's a fast, easy alternative for simple, straight-forward drafting.

- L. Document Automation on the Web: Many of the document automation programs today provide the ability to deliver automated documents through a web browser. The interview is presented to the user in a web form and the documents are generated on a web server and made available for downloading. This example shows the same interview in the example above but presented through Internet Explorer.

**Answer Source Test**

**Client Information**

CLIENT INFORMATION:

Client type:

Single Man

Single Woman

Married Couple

Who is this Will for?

Husband

Wife

Check if NOT a US citizen:

Husband

Wife

Who is presumed to predecease the other?

Husband

Wife

HIS NAME:

First name:

Middle name:

Last name:

Suffix:

Jr.

Sr.

II

III

Other

His nickname:

HER NAME:

First name:

Middle name:

Last name:

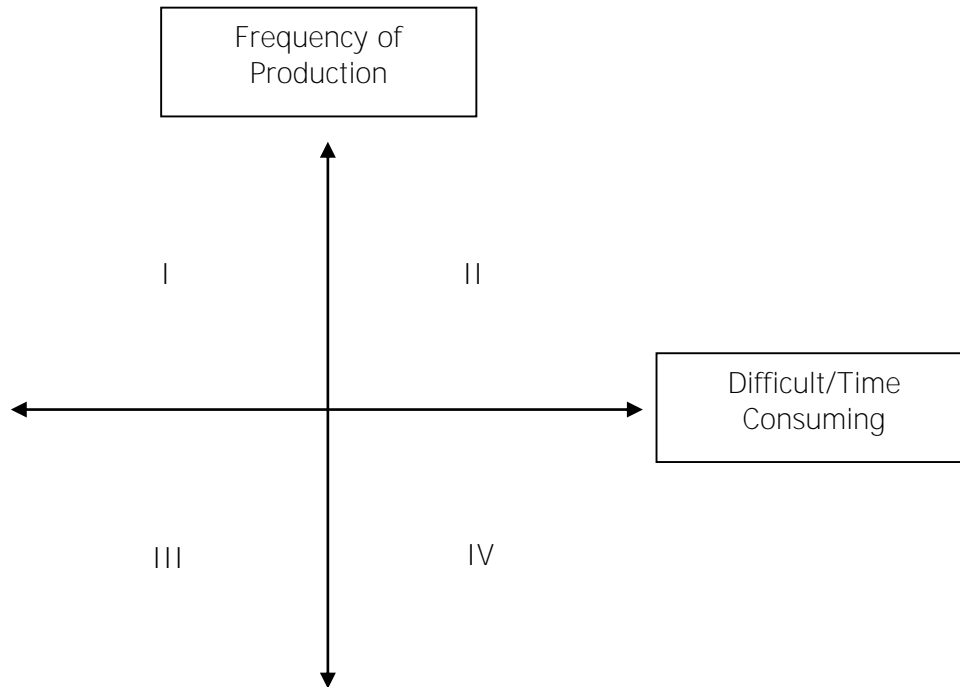
Her nickname:

Navigation: First, Previous, Next, Last, Finish

There are very few differences in the look and functionality of the interview. Using web technologies greatly enhances the flexibility of deploying automated document templates and customizing how those templates are used in legal practice.

- M. Document Assembly Considerations:
  1. How To Determine Documents Suitable for Automation: Draw a graph like the one below and plot your documents. Documents that are plotted in Quadrant I are good ones to start with when learning a document assembly program. You create them frequently, but they're pretty easy. Things like fax cover sheets and enclosed-please-find letters tend to fall

within this quadrant. Once you have practice and are a lot better at template development, you can start working on documents plotted in Quadrant II. These are the documents that will really improve your bottom line once they're automated. On the other hand, documents automated in Quadrants III and IV are probably not worth the effort.



2. Creating the Master Document: When you create a new template, in most cases you'll be basing the template on an existing document you commonly draft. Therefore, it's a good idea to start with a document you feel is the best example of the document for which you're going to create a template. Before creating the template, you'll need to add in all possible optional paragraphs that could occur in that type of document (in the order they could occur) and then "markup" the document. We refer to a document which contains all possible options for a document of that type and which has been marked up as a Master Document. This concept is best illustrated with an example. Let's say you're going to make a template for a Promissory Note like the one shown on the following page as Exhibit 1 on Page 43.

The first step is to identify changeable text. To make them easy to spot when you're automating the template, consider wrapping them with square brackets, and also add notes so you'll know what the options are. For an example, see Exhibit 2 on Page 44. The next step is to identify optional paragraphs, add in optional paragraphs that aren't included in your base document and state the tests for their inclusion. For an example, see Exhibit 3 on Page 46.

EXHIBIT 1 - Initial Document  
PROMISSORY NOTE

\$55,000.00

August 28, 2003  
Columbus, Ohio

FOR VALUE RECEIVED, the undersigned JOHN A. DOE and JANE M. DOE (hereinafter collectively referred to as "PAYOR"), promise to pay to the order of PAUL J. UNGER (hereinafter referred to as "PAYEE"), or holder, at 2001 Neil Avenue, Columbus, OH 43235, or at such other address as the holder hereof may from time to time designate in writing, the principal sum of Fifty Five Thousand and 00/100 Dollars (\$55,000.00) with interest thereon at the rate of eleven percent (11%) per annum, payable in sixty (60) monthly payments of \$1,195.83 commencing on the 1st day of February, 2000, and continuing on the first day of each month thereafter with the entire outstanding balance of interest and principal due and payable on January 31, 2005.

This Note may be prepaid in whole or in part, at any time, without penalty.

This note is secured by mortgage of even date herewith, executed and delivered by PAYOR, which is a lien on a certain parcel of real estate situated in Franklin County, Ohio, and more fully described in said mortgage.

If any installment of this note is not paid when due and remains unpaid for ten (10) days following the due date, such payment shall be subject to a five percent (5%) late fee. If any monthly installment under this note is not paid when due and remains unpaid for a period of thirty (30) days, the entire principal balance outstanding and accrued interest thereon shall at once be due and payable at the option of the note holder and such outstanding balance shall bear interest at the rate equal to five (5) percentage points higher than the original interest rate or sixteen percent (16%) per annum until paid.

All persons now or hereafter liable for the payment of the principal or interest due on this note, or any part thereof, do hereby expressly waive presentment for payment, notice of dishonor, protest and notice of protest, and agree that the time for the payment or payments of any part of this note may be extended without releasing or otherwise affecting their liability on this note, or the lien of any mortgage securing this note.

This note was executed in Franklin County, Ohio.

PAYOR

---

John A. Doe

---

Jane M. Doe

EXHIBIT 2 - Markup Phase I  
PROMISSORY NOTE

[\$Note Amount]

[Execution Date - August 28, 2003]  
[Execution City], Ohio

FOR VALUE RECEIVED, the undersigned [Payor Name - all caps - could be more than one] (hereinafter [collectively - include if more than 1 Payor] referred to as "PAYOR"), promise[s] to pay to the order of [Payee Name - all caps - could be more than one] (hereinafter [collectively - include if more than 1 Payee] referred to as "PAYEE"), or holder, at [Payee Full Address], or at such other address as the holder hereof may from time to time designate in writing, the principal sum of [Note Amount - in text = Fifty Five Thousand and 00/100 Dollars] (\$[Note Amount]) with interest thereon at the rate of [Note Interest Rate - text - could include hundredths of a percent] percent ([Note Interest Rate]%) per annum, payable in [Note Number of Payments - text] ([Note Number of Payments]) monthly payments of \$[Note Payment Amount] commencing on the [Note Date of First Payment - 1<sup>st</sup> day of September, 2003], and continuing on the first day of each month thereafter with the entire outstanding balance of interest and principal due and payable on [Note Maturity Date - calculate this].

This Note may be prepaid in whole or in part, at any time, without penalty.

This note is secured by mortgage of even date herewith, executed and delivered by PAYOR, which is a lien on a certain parcel of real estate situated in [Secured Property County] County, Ohio, and more fully described in said mortgage.

If any installment of this note is not paid when due and remains unpaid for ten (10) days following the due date, such payment shall be subject to a [Note Late Fee - text] percent ([Note Late Fee]%) late fee. If any monthly installment under this note is not paid when due and remains unpaid for a period of thirty (30) days, the entire principal balance outstanding and accrued interest thereon shall at once be due and payable at the option of the note holder and such outstanding balance shall bear interest at the rate equal to [Note Acceleration Interest Penalty - text] ([Note Acceleration Interest Penalty]) percentage points higher than the original interest rate or [Note Accelerated Interest Rate - text - calculate this] percent ([Note Accelerated Interest Rate] %) per annum until paid.

All persons now or hereafter liable for the payment of the principal or interest due on this note, or any part thereof, do hereby expressly waive presentment for payment, notice of dishonor, protest and notice of protest, and agree that the time for the payment or payments of any part of this note may be extended without releasing or otherwise affecting their liability on this note, or the lien of any mortgage securing this note.

This note was executed in [Execution County] County, Ohio.

PAYOR

---

[Payor Name]

---

[Payor Name]

EXHIBIT 3 - Markup Phase II  
PROMISSORY NOTE

[\$[Note Amount]

[Execution Date - August 28, 2003]  
[Execution City], Ohio

FOR VALUE RECEIVED, the undersigned [Payor Name - all caps - could be more than one] (hereinafter [collectively - include if more than 1 Payor] referred to as "PAYOR"), promise[s] to pay to the order of [Payee Name - all caps - could be more than one] (hereinafter [collectively - include if more than 1 Payee] referred to as "PAYEE"), or holder, at [Payee Full Address], or at such other address as the holder hereof may from time to time designate in writing, the principal sum of [Note Amount - in text = Fifty Five Thousand and 00/100 Dollars] (\$[Note Amount]) with interest thereon at the rate of [Note Interest Rate - text - could include hundredths of a percent] percent ([Note Interest Rate]%) per annum, payable in [Note Number of Payments - text] ([Note Number of Payments]) monthly payments of \$[Note Payment Amount] commencing on the [Note Date of First Payment - 1<sup>st</sup> day of September, 2003], and continuing on the first day of each month thereafter with the entire outstanding balance of interest and principal due and payable on [Note Maturity Date - calculate this].

ASK: Is there a prepayment penalty? If Y, insert this

{ If this Note is prepaid in whole or in part, in advance of the payment due dates, the PAYOR shall pay a pre-payment penalty to Payee equal to [Note Prepayment Penalty - text] Percent ([Note Prepayment Penalty - text]%) of the outstanding balance of the loan as of the date of the prepayment.

Otherwise, this

{ This Note may be prepaid in whole or in part, at any time, without penalty.

End Option

ASK: Is this note secured with real estate?

{ This note is secured by mortgage of even date herewith, executed and delivered by PAYOR, which is a lien on a certain parcel of real estate situated in [Secured Property County] County, Ohio, and more fully described in said mortgage.

End Option

If any installment of this note is not paid when due and remains unpaid for ten (10) days following the due date, such payment shall be subject to a [Note Late Fee - text] percent ([Note Late Fee]%) late fee. If any monthly installment under this note is not paid when due and remains unpaid for a period of thirty (30) days, the entire principal balance outstanding and accrued interest thereon shall at once be due and payable at the option of the note holder and such outstanding balance shall bear interest at the rate equal to [Note Acceleration Interest Penalty - text] ([Note Acceleration Interest Penalty]) percentage points higher than the

original interest rate or [Note Accelerated Interest Rate - text - calculate this] percent ([Note Accelerated Interest Rate] %) per annum until paid.

All persons now or hereafter liable for the payment of the principal or interest due on this note, or any part thereof, do hereby expressly waive presentment for payment, notice of dishonor, protest and notice of protest, and agree that the time for the payment or payments of any part of this note may be extended without releasing or otherwise affecting their liability on this note, or the lien of any mortgage securing this note.

This note was executed in [Execution County] County, Ohio.

PAYOR

---

[Payor Name]

---

[Payor Name]



3. Do it Yourself v. Consultants: After you've decided you want to implement document automation into your practice, you must decide whether to "do it yourself," hire a document automation consultant or a combination of both. Generally you can save time and money by hiring a consultant. It takes time to become skilled at document automation and your time is valuable to the profitability of your firm. If you bring in a consultant you benefit from the efficiencies and expertise from years of experience in working with firms like yours. Also with a consultant you will have more predictable and controllable costs, the project will likely be completed more quickly, and the cost will be lower. On the other hand, you know your documents better than anyone else and if you are one who likes to get your hands into technology then automating your documents is a great way to do exactly that. Either way it is important to weigh the costs and benefits of both approaches and decide what works best for you.

N. Free Trials of Document Assembly Software: Before you spend money on it, you can try HotDocs for 30 days. Just go here: <http://tinyurl.com/q5lzx3>

XI. COMPARING METHODS: The following is a brief summary of the relative pros and cons of using Gold Standards + Word Processor Automation ("GS + Word") compared to using Forms Plus Document Assembly Software ("Document Assembly").

- A. Raw Speed - Advantage Document Assembly: Document assembly software allows documents to be generated much faster than plain word processor automation.
- B. Ability to Automate Complex Documents - Advantage Document Assembly: Word processor automation can certainly fill in blanks, handle some basic logic and automatically format an answer entered (such as automatically converting a date entered like this: 8/14/09 into this format: August 14, 2009). However, document assembly software allows one to set up lists (infinite), calculate dates, text and numbers, easily make whole paragraphs or sections conditional. Almost anything you can think of can be done with document assembly software. As such, you can automate extremely complicated documents like leases, asset purchase agreements, estate planning documents or contracts.
- C. Cost - Advantage GS + Word: Since GS + Word does not require that you buy anything else and this type of automation can easily be done in-house, it is definitely cheaper than document assembly.
- D. Error Elimination - Advantage Document Assembly: With Forms Plus, you typically present users with a blank and they can type whatever they want into the field. With document assembly, you build a complete interview and have total control over what a user can enter and how prompts are phrased. You can also eliminate irrelevant questions from the interview, require that others are answered, and provide user help text with every question. As such, a good document assembly system prevents errors even if the individual using it has little idea about what they're doing or the relevant area of law.

- E. Ease of Learning Automation Tools - Advantage GS + Word: Because the tools built into Microsoft Word are fairly basic, it does not take long to learn how to use them effectively. Document assembly programs, on the other hand, can take months or years to master. Of course, the work product from a skilled document assembly developer is far more sophisticated, but it definitely takes a lot longer to get to reach that skill level.
- F. Time Required To Complete an Automation Project - Advantage Document Assembly: Automation options native to Word and WordPerfect are very capable. However, to build sophisticated systems using only the tools within the word processor (Word, in particular) can be difficult and slow. For example, I worked with a law firm that had a Visual Basic programmer on staff who was working to automate several departments using Microsoft Word's native functionality. Once they saw how efficient HotDocs could perform this task at a higher level, they immediately abandoned their Visual Basic coding. According to the gentleman who was doing the programming, he could create templates 3 times as fast using HotDocs (compared to Visual Basic) and had more advanced tools to work with.
- G. Database Integration - Advantage Document Assembly: Database integration means that you can pull client or case information directly out of a database and into your documents. This could be something as simple as pulling a name and address out of Outlook, or as complex as pulling party and all key contract terms out of a matter management application. The idea is that if you've already entered that information into a program, you shouldn't have to enter it again into the related documents.

Word processors allow you to use a technique typically referred to as "mail merge" in which you can merge information from a data source into a merge document. This approach is really great if you want to print address labels or simple letters for 500 individuals. However, it doesn't work so well when you want to generate a single set of documents for one transaction. On the other hand, document assembly programs typically allow users to tap databases or case management applications easily. For example, HotDocs comes with a database connector which allows one to link any HotDocs template to Outlook or any ODBC compliant database such as Access, SQL, Paradox, etc. Furthermore, almost every major matter management program has a HotDocs link so that case information can be drawn directly into templates during the assembly process.

A good example of this benefit is a large firm which does commercial loan work. For administrative purposes, the firm created a database which holds all of the pertinent loan information throughout the life of the loan. By using HotDocs to pull loan information into templates, a lawyer can generate any or all (in this case about 30) available documents in a matter of five or six seconds with a few mouse clicks. Before the integration was set up this process could take hours and the loan data was being reentered several times throughout the process.

- XII. AUTOMATION STUMBLING BLOCKS: There are obvious compelling reasons to automate your document generation. So why isn't every legal document being drafted

this way? There are several reasons and being aware of them will help you overcome them.

- A. **Productivity Paradox:** If a private firm bills time, then they have a strong disincentive to employ techniques that reduce the amount of time they spend to render a particular service. As long as hourly billing persists, automation makes little financial sense.
- B. **Insufficient Training:** If the project is undertaken in-house, the individuals responsible for the automation are rarely given enough training (particularly if a document assembly program is being utilized). With document assembly in particular, it can take months of practice to become a skilled user of the tool.
- C. **Unsuitable Documents:** Unless a lawyer drafts new documents from a blank piece of paper every time, then those documents can be automated. I have never met a lawyer who doesn't craft new documents from templates or pieces and parts of existing documents. However, many lawyers use templates or starting point documents that are related to one another (due to practice area), but which are completely dissimilar due to the fact that the lawyer has never audited the documents and tried to create similarity where it is appropriate. For example, let's assume a lawyer drafts employment agreements for hourly workers and salaried workers. Those agreements could contain a lot of duplicate language in at least the boilerplate provisions. However, they may not share a single paragraph unless the lawyer has made an effort to standardize them. Although it would make sense to combine those documents into a single template for purposes of automation, it may be impossible to do until the underlying documents are re-written so that the common provisions are actually consistent.
- D. **Lawyer Push-Back:** A successful document assembly project is going to encapsulate an entire decision tree in to the system so that it can produce perfectly customized documents with nothing more than the right answers to on-screen questions. Some lawyers feel threatened by this and simply aren't comfortable with technology which can do in seconds what was previously done by the lawyer through hours of work. I've heard more than one lawyer say over the years, "after this project is done, what are they going to need me for?" Support staff often feel even more threatened by this (sometimes justifiably so) and we have seen support staff make overt attempts to torpedo an automation project. The cold, hard reality is that a very high percentage of legal work is *routine* legal work. To the extent routine legal work involves the generation of documents by a lawyer, then it can be automated, systematized and in some cases, commoditized. These facts make lawyers uncomfortable for obvious reasons, but they are true nonetheless.
- E. **Initial Project Too Difficult:** This is another stumbling block for projects undertaken in-house. Most lawyers quickly realize that document automation will pay the biggest dividends with the most complex and time-consuming documents. However, those are the wrong documents to start with because of their complexity. For the person in charge of the project, it's like learning to swim by being pushed into the deep end of the pool. If a firm or department wants to automate a complex set of documents, they should start with a simple one so that

the developer has an opportunity to cut their teeth on something that isn't going to overwhelm them on the first day. For more information on how to choose appropriate documents to start with, see paragraph . on page .

- F. Not Enough Time To Finish a Project: Law firms and legal departments often task a support staff person or lawyer with automation projects and ask them to work on it "between projects" or "in their spare time." Of course, the time required to work on the project doesn't materialize or doesn't come in big enough chunks to get anything meaningful done. In our experience, if you don't make these projects part of someone's job description and allocate consistent time to the task, nothing gets done.
- G. Person Tasked With Project Does Not Understand the Substantive Law: This is usually when a firm or department decides that someone from the IT/computer staff should automate the documents because they're more tech savvy. Of course, those IT folks tend to know nothing about the substantive area of law (strike one); they typically have little experience with the word processor environment in which the development occurs (strike two); and they cannot get enough face time with the lawyers who *do* understand the area of law to get questions answered timely and keep the project moving (strike three).
- H. Faulty or No Return On Investment ("ROI") Analysis: Many times, a law firm or legal department will reject an automation proposal based solely on the price tag. That approach is fine as long as an ROI analysis is conducted to confirm or deny whether the project is worth doing. Many times, a project that sounds too expensive will pay for itself in 2 to 3 months. Therefore, it is essential to go through the ROI analysis before deciding yes or no on any particular project.
  - 1. What Is The Return On Investment of The Purchase? Technically, ROI is an estimate of the financial benefit (the "return") on money spent (the "investment") for a particular project. When calculating your cost, only include direct costs and expenses that are driven by the proposed project. Your calculation of return should include tangible benefits (bottom-line revenue increases or cost savings) and intangible benefits. When evaluating benefits, consider the following criteria:
    - a. Number of people helped: The higher the number of people helped by the proposed project, the higher the ROI. In this case, everyone in your office could use the system.
    - b. Frequency of use: The more frequently an application will be used, the higher the ROI.
    - c. Cost of production: The higher your internal cost to deliver the service or product, the greater the benefit from automation or technical assistance.
    - d. Potential to re-use: The greater your potential to re-use the data or information in the proposed new system, the higher the ROI.

- e. Communication efficiencies: The easier the proposed project makes it for your firm to communicate with clients or your employees to collaborate and communicate with one another, the higher the ROI.
  - f. Increased accuracy: The more a product or service increases accuracy, the higher the ROI.
2. Calculating Cost Savings: Before you can figure out savings, you must first figure out what your costs are. Therefore, you'll need to conduct a workflow analysis. Determine what steps are involved, how long each step takes and the costs associated with each step. After you've got that down, figure out how many of those transactions you average per week, month and year. This will help you determine your true costs so you can figure out what your savings might be. While you're doing this, you should consider which steps, if any, can be eliminated. The overall processes should also be scrutinized because it won't help to automate a bad process.
  3. Payback Period: This is the time it takes for the return to equal the investment. With technology projects, most experts agree that you should look for payback periods of one year or less. Furthermore, once a project is past its payback period, you should not be afraid to discard it for something better.
  4. Other Factors Affecting ROI:
    - a. Will The New Technology Increase The Competence Of Your Staff And Make The Office More Efficient? The best technology initiative will fail if your colleagues and staff refuse to use it or don't understand it sufficiently to use it. You have to think about this issue in advance. We recommend bringing the staff into the technology decision-making process early. This is essential if they are the ones who will be working with the new hardware or software. While they cannot dictate what you buy, their ideas can improve it, and their participation is essential if the system is to work. Without this participation and "buy-in," it can be an uphill battle.
    - b. Will The New Hardware/Software Allow You To Do Something You Couldn't Do Before? For example, if you currently refer to outside counsel all transactions of a particular type, then a new piece of technology may allow you to pull that work back inside your office
    - c. Will The Quality Of Your Services Be Improved? Any technology that enables you to provide more comprehensive, faster, more accurate or less expensive service to your clients should be given special consideration. This also applies to technology that allows you to communicate better with your clients.

5. Sample Analysis: In my professional experience, lawyers have a difficult time ascertaining their hard and soft costs associated with rendering a particular service. For example, a solo estate planning lawyer might be presented with an option of buying an estate planning document assembly system. Let's say the cost is \$12,000. Many lawyers will dismiss that cost immediately as too expensive and not give it a second thought. However, the return on investment analysis might have worked out like this:
- a. Lawyer handles 4 plans per week @ \$750 each (flat fee).
  - b. Average wage + benefits = \$30/hr (internal costs); and the typical transaction takes 8 hours from start to finish
  - c. Therefore, the current profit per plan = \$510 or \$97,920/yr
  - d. Automated estate planning system cost = \$12,000
  - e. Using the proposed system, the lawyer's total time to complete a plan drops from 8 hours to 1.5 hours
  - f. Profit per plan goes to \$705 or \$135,360/yr
  - g. Therefore, revenue would increase by \$37,440 in the first year and the system would have paid for itself by the 4<sup>th</sup> month of use. Most experts on this subject say that if the payoff is 12 months or less, then it is a good idea to pull the trigger.

## CHAPTER EIGHT

**MALPRACTICE AVOIDANCE II – MORE COMMON MISSTEPS LAWYERS MAKE**

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The following is a collection of articles, each of which discusses a common misstep that lawyers sometimes make. They are shared with the intent of helping you avoid the trouble others have had to face.

### **If You Didn't Document It, It Wasn't Said or It Didn't Happen**

Please, can we just acknowledge that lawyers as a group are terrible when it comes to properly and thoroughly documenting their files! Of course, not you, but all the other lawyers out there sure are. You wouldn't believe how bad it can get. I say this because with almost every claim we handle we have to deal with the lack of documentation of something. This can be a serious problem because now we're often forced to live with the reality that a word against word dispute between a lawyer and his or her client is in play and that rarely ends well for the lawyer. Here's just one story that highlights the problem.

Lawyer was retained by a client for the purpose of defending client in a contract dispute. No fee agreement or engagement letter was ever drafted. Lawyer prepared and filed an answer to the complaint that simply denied the allegations. There were no paragraphs specifically identified as affirmative defenses or a counterclaim, in part due to the fact there was no copy of the subject contract in lawyer's possession. The matter eventually ended up in early mediation. Lawyer failed to draft and submit a mediation statement based upon a belief that the issues were simple and doing so would not have been cost effective. The matter was settled at mediation. The agreement provided client would sign a promissory note secured with a confession of judgment. Lawyer recalls telling client that this was not a favorable settlement for him but client decided to agree to it anyway due to the potential costs of going to trial coupled with the risk of an adverse verdict. In other words, client just wanted to put it all behind him. Lawyer drafted and sent client the final documents for signature. There was no cover letter explaining the documents or setting forth client's obligations under them. Client never signed the documents. Instead client hired another lawyer who renegotiated the settlement for slightly better terms. Client refused to pay the bill and lawyer turned the bill over to a collection agency. Client sued for malpractice.

There are all kinds of documentation missteps in the above example but there's an even bigger problem. In this situation there were no notes of any kind in the lawyer's file. There was nothing documenting the lawyers thinking, no record of what was communicated, no record of the decision making process. Apparently the staff person responsible for scanning closed files and shredding the original file once scanning was complete was never instructed to scan and preserve all attorney notes. Now that's a problem.

Here at ALPS, we hear all the excuses when it comes to the reason why a firm's documentation policies are not as thorough as they perhaps should be. "That step isn't necessary," "It takes too much time away from important work," "We didn't think keeping that was necessary", "There are too many others things we have to do," "The client would be offended if we did that," and "We were trying to keep the costs down" are commonly shared. That's all well and good until someone questions what you did or why you did it. Memories are short, yours included. Never forget the following. If you didn't document it, it wasn't said or it didn't happen. That's how it's going to play out in our world.

While the basics such as documenting scope of representation, who and who isn't a client, and that representation has ended are vitally important, my desire with this post is to identify a few documentation traps that if not properly handled could place you in a situation not unlike the one set forth above. Here's the ultimate goal. There should be a thorough written record of the advice given and the decision making process in every file and this record must be preserved for the life of the file.

The first trap involves the client who wants to save a little green. It's a trap because there may be unintended consequences that the client hasn't thought through. If a client is cost conscious to such a degree that limitations are being placed on your scope of representation (e.g. taking shortcuts such as having you rely on documents prepared by others, severely limiting the amount of authorized research or discovery, not wanting to pay to have assets valued, not wanting to hire an expert, etc.), you must document that this client has been informed of the legal ramifications of the limitations being placed on your representation as well as the reasons why this client is making such a decision. Here's why. If this client is eventually harmed by his desire to save a little money he will turn to you and say "Why didn't you tell me that could happen? If I had only known I would have ponied up."

In a similar vein, if your client refuses to follow your legal advice it is **essential** for you to document the client has been informed of why you made your recommendation, the benefits of proceeding according to your advice, and the potential legal ramifications that might occur by not following your advice. Of course, don't forget to also document the client's stated reasons for making the decision to ignore your advice.

The next trap underscores one of the learnings from the story above. When closing a file, make certain that items like attorney notes, drafts of documents, memos, billing statements, and all substantive email exchanged are preserved because they serve as documentation of the work done, advice given, and the decision making

process. Again, these documents should be maintained for the life of the closed file. Pay particular attention to email. All substantive email should be captured and preserved with the relevant file. I have visited too many firms where this isn't the case, and frankly, that's asking for trouble.

Finally, don't get caught in the comfort trap. Many attorneys thoroughly document the files of "problem clients" yet remain slack in the documentation of files with their longstanding "good clients." More often than not, this is due to a level of comfort that has developed with longstanding clients. Be careful because too much comfort can cloud one's perception of what needs to be documented. Understand that problem clients are not the only clients who sue. Take whatever time is necessary to thoroughly document all files throughout the course of representation. The peace of mind that follows will be much better than the feeling of regret for not having done so should a claim ever arise, particularly one brought by a long-term good client.

This comfort trap also arises in another situation you should keep in mind. In short, never forget that you don't get a pass when doing a legal favor for a friend or family member. Treat this matter the same as you would if you were going to charge a paying client for the same work. Deadlines need to be calendared, conflict checks need to occur, phone calls need to be documented, etc. Friends and family sue when things don't turn out the way they expected; and when they do, if you happen to have no documentation of the advice given and the decision making process, you're about to learn a hard lesson just like the lawyer in our story above did.

### **It's All about Documenting Scope**

I know lawyers get tired of hearing it and risk folk like me get tired of always having to say it; but there is real value in documenting scope of representation on every new matter. Please note that I did not say with every new client, I said with every new matter. Now, I don't mean to suggest that every time a call comes in from some longstanding client that you, as their lawyer, should shoot off a new eight page contract or send a formal engagement letter. By no means do I wish to suggest that. I am suggesting, however, that anytime a new file is opened for a client, new or longstanding, one would be well served by taking a few moments to document the scope of representation on that new matter.

Many attorneys respond to this advice by sharing that they object to sending engagement letters to their longstanding and or well-known clients. They argue that doing so would be too formal and would detract from the attorney/client relationship. I could buy into this rationale if such clients never sued their attorneys. Unfortunately,

longstanding clients, life-long friends, and even family members do sue their attorneys. In fact, some of our largest losses have come from claims that were brought by such clients. Here's the spin. There is no rule that requires an engagement letter to be a lengthy three page contract full of legalese. A simple thank-you note or confirming email indicating that the usual fees will be charged along with a reference to the nature and scope of the work to be done can suffice.

Finding that I didn't buy into the first excuse, this next argument is made. With flat fee work, such as transactional work, more time would be spent drafting and sending an engagement letter than is warranted. After all, the work itself is usually completed within a month and often sooner. In response, it is uncanny to note the number of times that a planned one-month transaction ended up taking far longer. Unforeseen complications abound, particularly in repetitive transactions such as real estate closings in an area where many transfers are taking place.

Of course, we also need to recognize that memories can be short, including our own. Who wants to be in a dispute with a client over what you were or weren't asked to do? When this type of dispute does arise, few clients remember that they said they only wanted to pay their attorney to do certain tasks and not every possible action that might have been indicated. Again, a short letter or confirming email can do wonders. This documentation not only confirms your understanding of what the client's needs are, thus avoiding the running with assumptions misstep, but can even be an opportunity to ask if there is anything else you might be able to assist the client with. What harm is there in asking for additional work?

Given what we're seeing in claims coupled with more and more attorneys moving into limited scope representation, I would also encourage you to consider documenting what you are not going to do. If there happens to be a workmans compensation component to a personal injury claim and you have no intention of handling that piece, put it in writing! The same could be said for those of you who handle divorces or obtain large settlements of any type but also have no intention of advising those clients as to any tax ramifications that might arise. If you are only being retained to provide a second opinion, document that you have no obligation to file suit on the client's behalf. It's all about documenting that the client was made aware of what you will and will not be doing. Further, where called for, you might also consider documenting that you advised them to seek the services of someone who can assist them on those issues that you won't be.

While documenting scope of representation up front is critically important, it is equally import to document that your representation has ended at the matter's

conclusion. Just as with engagement letters, I continue to find that the use of a letter of closure varies greatly firm to firm as well as between attorneys within the same firm. The excuses that I often hear include statements like “in our firm we do a lot of flat fee in and out kinds of things and the effort simply isn’t worth it,” “I’m not about to say good-bye get out of here, particularly to my repeat clients,” or “these matters never really close.” Honestly, I don’t buy into any of these.

Let’s start with the basics. The purpose of a closure letter is to confirm that your representation has ended. From this perspective, I can understand why some might view these letters as more of a good-bye, get out of here statement and thus don’t wish to use them; but consider this. Closure letters can be a powerful marketing tool when placed in a different light. Regardless of whether the client is an in and out flat fee client or a long-term repeat client, the client has honored you by entrusting their current legal matter with you. Why not acknowledge that and say thanks? A simple thank you note along the lines of the following can do wonders in terms of repeat work and referrals.

*This concludes our representation of you in this matter. We hope that you found the quality of our work to be exemplary and we look forward to working with you in the future if and when the need ever arises. Thank you for allowing us to be of service. It has been our pleasure.*

If other matters remain open for the client, the letter can be modified accordingly. Instead of saying “we look forward to working with you in the future,” you might say “we’ll be in touch next week in regard to the Hightower matter.” Write to your audience, and yes it’s fine to have a few standard letters developed for various practice areas, but these things can and should be personalized which often takes just a minute or two.

Why not also use this letter to document that you have cut off unintended reliances? As attorneys, we often view flat fee in and out work as just that. Clients, however, may see it differently. They may feel that they have finally found their family attorney or their business lawyer. If you don’t wish to have these types of clients mistakenly believe that you will look out for their interests on a going forward basis send a thank you letter. Consider the simple will. If you don’t wish to take on the responsibility of informing everyone you’ve done a will for that the law has changed, cut off the possibility of that kind of unintended reliance. A statement inserted into your thank you letter along the lines of “Here are your wills, they should be reviewed every 3 to 5 years because laws do change” can help solve that problem in a non-dismissive way. The same would hold true for small business formations, particularly when you make the decision to hold the corporate books for these clients in the hopes that this will bring about additional work in the future. You don’t get something for nothing when it comes

to holding on to the corporate books of your clients because some will interpret your doing so as meaning they can rely on you to continue to look out for their interests when that's not the case.

A closing thank you letter is also the perfect place to document final instructions to the client. Even after you've completed your work, there may be times where a task or two remains for the client to complete. What might happen if a client fails to do that task or does it incorrectly? I believe attorneys do a pretty decent job of informing their clients about any remaining tasks that a client must take care of. Unfortunately, attorneys don't always document those instructions. This is why tax attorneys regularly write final instructions as to where to sign, where to send, what amount to pay, and by what date these steps must be taken in some type of closure letter. After all, they don't want to pay the interest and penalties after a client has missed a tax deadline and then says "Why didn't you tell me there'd be consequences if I missed that deadline?"

Two of the more significant benefits of a letter of closure concern conflicts of interest and the doctrine of continuous representation. In terms of conflicts, an interesting question that arises from time to time is when does a current client become a past client for conflict resolution purposes? The temptation is to rationalize that the passage of time coupled with a bright line gets you there. After all, doesn't the fact that the deed was delivered four months ago, the settlement proceeds were disbursed last year, the judge signed the final order three years ago, or the contract was signed over five years ago mean that these various matters were concluded and all of these clients are now past clients? Our conflict rules don't speak of bright lines or the passage of time as being determinative. Keep it simple. For conflict resolution purposes, once someone becomes a current client, they are always a current client unless and until you clearly document otherwise. This is typically done in a closure letter that clearly states something along the lines of "this concludes our representation of you in this matter." In fact, this is the reason why conflict savvy firms keep all letters of closure even after destroying the related file years after closing it. The closure letter is part of the conflict database because it documents who is a current client and who is a past client.

The doctrine of continuous representation and its tolling of the statute of limitations in malpractice cases can also be a problem. Losses have been paid on claims where the work was done 20, 30, and even 40 years ago. Here is an example of how this can happen. A firm has represented a long-term client for years. The work has always focused on oil and gas leases and at this point the number of leases the firm has been involved with numbers well over 40. Unfortunately closure letters were never sent because they were viewed as offensive. The lawyers feared that they would be received as good-bye, get out of here letters. But what happens if a serious problem on one of

the older matters comes to light and the client eventually sues? The lawyers want to argue that the subject file was closed years ago; but of course, there is no documentation of that. Due to the continuous representation coupled with the failure to formally close any of the long-term client's past files, an argument can be made that the running of the statute of limitations date has been tolled. If the firm had simply taken the time to send a thank you letter documenting that the work on each specific lease had been completed and the file was being closed, the outcome could be very different. Now an argument can be made that the closure letter started the SOL clock running and the window of opportunity to file suit has long since passed. That, my friend, is powerful stuff.

Finally, sometimes I'll hear that the time it takes to write closure letters simply isn't justified from a business perspective. Yes, there may be times where a more formal letter is called for but, again, remember to write to your audience. For some clients a simple "thanks for stopping by" email may suffice. The task can also be made much more efficient by developing a few templates for various practice areas. It's going to be much easier to customize a basic standard letter than create something new each and every time.

All of this speaks to the need to play it safe when it comes to documenting scope of representation. Clients are far less able to allege that their understanding of scope of representation was far broader than what yours was and, when there is no supporting documentation, we all know that it often doesn't work out well for the attorney particularly in the context of an allegation of malpractice. For this reason alone, the time spent documenting scope at the beginning and at the end of representation is well worth it. Try to get into a regular and consistent practice of doing so because claims attorneys will look for these types of documents in every claim file that comes in. They are that important.

### **Mixing Cocktails with Legal Advice Can Be an Accident Waiting to Happen**

I will admit that I can appreciate a well-crafted cocktail; but I will also share that when I am in a situation where such beverages are being served, I never allow myself to get involved in a conversation about someone else's legal problems and I strongly encourage you to do the same. Let me share a short story as to why.

An associate at a law firm, who was not a litigator in any way, shape or form, attended a social function and perhaps had a few more than she should have. Regardless, she got involved in a conversation with another guest about a personal injury matter. In addition to sharing some generic advice, the associate also let the

guest know there was still plenty of time to deal with it stating the statute of limitations in that jurisdiction was two years. Unfortunately, unbeknownst to our hero, there was an exception to the statute in play and the actual time to file suit was six months. The guest, relying on the advice received ended up not obtaining legal counsel until after the filing deadline had past. Associate and her firm were eventually sued for malpractice.

We are all well aware that drinking and driving can bring about serious consequences because when one's judgment and reflexes are impaired accidents can happen. Mixing cocktails and legal advice is similarly problematic. It's too easy for the combination of a casual friendly setting coupled with the consumption of a few adult beverages to cloud your better judgment. However, instead of leading to an automobile accident, you may find yourself having to deal with an accidental client.

Viable malpractice claims can easily arise out of situations involving an accidental client and these situations are not limited to casual conversations at cocktail parties. Casual conversations online, with extended family members or friends, and members of your church congregation or other community organizations you participate in are all additional examples of situations where you might want to proceed with caution. Unfortunately, we also can't overlook the office setting. Should you be concerned about passing along a little casual advice in a conversation with a corporate constituent while representing the entity itself? How about discussing issues with beneficiaries while representing the estate, trying to help a prospective client out during that first meeting when you know you are going to decline the representation, being a good Samaritan by making a few suggestions to someone on the phone who clearly has a problem but really can't afford an attorney, or answering a few questions from an unrepresented third party? The answer is, of course, yes. These are all situations that can easily lead to an accidental client. To underscore this point, who hasn't heard the old saying "No good deed goes unpunished?" Now remember that old sayings become old sayings because they have a ring of truth to them.

I am always a bit surprised by the response of attorneys who have had to deal with a claim brought by an accidental client. Statements along the lines of "I never intended to create an attorney-client relationship," "there was no signed fee agreement," or "no money was exchanged so how could this be" are common; but it's not about you! While these issues are not completely irrelevant, please understand that it is going to be more about how the individual you interacted with responded to the exchange. If whoever you were talking too happened to respond to the exchange as if they were receiving a little legal advice from an attorney about their legal issue and that response was reasonable under the circumstances it can start to get muddy. Worse yet, if it was



reasonably foreseeable that this individual would rely or act on your casual advice and then in fact did so to their detriment, you may have a serious problem on your hands.

I share all this, not with a desire to try to convince you to keep quiet and never try to help someone else out. By all means do so. The world certainly could use a few more good Samaritans and a desire to help others through a little education is a good thing as long as you stay the course. I share all of this because I want you to be cognizant of the risk involved whenever you decide to step into those waters.

Here's the bottom-line. Accidental clients are for real and there is no such thing as legal light. So if you ever find yourself enjoying a wonderful evening at a party with a cocktail in hand and another guest who has just learned you are an attorney wants to pick your brain, keep the following in mind. Don't talk about legal issues you are not well-versed in. If you feel compelled to pass along a little advice remember to ask questions so you understand the entire situation. Just know that by doing so you may be held to the accuracy of that advice later on so you might want to jot down a few notes as soon as you can. Finally, know that it's ok to say you're not the right person to be asking, particularly after you've had a few! That said, Salute.

## **How in the World**

From time to time I get involved in conversations with lawyers who have called in with a question or concern and as we talk through the situation it becomes clear that part of the problem is the lawyer doesn't know who his client is. These are the times I find myself asking "How in the world does this happen?" Here is one example.

A long-term client met his lawyer with his non-client sister in tow. These two siblings had real concerns about the seeming unwillingness of their parents to follow through with some necessary estate planning. The kids were well aware that upon the death of their parents and in the absence of an estate plan the tax situation could be devastating.

This lawyer agreed to get involved and see if he could help. The kids made the introduction, and as an extra incentive to help move their parents along, even agreed to cover the lawyer's bill. The lawyer met with the parents and got the ball rolling. There were additional conversations with the kids and parents but over time it became clear that the parents just couldn't commit. The lawyer allowed things to remain in limbo for a while; then, as it often does, the unexpected happened. The parents were killed in an unfortunate accident. The tax consequences are going to play out as feared. The lawyer

believes the kids are not his clients; but of course, the kids see it differently. As so succinctly stated in the film Apollo 13, "Houston, we have a problem."

The issue of not knowing who the client is occurs more often than some might think. Yes, in many situations who the client is is quite clear and that clarity will remain throughout the course of representation; but the story shared above is just one of a number that could be shared. Confusion over who the client is can and will arise in a number of practice areas. An interesting question for me has been is the failure to determine who one's client is an ethical misstep? While there is no direct rule that speaks to a lawyer's obligation to determine who and who isn't a client, several rules are certainly implicated. Rules 1.1, Competence, 1.2 Scope of Representation, 1.4 Communication, 1.7 Conflicts of Interest, and 4.3 Dealing with Unrepresented Persons immediately come to mind.

Comment 5 to Washington Rule 1.1 states the "Competent handling of a particular matter includes inquiry into and analysis of the factual and legal elements of the problem." If we are to keep our clients reasonably informed (Rule 1.4) in order to allow them to meaningfully participate in the decision making process of their legal matter, if we are to abide by our client's decisions (Rule 1.2) concerning the objectives of representation, if we are to comply with our obligations to avoid concurrent conflicts of interest (Rule 1.7), and if we are to clarify our role with unrepresented persons with whom we must interact with while representing a client (Rule 4.3) we can only do so with a clear understanding of who the client is. The only way to get there is to remember to stop and take the time at the outset of every new matter to review the fact pattern and make that determination in accordance with Rule 1.1. The failure to do so is simply asking for trouble from the get go.

That said, the issue is really more of a malpractice concern than an ethical problem. Here are the more common missteps I see. The lawyer never takes the time to make the determination and thus doesn't know who the client is. The lawyer fails to stay within the boundaries of her role and begins advising non-clients as the representation progresses. And finally, the lawyer fails to clarify her role to non-clients from the very beginning and confusion reigns. All three missteps can easily lead to the unintended creation of, and far too often unrecognized, attorney client relationships that can eventually result in all kinds of problems for the attorney.

To avoid these problems a lawyer must take the time to determine who the client is from the outset and then, if and when circumstances change during the course of representation, repeat the process as necessary. The analysis called for can at times become very fact specific. Start by determining to whom your duties and loyalties will

flow if you take a new matter on. Think about whose confidences must be maintained. This step in and of itself can help clarify the situation. While it's tempting to conclude that you will be representing the person you will be primarily interacting with while providing legal services, that's not necessarily the case, particularly in the context of handling corporate matters. Others will too quickly conclude that the client is going to be the person who will pay their bill. Again, this isn't always the case. You might also focus on the scope of representation. What are you being asked to do? Who will be relying on your legal advice? Will the representation bring about any conflicts? The answers to these questions will often provide further clarification.

Once you know who your client is, specifically identify the client by name in your engagement letter. Particularly when dealing with corporate entities, it can be just as important to similarly document who isn't your client. This step is essential because failing to do so is a way of giving yourself permission to avoid going through the necessary analysis just discussed. In addition to documenting who is and perhaps who isn't your client in your engagement letter you should also set forth the scope of representation. Defining the scope of your work further solidifies your role, not only in your mind, but also in the minds of those you will be interacting with going forward. Finally, once you have clarified who is and who isn't your client and thoroughly documented such, there is value in periodically taking a moment to review what you initially concluded as the course of representation evolves. Sometimes circumstances change. Sometimes non-clients become confused about your role. Sometimes you begin to get confused yourself. Regardless of the reason, take a little time to make sure you're still on the right track and, if necessary, have whatever conversations are called for in order to make certain all non-clients remain clear as to your role and then document these conversations. Yes, this may take a little extra time, but I know at least one lawyer who would tell you taking that time is well worth it.

### **Forgetting to Manage Your Side of the Attorney-Client Relationship**

Over the years numerous articles have been written on how to successfully manage client relationships. The focus often emphasizes effective and thorough communication, maintaining a professional presentation at all times and in all work spaces, learning all you can about your clients in order to anticipate additional legal needs they might have, taking the time to say thank-you and the list goes on. While this kind of information is worthwhile, it's time for something else.

Recently I have been thinking about how hard all the above might be if the lawyer actually didn't really like many of his clients. If he (or she) just found them irritating. Look, I love being a dad but I can assure you that when our kids were still at home there

were more than a few times over the years when I was seriously irritated with one or more of them. My point is this. Such feelings are normal in relationships of all types so irritation is likely to be part of the picture in some attorney-client relationships. This is when I realized this topic is worth addressing because we can all do something about it as long as we're aware of the issue and choose to do so.

It would be easy to now launch into a short lecture on client selection. All I will say about that here is this. Choose wisely and make sure they can pay. No, what I really want to do is look at what you can do to try to minimize the amount of time you spend being irritated with others, primarily clients because when you're irritated with any or all of them, the relationships involved can become stressed and your work product can suffer.

The obvious initial question I asked myself was why might a lawyer become irritated with one or more clients? The immediate answer that came to mind was because he wasn't properly managing his side of the relationship. Again, when I was irritated with my kids it was often because they were bothering me at a time when I didn't want to be bothered and I respectfully will suggest that clients can get under your skin just as easily if you allow it. The good news is this is something you have a great deal of control over.

Let's start by considering your overall workload. If, or perhaps when, you allow your workload to get out of hand, you become the one responsible for giving clients a reason to bother you. Depending upon the frequency of the interruptions, relationships can start to become strained and go south big time. Here's what I'm getting at. Almost by definition, managing client relationships demands that you manage your side of the relationship. You must help them help you do what they have hired you to do.

So what can you do? For starters learn to say no. No to additional work that's out of your comfort zone or work that you truly don't have time to take on. Think about it. When you say yes to work you really should be saying no to, this is the work where procrastination is most likely to be in play and that invites relationship problems. After all, who isn't annoyed by someone (like a client) asking about why work isn't being done when we know deep down it should have been. When you fail to say no you are the one creating the problem, not your clients. Learn to say no and it can be as easy as simply saying "While I sincerely appreciate your continued loyalty, my legal judgment tells me that you will be best served by my assisting you in finding an attorney with the level of experience this particular matter calls for."

In a similar vein, if you have allowed your workload to rise to the level where any interruption is truly burdensome or the workload is such that it's beginning to seriously impede your ability to have a life outside of the office, the time has come to hire additional staff. Think about it this way. For the legal practitioner, relief isn't spelled r-o-l-a-i-d-s, it's spelled d-e-l-e-g-a-t-e!

More importantly, educate your clients. Literally help them help you. Set aside specific blocks of time to respond to email, take and return calls, be available for walk-ins, or to just focus on client matters without interruption. If you fail to establish and then protect your productive time, who will? If it helps you to follow through, block out these times in your calendar.

Next, let every new client know what your communication policy is and work to educate your current client base as to the changes. You might place a short paragraph in your engagement letter or new client information sheet. Let them know when you will be available to take and return calls and explain what an emergency is and what it isn't so everyone is on the same page. Staff can take messages and offer what assistance they can when you are not available.

Establish a policy on responding to email and, as a risk guy, I strongly suggest you allow yourself time to carefully consider your response to any substantive inquiry. Shooting out an immediate response to every email that comes in is a bad idea. How about text messages? I find them to be quite an annoyance. As with email, establish a policy and let everyone know what it is. If you don't want clients texting you, you will need to tell them and also explain why. For starters, I immediately think about preservation, miscommunication, and acknowledgement problems. I don't know about you, but I sure as heck am not going to have my cell by my side every minute of every working day so I can check every text that I receive as they come in. My phone is off more than it's on when I'm on the road.

So I will say this one final time, managing client relationships includes helping your clients help you do what they have hired you to do. If you happen to be now, or ever find yourself, a little irritated at being bothered by some of your clients. I encourage you to consider whether or not the problem might be you. If it is, that's good news because you can definitely do something about it. You just need to decide to do so.

### **Who's Steering the Ship? Managing the Business Side of Your Firm**

I have always felt that my law school education missed one key component because a comprehensive course on how to manage the business side of a law practice

was never offered. Trust me, I had my fair share of missteps early on in my career and a course like that would have helped. Yes, I do know that now-a-days a number of law schools have developed a basic business class. In fact, I've actually been a guest lecturer in such classes at a few different law schools over the years. I just don't think that the limited number of hours typically devoted to a broad range of topics suffices. As I see it, there should be a serious year long course that delves into the ins and outs of managing a solo or small firm. Why? Because the success of any small professional services business, let alone a law firm, depends upon the business's continuing ability to deliver a quality product or service in a timely fashion and at a fair price. The more any business misses that goal, the greater the likelihood the business will eventually fail.

Here are three common examples that demonstrate the kinds of things I'm concerned about. In the first we have a solo attorney or a small firm's principal attorney who believes you can't make any money if you're not practicing law. She may eventually step in or tell someone else to address any fires, but only after it becomes absolutely necessary. In short there is a complete failure to recognize or appreciate the value of having the business side of the practice properly managed. No one is steering the ship. In the second we have a firm in which the partners decide to manage by consensus. No one is tasked with the responsibility of making any necessary business decisions because the group must first meet and try to reach consensus. The end result is that substantive decisions rarely occur and any decision that does get made often occurs long after it was needed. Finally we have a firm where the attorneys have decided to hire an office manager intending to delegate many, if not all, managerial tasks to this individual. Unfortunately, while delegating responsibility, they refuse to pass along the necessary authority and this person simply goes through the motions with little progress ever really made.

While a short article is not an appropriate place to delve into a thorough discussion of business management best practices; it is a place where I can highlight the principle areas that any successful small business does effectively manage. If your firm isn't adequately addressing one or more of the following managerial areas I would encourage you to remedy the situation as one way to further ensure the long-term success of your firm.

*Practice Management (Think **Quality Control**):* This area focuses primarily on the effective and efficient delivery of legal services. Managerial responsibilities should include things like determining the types of matters the firm will handle; setting appropriate caseloads; developing a client screening/intake process; establishing effective systems such as conflict checking and calendaring systems (which should

include the ability to monitor compliance with said systems); developing calendaring guidelines; and creating file organization standards for both paper and computer files. This position might also be tasked with recommending and deploying new technologies such as mobile devices or the utilization of cloud-based services. Ignoring this area can easily result in malpractice claims, ethical missteps, lost clients, and a poor reputation in the legal community.

*Administrative Management (Think **Leadership**):* These responsibilities here are more organizational in nature. Duties would typically include assigning staff; staff training; developing policies (e.g. Internet Use Policy); and most importantly, providing firm leadership. As firm leader, this person is responsible for establishing the firm's vision, direction, and culture. Attorney and staff achievement and motivation will be impacted as a direct result of this person's efforts. Ignoring this area can result in higher than normal attorney and staff turnover, low morale, and even create a situation where the firm is forced to downsize or eventually fold.

*Financial Management (Think **Accountability**):* This area is all about being responsible for the firm's financial health. Duties would include preparing budgets; managing cash flow to cover payroll, taxes and other expenses; issuing invoices; purchasing necessary goods and services; bank account oversight, maintaining financial records to include trust account and tax records; setting fee schedules; and preparing financial statements. Ignoring this area can have catastrophic consequences not the least of which could be cash flow problems, an excessive number of accounts in arrears, and unintentionally creating a situation where someone in your firm could steal client funds.

*Human Resource Management (Think **Culture**):* Responsibilities in this area are all about recruiting, hiring, evaluating, maintaining, and directing the personnel – including lateral hires, associates, secretaries, file clerks, bookkeepers, paralegals, etc. The person serving in this role is going to be on the front line and responsible for many of the day-to-day decisions that concern personnel. Ignore this area and you basically find yourself a camper at Camp Run-A-Muck. Some of the most troubled firms I have worked with found themselves in trouble directly and solely as a result of not effectively managing personnel. I will also share that several of these firms no longer exist as a result of this misstep.

*Marketing Management (Think **Presence**):* A marketing manager is often responsible for developing and maintaining the firm's visibility and presence both within the legal community and the legal marketplace. The goal is to let those with legal needs know what services your firm provides and why your firm is best suited to meet their

legal needs. Optimally this manager's efforts will generate a steady stream of business that can grow with the firm as its ability to handle additional work also grows. Not only should this person seek new business, he should also work to increase business with the firm's existing clients. This individual must also stay abreast of applicable law firm advertising rules in all jurisdictions where the firm does legal work. Ignore this area and income streams will stagnate and often decline. Ignore it long enough and the firm will eventually be forced to shut its doors for want of clients.

This list is not exhaustive by any stretch of the imagination and responsibilities certainly overlap in places. That said, I hope it begins to demonstrate the need for and value of effective firm management. Depending upon the size of your firm, there is no reason why any of the above areas of responsibility couldn't be handled by several different individuals. The trick with any of this will be in how successful you are in prioritizing the work, clarifying responsibilities, delegating sufficient authority to allow the manager/s to effectively manage, and most importantly trusting them to make decisions that are in the firm's best interests. In my experience I have found that it's either the refusal to make the managerial work a priority or the failure to delegate enough authority (often due to lack of trust) that undermines the entire effort. If your firm is doing a decent job of managing the above areas, that's great! If not, do all that you can to avoid the three examples shared above. Because in my opinion, failing to effectively manage a firm is the equivalent of having no one at the helm and I don't see that ever turning out well.

### **What's Wrong with Assuming Everything Will Turn Out Just Fine**

Everyone makes assumptions every day. As I see it, doing so allows each day to progress with some level of predictability and efficiency. Most days I assume my wife will return home for dinner at her usual time, all my tech will function problem free, and that if I need anything from anyone at the office they'll be available. There's nothing wrong with making such assumptions unless, of course, it turns out one of them is wrong **and** I am not prepared to deal with the consequences.

My guess is many attorneys would be surprised at the number of claims that are the result of a mistake that can be best described as the attorney was working under a false assumption. Think about a situation as simple as an attorney allowing her workload to grow beyond a reasonable level. Some won't worry because they assume they will somehow find the time to get it all done while others may assume that someone else will be available to pitch in. But what if there really isn't enough time to get it all done? What if no one else is available? What if the person who was asked to



help out isn't properly trained and doesn't do the work correctly? Let me share two short stories based upon actual claims to further underscore the concern.

An attorney had a high volume real estate practice. He made a decision to assign all title search responsibilities, settlement package preparation responsibilities, and additional related administrative tasks to one staff person. The attorney assumed everything would be fine because there was no pushback on the amount of work assigned and this person was a trusted, devoted, and competent employee. This staff person, however, was one who also happened to feel unable to speak up for a number of reasons. It wasn't long before she began to feel overwhelmed. She ended up in the weeds due to what had quickly become an excessive workload. The fallout was mistakes were made because the attorney's assumptions proved to be incorrect and there was no safety net in place.

What could this attorney have done to avoid having a claim arise if and when an assumption proved incorrect? I would have advised him to develop a quality control process to assure that all completed settlement documents were reviewed for accuracy. After all, having all important legal documents of any type reviewed by a second set of eyes is always a good idea regardless of practice area. He might have also monitored the reasonableness of every employee's workload or conducted periodic reviews of work in progress in order to stay abreast of how the staff was doing day to day because some people are just unable to say stop, this is enough. Finally he could have instituted a file review process. Obtaining a periodic status update on all active files is a great risk management tool in any practice. However, one caution is called for. Understand that the intent here is to have you approach the problem as looking for ways to maintain a quality work product. These processes should never be used as an excuse to start micromanaging the staff.

The second story is one that focuses on assumptions about attorney competency. It started with Attorney Smith who was in the process of retiring. He was fortunate in that another attorney, Attorney Wilson, had an interest in purchasing his practice. As a result of the eventual transfer of files, Wilson's workload jumped literally overnight. Wilson made a decision to assume that all of Smith's prior work was accurate and correct. Wilson also assumed that she would only be liable for the work she did on these new files and not for anything Smith might have done prior to her involvement. Both of her assumptions proved to be incorrect.

The problem here was that Wilson failed to consider the reasons that might be behind Smith's decision to retire. What if Smith's decision was due to his being burned out? What if in the final year or so leading up to his retirement Smith's mental acuity had

started to deteriorate? Wilson took no steps to be prepared to deal with any files that might have been neglected or mishandled. When Wilson decided to accept responsibility for Smith's files, she also accepted accountability. From a liability perspective accountability for past work done by Smith may not be immediate, but it will come. These new clients will expect to be told of any problems in their file. As they see it, Wilson's acceptance of responsibility for their files brought with it a responsibility to review those files. Wilson really should have conducted a thorough file review of all incoming files from Smith, even recently closed files.

The above two stories demonstrate the kinds of consequences that can arise due to working under assumptions without a plan should one turn out to be wrong. While more stories could be told, the point I am trying to make is this. In any busy practice, the temptation to assume all is well can be strong indeed. The new associate is settling in just fine. The network will never go down. Everyone is excited about and therefore using the new case management system. Again, this isn't a problem as long as all assumptions made turn out to be correct. But as shared above, what if the new associate is actually struggling? What if a truck hits a pole and knocks out power so your network isn't available for a last minute filing? What if a few attorneys and staff are using the new case management system incorrectly or not at all due to poor training? You see, life isn't always neat and tidy. Some assumptions will turn out to be incorrect. It's important to keep this in mind and periodically ask if any assumptions are in play. If there are, then the next step is to figure out what to do about it should they not hold true. Leave them alone and the false ones will bite at some point. As I see it, that's just a matter of time.

## **Don't Blow It with Those Darn Statutes of Limitations Dates**

Allowing a statute of limitations (SOL) to run on a client matter has always been a common malpractice error and I really don't see that changing. One would think that with the rise of computerized calendaring systems there would be a decrease in the frequency of these types of errors. Unfortunately, it hasn't played out that way. In fact, now-a-days malpractice carriers classify some of these claims as a failure to respond to the calendar. The calendaring system worked; but for one reason or another, the attorney just didn't get the job done. It happens. If statute of limitations dates come into play in your practice, here are a few thoughts shared for the purpose of helping you avoid becoming one of the many who have blown an SOL.

- 1) **Independently verify facts relevant to SOL dates** and identify the correct defendants from reliable sources in every instance. For example, verify accident dates from police reports and ascertain who the owner of the involved vehicle is

because it may not be the driver of the other vehicle. Thorough investigation from reliable sources is the only way to ensure accurate information. Clients and the persons to whom they talk, for example physicians, may not be dependable sources of information. It is imperative that you understand the importance of conducting a thorough investigation as well as have the ability to make the determination as to the reliability of all information obtained. You must also have a working knowledge of the statutes and their application in the various state and federal courts. This is particularly important when declining representation because you do not want to specify when a SOL will run in a non-engagement letter if you are relying solely on client memory. If they are wrong, or you are not given all of the facts, you will be wrong on the legal advice given as to when the SOL date is to run. Finally, if you don't have time to do all of the above, just say no.

- 2) **Don't delegate what is your responsibility.** Make certain that you are the one always responsible for making the legal decisions as to when the SOL will run on any given matter. Although many attorneys will claim otherwise, the reality is support staff often routinely establish SOL dates and the attorney reviews the date for statutory accuracy. As the attorney, you are well advised to take the time to note the jurisdiction, the venue, the parties involved, the type of case, verify dates and then go to the statutes each and every time to determine applicability and look for exceptions. Following through on this procedure can significantly reduce the likelihood of an error occurring when setting the statute of limitations date.
- 3) **Use reminder dates for all critical date calendaring.** There will never be a good reason to claim surprise when it comes to an approaching SOL deadline. Place reminder dates in the calendar well in advance of approaching deadlines in order to give yourself more than enough time to complete the necessary work in a thorough and professional manner.
- 4) **If you decide to withdraw, do so promptly.** In a perfect world you should try to withdraw at least six months prior to when the SOL will run. Inform the client of your withdrawal in writing and clearly advise the client of the applicable SOL deadline. Waiting until the last minute to withdraw increases the likelihood that the client will end up missing the SOL date and subsequently turn to you for recovery. This is the one situation where specifically stating when the SOL will run is advised because a thorough investigation of the matter has already occurred. On the flip side, try not to accept new cases at the eleventh hour as

there is an increased risk of problems arising simply due to the lack of time to properly investigate the matter.

- 5) **Institute a diary system** that allows you to review each and every file every thirty to forty-five days. One disadvantage of any calendaring system, docket control system, and file setup is that they create an unwarranted reliance upon their accuracy. A person has created the calendar, the docket card and the file and mistakes happen. Redundant systems can simply multiply the error. Best practices dictate that each and every file be reviewed on a routine basis. When doing so, be certain to double check dates, independently verify all key facts, prepare necessary documents well in advance of approaching deadlines, and contact the client so that they don't feel forgotten about.
  
- 6) **File suit early and follow up with service of process in a timely manner.** Never get to within thirty days of the SOL date without having filed suit. Last minute filings are playing with fire because there is no room for error. Do not put off the paperwork or service of process hoping to reach a settlement at the last minute. Unexpected events such as illness, computer failure, the discovery of an incorrectly calendared date, office vandalism, weather events, and accidents on the way to the courthouse are all actual examples of what can go wrong. Play it safe and smart. If you discover you have named the wrong defendant, for example the defendant was a person and not a corporation, there will still be time to remedy the situation. In fact a number of firms require that all firm attorneys file suit thirty days in advance of the SOL date and set reminders from that date as a way to ensure that no SOL date will ever be missed. I strongly suggest you consider following their lead.

### **Don't Take Client Indemnity Agreements Lightly**

I recently took yet another call from a lawyer wanting to know my thoughts about a new business opportunity. It's the call that starts out with so and so company wants the lawyer to be their exclusive local point person and boy it seems like a great opportunity. This type of call is not infrequent and comes in many flavors. After talking about the issues as I see them, I always ask the one question these callers never seem to think about and the question is this. Is there an indemnification provision in the contract? I have yet to hear any lawyer tell me no.

Truth be told, a number of the lawyers who call about contracts they are considering signing seem to be surprised when I ask about the presence of any indemnification language. Apparently they just gloss over certain sections of the

contract; and trust me, that's a misstep. Indemnification provisions are not something that can be ignored because they raise very real and serious coverage concerns.

Stop to consider how a malpractice insurer might view client driven indemnity provisions. When drafted very broadly, the language often used significantly expands what the lawyer may ultimately be liable for. Absent said language the lawyer would be liable for any attorney negligence. Depending upon the specific language at issue, however, by agreeing to an indemnity provision the lawyer can become liable for all kinds of client losses that are not the result of any attorney negligence. A malpractice insurance policy is designed to cover lawyers for their negligence. In addition, the insurer is not a party to the contract and has not agreed to the expanded exposure. As a result and in anticipation of such provisions, malpractice policies typically have a provision in them that excludes coverage for any obligation that arises under contract which is what creates the coverage problem. In short, by voluntarily agreeing to contractually expand one's exposure, a lawyer can create a serious coverage gap.

Unfortunately this concern isn't limited to contracts that a lawyer is thinking about entering into. Suppose a client inserts an indemnification clause into the boiler plate language of their guidelines and sends that to you. Might your continued representation after receiving the guidelines constitute an acceptance of that clause? I certainly wouldn't want to be the one who has to pay to find out.

In this day and age when lawyers more and more are being treated like a general service providers as opposed to trusted advisors, what is one to do? At the outset, read client guidelines and contract proposals front to back. Don't continue with the representation or sign anything without understanding what your true exposure will be. If you are not comfortable with the exposure, see if the client will remove the language. Other lawyers have suggested trying to insert language along the lines of "but only to the extent covered by my malpractice insurance policy" at the end of any indemnity clause and seeing if that will be acceptable. Hopefully some clients (your good clients) will understand that the risk they are asking you to assume is unfair and they will work to make the agreement acceptable. On the other hand, if any client responds by telling you everyone else signs this so if you want the work you will too, then I guess you have a tough decision to make. At least now you know it's going to boil down to how comfortable you are in self-insuring the risk.

## **Malpractice Avoidance II**

### **More Common Missteps Lawyers Make**

**Presented by:**

**Mark Bassingthwaite, Esq., ALPS Risk Manager**



**1) Poorly documenting your files is playing with fire because in word against word disputes, you often lose!**



**Enough with the excuses. Find time to document scope on every file.**

- ✓ Prevents running with assumptions - think role clarity
- ✓ Write to your audience
- ✓ Recognize its value as essential documentation
- ✓ Extremely important when scope is limited



**Documenting scope means you must also document that it has concluded.**

- ✓ This isn't a goodbye letter
- ✓ Cuts off unintended reliances
- ✓ Documents final instructions
- ✓ Important for conflict resolution
- ✓ Starts the clock ticking
- ✓ Needn't be formal



## The three file documentation traps you really want to try and avoid

- **Client driven limitations on scope**
- **Client refusal to follow your advice**
- **The comfort trap**



**2) Mixing drinks with legal advice is inviting trouble!**





**“No good deed  
goes unpunished”  
can ring true  
because it isn’t  
about you!**

**Accidental clients can be**

- **Family, members of your church, friends**
- **Corporate constituents**
- **Beneficiaries of an estate**
- **Prospective clients**
- **Unrepresented parties**



Seriously, are you telling me you don't know who your client is?

**How in the world???**



**3) Always take whatever time is necessary to determine who is and who isn't your client.**

**And be on the lookout for role confusion.**



**4) Don't forget to manage your side of the attorney-client relationship!**

**Why allow clients to be in control of your professional life?**



## **Start by setting boundaries and then hold to them.**

**You might also learn to:**

- **Say no,**
- **Delegate, and**
- **Unplug.**

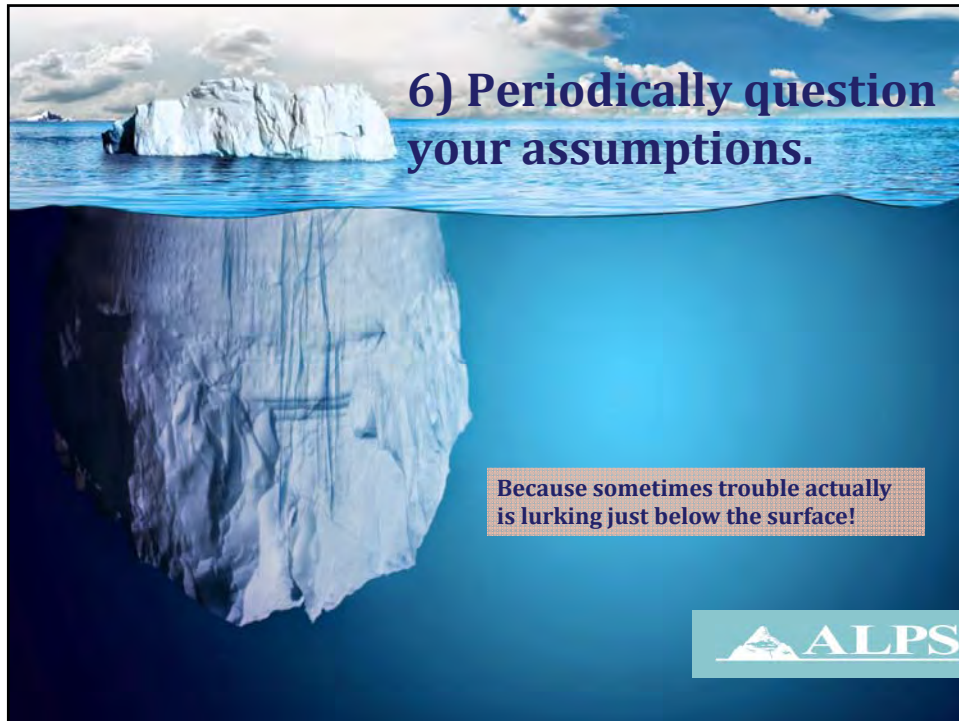


## **5) Make sure someone is always steering the ship. (Unless you truly intend to be a firm in name only.)**

**Who is in charge of firm**

- ✓ **Quality Control,**
- ✓ **Leadership,**
- ✓ **Accountability,**
- ✓ **Culture, and**
- ✓ **Presence?**





**8) Understand that indemnity agreements create a coverage concern.**



**THANK YOU. ARE THERE ANY QUESTIONS?**

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The logo for ALPS, featuring a stylized mountain peak icon to the left of the letters "ALPS" in a bold, sans-serif font. The logo is set against a teal rectangular background.

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## CHAPTER NINE

**BEING MORE EFFECTIVE BY MANAGING STRESS**

July 2016

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**FRANCES SCHOPICK, JD, MSW**, has worked for nearly 20 years as a mental health diagnostician and clinician in agency, research, and private practice. She is on the faculty of the Icahn School of Medicine at Mount Sinai (fka the Mount Sinai School of Medicine) in New York City in the Departments of Psychiatry and Preventive Medicine, and was formerly on the faculty of Harvard Medical School in the Department of Psychiatry. Research publications, abstracts, and presentations reflect her work in Mood and Personality Disorders and psychotic illness. More recently, she served as a Mediator for the King County Family Court Settlement Conference Program. She has investigated high conflict custody issues as an evaluator for Family Law Court Appointed Special Advocate (CASA), and is trained as a Guardian ad Litem (GAL). As an attorney, her focus is on Family Law dissolutions (divorces) and representing counselors facing complaints before the Department of Health (DOH). Ms. Schopick has presented to WA State Superior Court Judges and Administrators, as well as to the WSBA Disciplinary Counsel on mental health issues. Ms. Schopick completed her BA at Barnard College at Columbia University in New York City, a Master's Degree in Social Work (MSW) at the Hunter College School of Social Work, and a Juris Doctor (JD) at the University of New Hampshire. She holds WA licensure as both an attorney and LICSW. She coaches lawyers on minimizing stress in practice and working constructively with high conflict people.

Being More Effective by Managing Stress: Stress management is the key to living a healthy life. This is especially true while we practice law. Our jobs as lawyers put us at risk for higher levels of use, abuse, and dependence on alcohol, drugs, and other addictive processes. Stress management skills and self-care can help us make better decisions about which battles are worth fighting as well as how to best expend our energies for our clients. Please note that the information provided in this presentation is general and does not qualify the attendee to make psychiatric, medical, or other diagnoses. The presentation does not constitute legal, medical, or counseling advice, treatment, or representation.

Some say that stress is an ethical issue because unmanaged stress causes us to conduct ourselves in ways that are problematic. Stress may be a contributing factor in cutting corners, avoiding responsibility, and treating clients poorly. Candor to the court may suffer. It is our duty to take proper care of ourselves through reflection and active self-care.

Research shows that lawyers correlate with significantly higher rates of certain difficulties than the general population. Statistically, as a group, we face some psychological, behavioral, physical, professional, and interpersonal challenges at higher rates than the general adult population. For example, we struggle with depression at a rate that is estimated to be four times higher than the general population. Anxiety is estimated conservatively to be 5 – 6 times higher than the general population. For suicidality, we come in fourth after doctors, dentists, and financial professions. For alcohol abuse, we are at twice the risk of the general population, twice the risk of substance abuse, and three times the risk for cocaine. Physical expression of stress may be manifested as headaches, muscle aches, difficulty sleeping, digestive problems, diabetes, heart disease, and death. Professional expression may be seen through burnout, agitation, compassion fatigue, and mismanagement of funds. Interpersonal relationships may be strained when lawyers apply their professional skills, such as adversarial zealotry, to competitive domination in loving relationships.

Simply stated, stress is a reaction to a stimulus that disturbs our physical or mental equilibrium. We as lawyers have vulnerabilities to stress that are particularly high. We work long hours. Our work involves high stakes whereby our successes or failures may affect a client's access to children, life, liberty, or property. Our jobs require that we be precise and perfectionistic. The nature of the work is often adversarial. We often work with high conflict people – both clients and other counsel. Making matters worse, we may further stress our bodies through poor self-care.

There is research that suggests that our attitude toward stress can have a direct effect on whether stress is more or less likely to affect our quality of life or even our longevity. Research also suggests that when stress is high, negatively perceived, and unremitting, it can be damaging.

Generally, there are three theories of stress. Understanding them can help each of us identify how we might best address our own vulnerabilities in order to mitigate them. The experience of stress can initiate a response that is often referred to as “Fight or Flight” or “Fight, Flight, or



Freeze.” The body responds biologically in order to prime ourselves to respond, react, and preserve our safety. Then, when the threat has passed, we may return to baseline. However, there are times the threat has passed but our bodies remain on high alert. When this happens, the biologic triggers endure and can challenge our health even though the actual threat to safety is extinguished.

The first theory of stress addresses whether it is adaptive or maladaptive. According to this theory, not all stress is harmful; in fact, it appears that some forms of stress can increase creativity, prompt resourcefulness, and stimulate the growth of new brain cells. “Productive” worry can help us anticipate stress and rehearse responses to ward off anticipated trauma. Neurotic worry, on the other hand, can cause us to relive stress and replay catastrophe, all the while evading mastery.

The second theory of stress is to see it as objective versus transactional. That is to say, there are certain stressors that are objective and undeniable – such as, for instance, being chased by a hungry wild animal. The transactional perspective, on the other hand, states that how we perceive stress depends on how we interpret the situation, and how we interpret the situation affects whether it produces a stress response. There, the stress resides neither solely in the situation nor solely in the person.

The third theory of stress focuses on the effect attitude has on biology. This theory suggests that stress is not objectively or inevitably harmful, and a person’s attitudes toward stress can determine outcomes. Here, differences in how we think about the body’s responses to stress can actually improve our reactions to stressful events. So, when we reframe our responses, we garner physiological benefits. Some research suggests that people who report large amounts of stress *and* perceive that stress affects their health had increased risk of premature death. A third researcher suggests that giving to others can mitigate the negative effects of stress. Thus, it’s not that we need to get rid of stress, we just need to get better at it.

It is within our power to examine the stressors in our lives and determine how – and whether – we wish to mitigate them. This presentation gives examples of ways to identify and ease stressors, including: working with high conflict people (clients and other counsel) and tips on how to interact with them; identifying stressors within our control and how to mitigate them; seeking balance in our lives; and examining our values and how well we meet them.

One of the most important areas to consider is how we can manifest our values through attitude, autonomy, mastery, and purpose. As one researcher put it, “Chasing meaning is better for your health than trying to avoid discomfort.” This presentation is designed to help lawyers identify stressors that are unique to us as attorneys, consider how to address stress, and to consider how we can live our lives in concert with our values, so that we can become more effective in both our personal and professional lives.

# WORKING EFFECTIVELY WITH HIGH CONFLICT PEOPLE

Presented Saturday, July 23, 2016  
to  
The 11th Annual Solo and Small Firm Conference  
Seattle, WA

by  
Frances Schopick, JD, MSW

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# INTRODUCTION

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## Disclaimer

- ❑ This presentation does not constitute legal, medical, or counseling advice, treatment, or representation.
- ❑ Use hypothetical fact patterns.
- ❑ No consent to photograph, videotape, or audiotape.
- ❑ A little knowledge does not an expert make.
- ❑ This presentation does not qualify you to make psychiatric or other diagnoses.

## Risk Management

- ❑ Know thyself.
- ❑ Know your client / opposing counsel.
- ❑ Know your goal.
- ❑ Know your profession.
- ❑ Know your Rules of Professional Conduct.

## Roadmap: Working Effectively with High Conflict People

- ▣ Who 's "high conflict"?
- ▣ Are there signs?
- ▣ Practical tips

## WHO'S "HIGH CONFLICT"?

## Who's high conflict? Factors to Consider

- ▣ Combative litigators
- ▣ Over-zealous counsel
- ▣ Clients
  - Challenging
  - Confrontational
  - Belligerent
- ▣ Cultural differences

## Who's high conflict? Factors to Consider

- ▣ Situational stress of a legal battle
- ▣ Chronic history
- ▣ Your tolerance
- ▣ Client tolerance

## Who's high conflict? Situational v habitual

- ▣ Situational
  - Address the difficulty
  - Answer questions
  - Set tasks

## Who's "high conflict"? Situational v habitual

- ▣ Habitual
  - Generalized
  - Problematic relationships that can be relevant to their legal issues
  - Pervasive behaviors
  - Long phone calls
  - Lack of containment – Venting
  - Unrealistic expectations

## HIGH CONFLICT CLIENTS: ARE THERE SIGNS?

## Roadmap: High Conflict Clients

- ▣ Who are the high risk clients?
- ▣ What are some overall behaviors?
- ▣ Personality Characteristics
- ▣ Management Tips

■ Eddy, B. (2009). High conflict people in legal disputes.

## High Conflict Clients

Who are the high risk clients?

## High Risk Clientele

- ▣ Consider possible risk with
  - Employment cases
  - Property
  - Wills, Trusts, and Estates
  - Personal injury
  - Med mal
  - Workman's comp
  - Disability
  - Divorce
  - Custody cases
  - Evaluations
  - Suits to recover for trauma

## High Risk Clientele

- ▣ Consider
  - Undermining behaviors
  - Pervasive behaviors that seem part of "who they are"
  - People with maladaptive personality characteristics
    - ▣ Borderline Personality Disorder characteristics
    - ▣ Narcissistic characteristics
    - ▣ Antisocial characteristics

## Characteristics of People Who Engage in High Conflict

- ▣ Rigid pattern of thought, behavior, and functioning
- ▣ Distorted thinking and reasoning
- ▣ Difficulty perceiving, relating to, and responding to reality as others might perceive it
- ▣ Lack of empathy or concern for feelings of others
- ▣ Problems in relationships, social interactions, and work

▣ Bill Eddy, 2008, High Conflict People in Legal Disputes.

## Characteristics of People Who Engage in High Conflict

- ☐ All-or-nothing thinking
- ☐ Unmanaged emotions
- ☐ Extreme behaviors
- ☐ Preoccupation with blame

## Characteristics of People Who Engage in High Conflict

- ☐ All-or-nothing thinking
  - Black and white thinking
  - Unwilling or unable to take time to analyze situations or consider differing points of view, alternative solutions.

• Kantzavelos, Attorney and Client: Handling Confrontational Clients.

## Characteristics of People Who Engage in High Conflict

- ☐ Unmanaged emotions
  - Intense fear, anger, yelling
  - Outright show of disrespect
  - May not control emotions
  - May use emotions to manipulate or hurt others

• Kantzavelos, Attorney and Client: Handling Confrontational Clients.

## Characteristics of People Who Engage in High Conflict

- ☐ Extreme behaviors
  - Shoving, hitting
  - Spreading rumors
  - Outright lies
  - Obsessive contact
  - Surveillance
  - Unresponsive

• Kantzavelos, Attorney and Client: Handling Confrontational Clients.

## Characteristics of People Who Engage in High Conflict

- ☐ Preoccupation with blame – “Blamespeak”
  - Concentrates on how others fail them
  - Emotionally intense
  - Disproportionate to the event
  - Personal
  - Fault based
  - Out of context
- You may be next
- Getting hooked => negative advocate

» Kantavolos, Attorney and Client: Handling Confrontational Clients.

» Eddy, Bill, RIFF, p19.

## HCP: Results of Enduring Behaviors

- ☐ Interpersonal conflicts
- ☐ Inability to reflect on own behavior
- ☐ Inability to benefit from behavior-change feedback
- ☐ Denies part in cause

» Bill Eddy, 2008, High Conflict People in Legal Disputes, P. 26.

## Natural Attraction?

- ☐ Dramatic nature of court process
- ☐ and
- ☐ Dramatic nature of Cluster B PD

» Bill Eddy, 2008, Managing High Conflict People in Court, p. 17.

## Attributes of Court and High Conflict Personalities (HCP)

- |                                     |  |
|-------------------------------------|--|
| ☐ HCP                               | ☐ Court Process                                |
| ☐ Preoccupied w/blame               | ☐ Purpose is to assign blame/guilt             |
| ☐ All-or-nothing, Win/Lose thinking | ☐ Guilty/Not guilty                            |
| ☐ Avoids responsibility             | ☐ Holds culpable                               |
| ☐ Seeks attention and sympathy      | ☐ Center of attention/sympathy                 |
| ☐ Dramatic extremes of emotion      | ☐ Argue/testify in dramatic emotional extremes |

Bill Eddy, 2008, Managing High Conflict People in Court, p. 18.

## Attributes of Court and High Conflict Personalities (HCP)

- ▣ HCP
- ▣ Court Process
- ▣ Focuses on others' past behavior
- ▣ Examines people's past behavior
- ▣ Seeks to punish for hurt feelings
- ▣ Society punishes through court
- ▣ Seeks allies/engage others to solve problems
- ▣ Attorney advocates and court resolves
- ▣ Self serving
- ▣ Adversarial and zealous

Bill Eddy, 2008. Managing High Conflict People in Court, p. 18.

## High Conflict Clients

### Personality Characteristics

## PD Statistics General US Population

- ▣ People with PD's ~ 15-18% US population
- ▣ Borderline PD ~ 2% general population
- ▣ Narcissistic PD ~ 6% general population lifetime
  - 7.7% men
  - 4.8% women
- ▣ Antisocial PD ~ 4% of general population

## Personality Disorders

- ▣ Borderline Personality Disorder (BPD)
  - Dysregulation of need for attachment/affiliation
- ▣ Narcissistic Personality Disorder (NPD)
  - Dysregulation of need to be admired
- ▣ Anti-social Personality Disorder (ASPD)
  - Dysregulation of need for control



## BPD Hallmarks

- ▣ I-Love-You-I-Hate-You-I-Love-You-I-Hate-You-I-Love-You-I-Hate-You-I-Love-You-I-Hate-You-I-Love-You-I-Hate-You-I-Love-You-I-Hate-You-I-Love-You-I-Hate-You-I-Love-You-I-Hate-You-I-Love-You-I-Hate-You-I-Love-You-I-Hate-You-
- ▣ Splitting
- ▣ Cutting / self harming behaviors
- ▣ Walking on eggshells

## BPD Hallmarks

- ▣ I-Love-You-I-Hate-You-I-Love-You-I-Hate-You-I-Love-You-I-Hate-You-I-Love-You-I-Hate-You-I-Love-You-I-Hate-You-I-Love-You-I-Hate-You-I-Love-You-I-Hate-You-I-Love-You-I-Hate-You-
- “You’re the best lawyer in the world, you’re so smart, finally I have found someone who can understand and help me.”
- Followed by...
- “If you had told me xyz I wouldn’t have ...”
- “You haven’t helped me at all, I could have done better on my own.”
- Multiple past attorneys.

## BPD Hallmarks

- ▣ Splitting
  - Black and white thinking
  - All good or all bad
  - Indicator:
    - Grossly varied views on the person

## BPD Hallmarks

- ▣ Cutting / self harming behaviors
  - Reckless behavior
  - Burns or cuts
  - Fast driving
  - DUIs

## BPD Hallmarks

- ☐ Walking on eggshells – the experience of others
  - Hypervigilance re upsetting the person
  - Concern not to inflame

## BPD Risk for Legal Disputes

- ☐ Distortions.
- ☐ Feeling abandoned may evoke impulsivity, manipulation, and rage.
- ☐ May seek court as a means to punish or gain control.
- ☐ May be brought to court after loss of control.

## BPD: Risk Management Tips

- ☐ Be matter-of-fact and modest.
- ☐ Listen with respect even to anger and blame.
- ☐ Moderate reassurance.
- ☐ Realistic expectations / boundaries.
- ☐ Avoid intense emotions / criticism.
- ☐ Don't ignore or abruptly terminate.

Bill Eddy, 2008. Managing High Conflict People in Legal Disputes, p. 74.

## Narcissistic PD: Hallmarks

- ☐ Seeming lack of internal conflict
- ☐ Can be very attractive and seductive
- ☐ Constant demand for attention
- ☐ Types:
  - Flamboyant/Exhibitionistic
  - Covert
  - Malignant
- ☐ Exaggeration
- ☐ Arrogant

Bill Eddy, 2009. High Conflict People in Legal Disputes, p. 82.

## NPD: Risk for Legal Disputes

- ▣ High risk for legal disputes
  - Arrogant
  - Preoccupied with power or success
  - Sense of being entitled to special treatment
  - Risk takers
  - Disdainful of others / okay to take advantage
  - May exploit for personal gain
  - Unaware of effect of actions
  - Lack of empathy
  - Sees self as victim

Bill Eddy, 2009. High Conflict People in Legal Disputes, p. 77.

## NPD: Risk Management Tips

- ▣ Avoid direct criticism.
- ▣ Recognize genuine strengths and accomplishments.
- ▣ Listen with empathy.
- ▣ Share decision making.
- ▣ Explain benefits, risks, and consequences.
- ▣ Don't ignore or abruptly terminate.

Bill Eddy, 2009. High Conflict People in Legal Disputes, p. 96.

## Personality Disorders: Antisocial PD

- ▣ Antisocial Personality Disorder
  - No benefit to regulating need for control
  - Driven by refusal to be dominated
  - Sees rights of others as domination
  - Unmoved and gratified by the suffering of others
  - Disregard for and violation of the rights of others.

## Antisocial PD: Hallmarks

- ▣ Aggressive charm, seduction, and deceit
- ▣ Need to dominate / test
- ▣ Uncanny ability to mirror
- ▣ Lack of remorse or empathy
- ▣ Lack of fear
- ▣ Often not emotional
- ▣ Sadistic

Bill Eddy, 2008. Managing High Conflict People in Legal Disputes, p. 102.

## Antisocial PD: Hallmarks

- ☐ Potential downfall
  - Arrogance that leads to
  - Underestimating others

Stout, M. 2005. The Sociopath Next Door.

## ASPD: Risk for Legal Disputes

- ☐ May see self as victim
- ☐ Lacks concern for lying
- ☐ Drive to dominate
- ☐ Short-term thinking

## APD: Risk Management Tips

- ☐ Be aware of possible manipulation.
- ☐ Be aware of client's use of charm.
- ☐ Be aware of shifting stories.
- ☐ Obtain corroborating information.
- ☐ Avoid doing favors.
- ☐ Explain consequences.
- ☐ Be prepared to impose/enforce consequences.
- ☐ Pay attention to your fears.

Bill Eddy, 2008. Managing High Conflict People in Legal Disputes, p. 125.

## Dangerousness?

- ☐ "Mental illness" is not in itself a risk of violence.
- ☐ Past behavior is the best predictor of present risk:
  - ☐ History of violence
  - ☐ History of impulsivity
  - ☐ Plus: significant substance abuse problem
  - ☐ Plus: eg ownership of lots of weapons
  - ☐ Plus: preoccupation with xyz

Kantavolos, M. 2012. Attorney and Client: Handling Confrontational Clients.

## PRACTICAL TIPS

## Tips for Managing HCP Lend me an EAR!

- ▣ May feel counter intuitive:
- ▣ EAR
  - Empathy
  - Attention
  - Respect

• Kantzavelos, Attorney and Client: Handling Confrontational Clients.  
• <http://highconflictinstitute.com/calming-upset-people-with-e-a-r>

## Lend me an EAR!

- ▣ Empathy
  - ...is different from sympathy
  - Sympathy: S/he's there and you're not.
  - Empathy: You are in the person's shoes.

• Kantzavelos, Attorney and Client: Handling Confrontational Clients.  
• <http://highconflictinstitute.com/calming-upset-people-with-e-a-r>

## Lend me an EAR!

- ▣ Empathy
  - ▣ "Yes, I can hear how upset you are."
  - ▣ "I can see how important this is to you."
  - ▣ "I understand this can be frustrating."
  - ▣ "I know this process can be confusing."
  - ▣ "I'm sorry to see that you're in this situation."
  - ▣ "I'd like to help you if I can."

• Kantzavelos, Attorney and Client: Handling Confrontational Clients.  
• <http://highconflictinstitute.com/calming-upset-people-with-e-a-r>

## Lend me an EAR!

### □ Attention

- Non-verbal cues
  - 7% Rule
  - Eye contact
  - Nod your head
  - Lean in - with good boundaries
  - Tone of voice

• Kantzavelos, Attorney and Client: Handling Confrontational Clients.  
• <http://highconflictinstitute.com/calming-upset-people-with-e-a-r>

## Lend me an EAR!

### □ Attention

- Crucial to feeling "heard."
  - "Tell me what's going on."
  - "I will listen carefully."
  - "Tell me more."
  - "I will pay attention to your concerns."

• Kantzavelos, Attorney and Client: Handling Confrontational Clients.  
• <http://highconflictinstitute.com/calming-upset-people-with-e-a-r>

## Lend me an EAR!

### □ Respect

- "I share your concerns about this problem. I have a lot of respect for your efforts to solve it."
- "I can see you're a hard worker."
- "I respect your commitment to solving this problem."
- "I respect your success in accomplishing \_\_\_\_\_."
- "You have important skills that we need here."

• Kantzavelos, Attorney and Client: Handling Confrontational Clients.  
• <http://highconflictinstitute.com/calming-upset-people-with-e-a-r>

## Lend me an EAR!

### □ EAR

- Don't lie.
- Don't listen forever.
- Maintain an "arm's length" relationship.

• Kantzavelos, Attorney and Client: Handling Confrontational Clients.  
• <http://highconflictinstitute.com/calming-upset-people-with-e-a-r>

## Tips for Managing HCP Correspondence: BIFF

- BIFF
  - Brief
  - Informative
  - Friendly
  - Final

• Kantzavelos, M. 2012. Attorney and Client: Handling Confrontational Clients.  
• Eddy, B. 2011. BIFF: Quick Responses to High Conflict People.

## Correspondence BIFF

- BIFF
  - Good for email.
  - Effective for responding to hostile correspondence.
  - Responding to distorted information.
  - De-escalates the conversation.

• Kantzavelos, M. 2012. Attorney and Client: Handling Confrontational Clients.  
• Eddy, B. 2011. BIFF: Quick Responses to High Conflict People.

## Correspondence BIFF

- Avoid “The Triple A’s”
  - Advice
  - Admonishment
  - Apology

• Eddy, B. 2011. BIFF: Quick Responses to High Conflict People.

## Tips for Managing HCP

- From the start: Reduce client expectations.
- Express ambivalence: curious, matter-of-fact.
- Ask for specifics.
- Analyze alternatives together
  - Get them engaged
  - Share responsibility
- Create structure

• Kantzavelos, M. 2012. Attorney and Client: Handling Confrontational Clients.  
• Eddy, B. 2011. BIFF: Quick Responses to High Conflict People.

## Tips for Managing HCP

- ☐ Engage in “reality testing”
- ☐ Educate re consequences and risks
- ☐ Set limits and maintain boundaries
- ☐ Focus on tasks.
- ☐ Do respond to misinformation.

- Kantzavelos, M. 2012. Attorney and Client: Handling Confrontational Clients.
- Eddy, B. 2011. BIFF: Quick Responses to High Conflict People.

## Tips for Managing HCP

- ☐ Empathize with the intense emotions.
  
- ☐ Avoid getting “hooked.”
  - Feeling angry?
  - Avoiding eye contact?
  - Want to argue or defend yourself?
  - Out of choices?

Bill Eddy, 2008. Managing High Conflict People in Court, p. 35.

## Tips for Managing HCP

- ☐ Invite participation in final decisions.
  
- ☐ Remember: Lack of insight may result in escalation.
  
- ☐ Document important conversations including pros, cons, risks, and rationales.

Bill Eddy, 2008. Managing High Conflict People in Court, p. 36.

## Counseling for Clients?

- ☐ How to be effective in suggesting counseling
  - Counseling versus coaching
  - Set time aside to discuss benefits of counseling or coaching
  - Make a referral based on research
  - Follow up on the referral with counselor and/or client

- Stephen Feldman in conference.





Thank you!

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## CHAPTER TEN

## PROFESSIONALISM IN PRACTICE

July 2016

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**JUDGE SUSAN CRAIGHEAD** was appointed to the King County Superior Court bench in 2007. In 2014, she assumed the position of Presiding Judge. Judge Craighead previously served as Commissioner for the Washington State Court of Appeals from 2002-2007. As an attorney, she spent seven years with The Defender Association representing everyone from juvenile offenders to clients facing their Third Strike. Judge Craighead moved to Washington after clerking for a year with Justice Shirley Abrahamson of the Wisconsin Supreme Court. She graduated from Harvard Law School, which she attended after spending two years covering the courts of Kentucky as a reporter for the Louisville Courier-Journal. She graduated magna cum laude from Princeton University and earned a master's degree in International Relations from Oxford University, which she attended as a Rhodes Scholar. She is raising her teenaged son as a single mother.

**PAUL R. TAYLOR** is a partner with Byrnes Keller Cromwell LLP. He has been a trial attorney for 30 years and has tried a wide variety of cases including representing the Oklahoma-based owners of the Sonics in the case involving the Sonics' lease at Key Arena, professional liability, antitrust, securities, plaintiff's wrongful death, patents, commercial landlord/tenant disputes and white collar cases, both prosecution and defense. He also serves as special counsel to the Washington Commission on Judicial Conduct, investigating and trying cases of judicial misconduct. Before entering private practice, he was with the U.S. Department of Justice, Antitrust Division. He is ranked among the top ten commercial litigators in Washington by Chambers USA – America's Leading Lawyers for Business, and has been voted a "Super Lawyer" each year since 1999. He is also listed in Best Lawyers in America and Best Lawyers in Washington.

# PROFESSIONALISM: A MATTER OF COMMON SENSE

PAUL R. TAYLOR  
BYRNES KELLER CROMWELL LLP

- I. In General
  - A. Learn to Apologize.
    - 1. If you get out of line, fix it.
  - B. Don't take yourself too seriously.
  - C. Recognize that affronts from opposing counsel often stem from inexperience or a lack of confidence.
    - 1. Don't overreact.
  - D. Most things that seem like a crisis are not.
    - 1. Talk to someone with experience.
  - E. Don't jump to conclusions about opposing counsel.
    - 1. Most of us are honest and hardworking.
  - F. Take your client's story/facts with a grain of salt.
  - G. With disagreements, try to understand what is driving other side's position.
    - 1. Usually there is common ground to be found.
  - H. Try to avoid confrontational statements.
    - 1. Instead of telling opposing counsel that their client is a liar, try "one of our client's recollections seems to be a little off. . . ."
  - I. Think before reacting – don't kneejerk.
  - J. You don't need to respond immediately.
    - 1. Think before hitting "send."
  - K. Don't threaten sanctions unless they are truly warranted and you are serious.
  - L. If you have to send a stern letter, call in advance to explain why.
    - 1. The call may eliminate the need for the letter.
- II. Dealing With Difficult Lawyers

- A. Check your ego at the door.
  - 1. Your goal is to advance your client's case, not yourself.
- B. Maybe you are part of the problem?
  - 1. Bad questions in depositions?
  - 2. Impolitic emails, letters?
    - a. By the way, do you really need to send "confirming letters"?
  - 3. Not timely responding?
  - 4. Other common triggers.
- C. Depositions
  - 1. Don't dwell on stupid stuff.
    - a. Get rid of The Speech.
      - (i) You don't need to explain the basics of a deposition (opposing counsel did it when preparing the witness).
    - b. Forget "The Background."
      - (i) You don't need to know where the witness went to high school or her first job after junior high.
  - 2. What if opposing counsel is coaching the witness?
    - a. Look in the mirror: Is it really coaching or did you ask a bad question?
    - b. Next question: Is it hurting you? If not, who cares?
    - c. Listen and learn why they are coaching.
      - (i) Is the witness unprepared?
      - (ii) Is the lawyer sending a signal about areas of concern?
    - d. Don't use the word "coaching."

- (i) Will prompt an immediate fight.
    - (ii) Take a light-hearted approach – “your lawyer is right, I asked a bad question.”
      - (a) Enlist the court reporter’s help. . . .?
  - e. Don’t threaten to call the judge . . . unless you really mean it.
  - f. Look in the mirror.
  - g. Don’t be a “Demi” (Demi Moore in “A Few Good Men” – “Your Honor, the defense strenuously objects”).
    - (i) Your questions/objections don’t get better because you are raising your voice.
3. Do the crossword puzzle.

### III. In the Courtroom

- A. Cooperate with opposing counsel whenever possible – scheduling, stipulations, etc.
  - 1. Don’t fight over things that don’t matter.
- B. Address the Judge, not opposing counsel.
- C. When the Judge’s mouth opens, yours closes.
- D. Be unfailingly courteous to the lower bench.
  - 1. They talk to the judge. . . .
- E. Strident briefs are losing briefs.
  - 1. And they create unnecessary tension with opposing counsel.
- F. Argue the issues, not the personalities.
- G. Be firm with adverse witnesses, but not a jerk.
- H. You can actually joke (sometimes) with opposing counsel.

## CHAPTER ELEVEN

**DEALING EFFECTIVELY WITH DIFFICULT PEOPLE**

July 2016

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**FRANCES SCHOPICK, JD, MSW**, has worked for nearly 20 years as a mental health diagnostician and clinician in agency, research, and private practice. She is on the faculty of the Icahn School of Medicine at Mount Sinai (fka the Mount Sinai School of Medicine) in New York City in the Departments of Psychiatry and Preventive Medicine, and was formerly on the faculty of Harvard Medical School in the Department of Psychiatry. Research publications, abstracts, and presentations reflect her work in Mood and Personality Disorders and psychotic illness. More recently, she served as a Mediator for the King County Family Court Settlement Conference Program. She has investigated high conflict custody issues as an evaluator for Family Law Court Appointed Special Advocate (CASA), and is trained as a Guardian ad Litem (GAL). As an attorney, her focus is on Family Law dissolutions (divorces) and representing counselors facing complaints before the Department of Health (DOH). Ms. Schopick has presented to WA State Superior Court Judges and Administrators, as well as to the WSBA Disciplinary Counsel on mental health issues. Ms. Schopick completed her BA at Barnard College at Columbia University in New York City, a Master's Degree in Social Work (MSW) at the Hunter College School of Social Work, and a Juris Doctor (JD) at the University of New Hampshire. She holds WA licensure as both an attorney and LICSW. She coaches lawyers on minimizing stress in practice and working constructively with high conflict people.

Dealing Effectively with a Difficult/High Conflict Person (HCP): It's never too soon or too late to learn more about dealing with difficult people – whether you encounter them among clients or colleagues. This workshop will provide insights and increase skills for understanding how to spot difficult behaviors from the start, how to extricate yourself ASAP if so desired or, if you choose to hang in, how to optimize your energies for the long haul.

This presentation addresses such questions as who is high conflict, whether there are signs that can help you know if the person is high conflict and, once identified, practical tips by which to manage your work with high conflict people. Please note that the information provided in this presentation is general and does not qualify the attendee to make psychiatric or other diagnoses. The presentation does not constitute legal, medical, or counseling advice, treatment, or representation.

Who is high conflict?

Any person involved in your case may be high conflict including but not limited to other litigators and/or clients. Litigators may be high conflict when they seek to dominate a case, rationalizing that they are merely and appropriately adversarial or “zealous.” Clients may present as challenging, confrontational, or downright belligerent. It is important not to confuse someone who is high conflict with a person whose cultural differences may cause you to feel uncomfortable.

Under circumstances of a legal case, clients who might otherwise be low conflict may present as high conflict. That is, the strain of a legal battle may exacerbate people's vulnerabilities to the point of breaking or decompensating.

A good way to tell if a person is high conflict is to get a sense of whether the behavior is in response to a situational strain or if the behavior is habitual. If situational, the client is more likely to respond positively to reassurance, constructive critique, strategy, and logic.

Are there signs?

If, on the other hand, the propensity to high conflict behavior is habitual, you will get a sense that the behavior is generalized. You will likely observe problematic behaviors that are pervasive throughout the person's life. You might notice that they provide evidence of problematic relationships that are relevant to their legal issues, long rambling phone calls, and/or unrealistic expectations. High conflict people may demonstrate rigid patterns of thought, behavior, and functioning; distorted thinking and reasoning; difficulty perceiving, relating to, and responding to reality as others might perceive it; a lack of empathy for others; and problems in relationships. They may also demonstrate all-or-nothing thinking, unmanaged emotions, extreme behaviors, and a preoccupation with blame. These may all be concerning behaviors. You may choose not to work with these people. You may also choose to adopt techniques that may help manage interactions. The presentation describes hallmark behaviors of people with high conflict personality disorder characteristics such as Borderline Personality Disorder (PD), Narcissistic PD, and Antisocial PD.



Practical tips.

With the borderline HCP: You may: Be matter-of-fact and modest to offset idealization and devaluation; listen with respect to anger and blame; give moderate reassurances; promote realistic expectations and boundaries; and /or avoid intense emotions and criticism. Don't ignore or abruptly terminate. Most important, don't take the idealization or devaluation personally; it's all part of a pattern and has nothing to do with you (even when it's flattering).

With the narcissistic HCP: You may: Avoid direct criticism; recognize genuine strengths and accomplishments; listen with empathy; share decision making; and/or explain benefits, risks, and consequences of strategies and plans of action. Don't ignore the client or abruptly terminate him/her. Here, too, the HCP may idealize and devalue you. Don't take the idealization or devaluation personally; it's all part of a pattern and has nothing to do with you.

With the antisocial HCP: You may: be aware of possible manipulation; be aware of the use of charm; consider inconsistencies and shifting stories; look for corroboration; avoid doing favors; explain consequences; be prepared to impose consequences; pay attention to your fears.

Note: People with mental illnesses such as depression, bipolar disorder, and schizophrenia are not necessarily dangerous. Mental illness is not in and of itself a risk for violence. Past behavior is the best predictor of present or future risk. Keys to consider are history of violence and history of impulsivity, particularly when accompanied with significant substance abuse, ownership of lots of weapons, and preoccupations with other things.

With high conflict people in general: You may: reduce client expectations; express ambivalence and curiosity; learn specifics; work with the client to analyze alternatives together; get the client engaged; invite client participation; share responsibility; engage in reality testing; educate the client as to risks and consequence; empathize; exercise limit setting and maintain boundaries; document hallmark discussions and decisions. When appropriate, suggest counseling for additional support.

For communication, you may use the method of EAR – Empathy, Attention, and Respect. For correspondence, you may use the method of BIFF – Brief, Informative, Friendly, and Final. You may avoid giving advice (other than legal advice) or admonishment.

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### STRESS MANAGEMENT

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Discussion on stress, its symptoms, ways to manage it. Not all stress is harmful, and moderate stress can be a positive motivator to creativity and resourcefulness. Suggests that it's important to encourage colleagues experiencing high levels of stress to get help.
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Written by the Director of the Texas Lawyers' Assistance Program, who is a JD and licensed counselor. As an ethical issue, lawyers have a duty take proper care of oneself in order to appropriately and adequately serve the legal system. Service is not just about avoiding violation of laws and rules. It is important to take responsibility for life and its stressors, identify principles, values and goals by which we wish to live, learn to breathe properly, and manage sources of stress.
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 Fascinating theory that stress is not objectively harmful, and that a person's attitude toward stress can determine whether it harms. "Chasing meaning is better for your health than trying to avoid discomfort.... Go after what it is that creates meaning in your life and then trust yourself to handle the stress that follows." This is consistent with the theory of Daniel Pink, also referenced here. See also the references she makes to work of Keller et al., Jamieson et al., and Poulin et al.
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 Pink's research identifies six fundamentally human "right brain" abilities essential for professional success and personal fulfillment. Once basic needs are met, people are not motivated by money. We are most motivated to gain autonomy, mastery, and purpose in life.
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[http://www.abajournal.com/magazine/article/stressing\\_yourself\\_sick](http://www.abajournal.com/magazine/article/stressing_yourself_sick)  
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Addresses legal ethics and professionalism. Stress can cause job dissatisfaction, burnout, depression, and substance abuse, all of which can lead to ethical violations, malpractice, and other unprofessional behaviors. Includes a self test check list. Elwork's Table of Human Emotions, Log of Stress Reactions and Solutions, Values Questionnaire. Good Bibliography.
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Stress can put you at risk as a lawyer. Exercise management of stress. Identify stressors and address them head on. Know what is a good fit for you. Take clients or cases that fit your personality and strengths. Don't feel you have to do everything yourself. Use the Bar's Lawyers Assistance Program.

### **WORKING CONSTRUCTIVELY WITH "HIGH CONFLICT" PEOPLE**

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Gives (vaguely humorous) names for the various types of difficult adversaries. Most important: fly the plane. Reference to Judge Atlas' warning that an attorney's obnoxious or dishonest behavior can cost the him/her the judge's good opinion and even good will. Handling abuse in discovery with aplomb can reap rewards.
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Insights into the importance of the attorneys' identifying personal and professional style as well as clientele with which to work. Gives hypotheticals and responses as to how to handle them.
21. Eddy, B. 2008. Managing High Conflict People in Court. William A. Eddy.  
A must-have for all attorneys who work with high conflict clients, colleagues, or opposing counsel. That's everyone. Oh, and did I include family members?

- This is a short but very useful book written by Bill Eddy, who is trained both as social worker and attorney. Eddy describes commonalities between the court process and people with personality disorders. Gives useful tips for what to expect and how to manage people prone to – or seeking – high conflict in the courtroom (or anywhere for that matter!).
22. Eddy, B. 2011. *Splitting: Protecting Yourself While Divorcing Someone With Borderline Or Narcissistic Personality Disorder*. New Harbinger Publications, Inc.  
A useful addition to any Family Law attorney’s library. Helps attorneys to understand the dynamic of “splitting” in order to arm against it.
23. Eddy, B. 2013. *Pre-Mediation Coaching Manual*. High Conflict Institute.
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Very useful (although somewhat duplicative of other of this author’s writings) analysis of the intersection of high conflict behaviors with personality disorders. Designs a method to guide communication with high conflict people who communicate via “Blamespeak” whereby the people blame others and deflect responsibility to external sources. He uses the acronym BIFF for verbal and written communication: Brief, Informative, Friendly, and Firm.
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Interesting assessment of strategies to dealing with clients who may have psychiatric traits that make representation a challenge. Written by a psychologist to explain strategies for dealing with such clients, with advice from ethics attorney in Wisconsin. Can incorporate strategies into the firm’s policies, procedures, and engagement letters. Communication or lack thereof, is one of the most frequent reasons for atty discipline. Crucial to discuss. Terms of permissive withdrawal.
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Assess whether difficult behavior is the personality type, cultural tendency or trait, tactic to intimidate, or some other thing.
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- Excellent discussion of how to recognize some differences between people going through a rough patch versus someone with a psychiatric condition or personality disorder (PD). Refers to the work of Bill Eddy, JD, MSW. Lawyers see more people with PD-like behavior than other professionals because the people who come to them are in a crisis. PD's are not obvious. The conditions may cause people to defy logic and insight. Helpful for lawyers to gain greater understanding of this dynamic. Very useful for Eddy's descriptions of behaviors of high conflict people. Beware not to become negative advocates. Eddy's two models for communication: EAR and BIFF.
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Lawyers taint the profession when they confuse being adverse with acrimonious. This confusion has serious consequences for clients, court, and the profession. Gives 10 advisories for how to deal with difficult OC. Among them: don't let them get away with it; address communication breakdowns in real time; document to make a record so as to have evidence if needed to involve the court; keep focus; don't engage.
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<https://www.lawsociety.bc.ca/page.cfm?cid=1524&t=Dealing-with-difficult-people:-clients,-counsel-&-colleagues>  
Be clear and realistic about what you can or can't do for someone. Identify how bad the behavior is before determining what to do (not that good an article). Consult with trusted associate.
33. Stout, Martha. 2005. The Sociopath Next Door: The Ruthless Versus the Rest of Us. Tantor Media, Inc.  
Eye opening description of sociopathic behavior. Many people believe sociopaths are all violent criminals, and that we rarely meet them. However, the author tells us that sociopaths compose about 4% of the American population - one out of 25 people; and even greater numbers have sociopathic characteristics without fulfilling full criteria of the disorder. The author gives colorful, relatable narratives with analyses of how to better identify the behaviors that put non-sociopaths at risk.

## **BULLIES IN THE COURTROOM**

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 Gives (vaguely entertaining) names for the various types of difficult adversaries. Most important: fly the plane. Reference to Judge Atlas' warning not to lose the faith of the judge. Handling abuse in discovery with aplomb can reap rewards.
35. Hicks, RL Jr. Viewed 6/14/15. Strategies and Tips for Dealing with Dirty Litigation Tactics by Opposing Counsel.  
[www.dri.org/DRI/course-materials/2013-Employment/.../08\\_Hicks.pdf](http://www.dri.org/DRI/course-materials/2013-Employment/.../08_Hicks.pdf)  
 An excellent guide through common tactics and strategies a bully opposing counsel will use to make your life miserable. Very useful for Federal Rules of Civil Procedure and cases history that may be invoked to make bullies accountable. Talks about the Rambo Lawyer approach. Gives 9 practical tips. Believes that court will not tolerate Rambo techniques.
36. Intelligence Report. 2001. Halting Abusive Lawyers. *Intelligence Report*, Spring 101. Southern Poverty Law Center.  
<http://www.splcenter.org/get-informed/intelligence-report/browse-all-issues/2001/spring/halting-abusive-lawyers>  
 Useful references to rules and cases that make lawyers accountable.
37. Maleson, L and Ortego, JJ. 2003. Under Attack: Professionalism in the Practice of Law.  
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 A very good discussion of the boundaries of civility, incivility (all manner of adversarial excess), professionalism and lack thereof. Useful analysis that includes case references and rules. Some overlap with Hicks article, both of which refer to Saylor's 1988 article, "Why Hardball Tactics Don't Work." Concludes that unprofessional tactics do not work and will never help your client. References to case law. Distinction between "zealous" with "zealot." Sandra Day O'Connor reference that incivility is a disservice to clients and a waste of time and energy. Advises the 24/7 model that the court is a phone call away to deter bad behavior.
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 Lawyers taint the profession when they confuse being adverse with acrimonious. This confusion has serious consequences for clients, court, and the profession. Gives 10 advisories for how to deal with difficult OC. Among them: don't let them get away with it; address communication breakdowns in real time; document to make a record so as to have evidence if needed to involve the court; keep focus; don't engage.
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[https://books.google.com/books?id=D8\\_dRjjI9hIC&pg=PA79&lpg=PA79&dq=saylor+why+hardball+tactics+don't+work&source=bl&ots=QTwb17FAHt&](https://books.google.com/books?id=D8_dRjjI9hIC&pg=PA79&lpg=PA79&dq=saylor+why+hardball+tactics+don't+work&source=bl&ots=QTwb17FAHt&)

[sig=2RyCeJ7rTGdReqRk9zjAzRnXC08&hl=en&sa=X&ved=0CB8Q6AEwAGoVChMI0qz63vuPvgIVB6SICh2c4QDS#v=onepage&q=sayler%20why%20hardball%20tactics%20don%27t%20work&f=false](https://www.google.com/search?q=sayler%20why%20hardball%20tactics%20don%27t%20work&f=false&sig=2RyCeJ7rTGdReqRk9zjAzRnXC08&hl=en&sa=X&ved=0CB8Q6AEwAGoVChMI0qz63vuPvgIVB6SICh2c4QDS#v=onepage&q=sayler%20why%20hardball%20tactics%20don%27t%20work&f=false)

There is no evidence to support the theory that hardball tactics get favorable results. Judges don't like them; using them can backfire. Meanspiritedness is not persuasive. Litigation is not war; in fact it is a form of dispute resolution that was crafted to be non-warlike. "Zealous advocacy is the modern day plague... makes a mockery of the lawyers' claim to officer of the court status."



## BEING MORE EFFECTIVE BY MANAGING STRESS

Presented July 23, 2016  
to  
The 11<sup>th</sup> Annual Solo and  
Small Firm Conference  
by  
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## INTRODUCTION

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## Disclaimer

- ❑ This presentation does not constitute legal, medical, or counseling advice, representation, training, or treatment.
- ❑ Use hypothetical fact patterns.
- ❑ No consent to photograph, videorecord, or audiorecord.
- ❑ A little knowledge does not an expert make.
- ❑ This presentation does not qualify you to make psychiatric, medical, counseling, or other diagnoses of any sort.

## Stress Management

- ❑ What does it mean to manage stress?
- ❑ Does stress kill?
- ❑ Is stress good for you?
- ❑ Do effects of stress change depending how you see it?

## Stress Management

- Know thyself.
- Know your client.
- Know your role.
- Know your goal.
- Know your Rules of Professional Conduct.

## Roadmap: Being More Effective by Managing Stress

- Is stress management important?
- What is stress?
- Theories of stress
- Why should we care??
- Ways to minimize, manage, optimize stress
- Know what motivates you.

## Is Stress Management Important?

- Risks:
  - Stress can undermine your health.
  - Stress can undermine you professionally.
  - Stress can undermine you ethically.
  - Stress can undermine your personal life.
  - Stress keeps you from being your (wonderful) self.
- Proper management can reverse the effects of stress.

## Chinese Proverb

- The best time to plant a tree is?
- The second best time to plant a tree is?

## WHAT IS STRESS?

## Stress Defined

- ▣ Stress is
- ▣ A reaction to a stimulus that disturbs our physical or mental equilibrium.

• <https://www.psychologytoday.com/basics/stress>

## Ethical Implications

- ▣ Ethical issue of the 21<sup>st</sup> century
  - ▣ Duty to take proper care of ourselves
  - ▣ To properly serve the legal system
  - ▣ Take responsibility for life stressors
  - ▣ Identify life values and goals

• Foster, A. Viewed 6/14/15. Stress management - An ethical issue in the 21<sup>st</sup> Century.

## Expressions of Stress

- ▣ Psychological
- ▣ Behavioral
- ▣ Physical
- ▣ Professional
- ▣ Interpersonal

## Psychological Expression

- ▣ Depression
- ▣ Anxiety
- ▣ Irritability
- ▣ Anger
- ▣ Amotivation
- ▣ Hopelessness

Gosland, N., 7 Stress Management Tips for Busy Biglaw Attorneys

## Psychological Expression

- ▣ Depression
  - In the general population: 6.9%
  - Among lawyers: in 1996 23.4% of lawyers in WA
  - Now: Four times greater than general population

NAMI: <https://www.nami.org/Learn-More/Mental-Health-By-the-Numbers/reported-depression>  
Daicoff, S., Lawyer Know Thyself, P. 8.  
Gosland, N., 7 Stress Management Tips for Busy Biglaw Attorneys

## Psychological Expression

- ▣ Anxiety
  - In the general population: ~4% of adults
  - Among lawyers?
    - ▣ 19.8% of female lawyers
    - ▣ 27.8% of male lawyers

Daicoff, S., Lawyer Know Thyself, p. 10.

## Psychological Expression

- ▣ Suicidality
  - Lawyers are the fourth most likely profession to commit suicide
  - After doctors, dentists, and financial professions

Gosland, N., 7 Stress Management Tips for Busy Biglaw Attorneys

## Behavioral Expression

- ☐ Alcohol abuse
  - Twice the general population (13% => 26%)
- ☐ Substance abuse
  - Twice the general population
  - Cocaine: 3x general population
  - 60% of malpractice cases
  - 27% nationally linked to disciplinary cases
- ☐ Obsessive internet use
- ☐ Compulsive use of video games
- ☐ Pornography
- ☐ Sexual addiction

Ginsland, N. 7 Stress Management Tips for Busy Biglaw Attorneys  
Daicoff, S. Lawyer Know Thyself

## Physical Expression

- ☐ Headaches
- ☐ Muscle aches
- ☐ Chest pains
- ☐ Fatigue
- ☐ Sex drive
- ☐ Difficulty sleeping
- ☐ Restlessness
- ☐ Digestive problems
- ☐ High blood pressure
- ☐ Weakened immune system
- ☐ Diabetes
- ☐ Heart disease
- ☐ Death

## Professional Expression

- ☐ Loss of pleasure in work = Burnout
- ☐ Agitation
- ☐ Impatience
- ☐ Poor work quality
- ☐ Performance anxieties
- ☐ Compromised client relations
- ☐ Financial "irregularities"

## Interpersonal Expression

- ☐ Problems in relationships
- ☐ Impatience with others
- ☐ Adversarial traits transferred to loved ones
- ☐ Unnecessarily competitive
- ☐ Divorce rates?

Daicoff, S. Lawyer Know Thyself

## Stress Factors

- ☐ Stress is a physical, mental and emotional response to life's changes and demands.
- ☐ Not all stress is harmful.
- ☐ Moderate stress can be positive
  - ☐ Raise creativity
  - ☐ Prompt resourcefulness
  - ☐ Stimulates growth of new brain cells
- ☐ When stress is high and enduring, it can be damaging and lead to serious health problems such as depression and heart disease.

Commission on Lawyer Assistance Program

## Stress Factors

- ☐ Personality
- ☐ Physical and emotional health
- ☐ Personal relationships
- ☐ Major life changes
- ☐ Social factors
- ☐ Professional factors
- ☐ It's not always possible to avoid stress, but it is possible to change your response to stress.

Commission on Lawyer Assistance Program

## 12 Mechanisms of the Body Affected by Stress

- ☐ Integumentary system
  - Largest sensory organ
  - Protects tissue beneath
  - Regulates fluid and blood loss
  - Skin, hair, nails, sweat, other glands
    - Quizlet, Systems of the Body, What's Their Function
    - Wikipedia, Systems of the Body

## 12 Systems of the Body Affected by Stress

- ☐ Muscular system
  - Enables movement
  - Generates heat
  - Maintains posture
    - Quizlet, Systems of the Body, What's Their Function
    - Wikipedia, Systems of the Body

## 12 Mechanisms of the Body Affected by Stress

- Skeletal system
  - Stores calcium
  - Protects vital organs
  - Red blood cell production
  - Supports the body and its organs

• Quizlet, Systems of the Body, What's Their Function  
• Wikipedia, Systems of the Body

## 12 Mechanisms of the Body Affected by Stress

- Nervous system
  - Collects and processes information from the senses
  - Directs muscles to contract for physical action
  - Sensory input
  - Interprets input or thought
  - Elicits and signals responses
  - Coordinates muscles

• Quizlet, Systems of the Body, What's Their Function  
• Wikipedia, Systems of the Body

## 12 Mechanisms of the Body Affected by Stress

- Cardiovascular system
  - Circulates blood through the body via the heart, arteries and veins
  - Delivers oxygen and nutrients to organs and cells
  - Carries waste products
  - Transports nutrients and gas waste
  - Supports immune function

• Quizlet, Systems of the Body, What's Their Function  
• Wikipedia, Systems of the Body

## 12 Mechanisms of the Body Affected by Stress

- Endocrine system
  - Provides chemical communications within the body via hormones
  - Secretes hormones that regulate growth
  - Metabolism
  - General body function

• Quizlet, Systems of the Body, What's Their Function  
• Wikipedia, Systems of the Body

## 12 Mechanisms of the Body Affected by Stress

- Lymphatic system
  - Supplies and drains lymph fluid in support of the cardiovascular and immune systems.
  - Houses white blood cells

• Quizlet, Systems of the Body, What's Their Function  
• Wikipedia, Systems of the Body

## 12 Mechanisms of the Body Affected by Stress

- Respiratory system
  - Lungs and trachea regulate air
  - Moistens and heats air
  - Gas exchange

• Quizlet, Systems of the Body, What's Their Function  
• Wikipedia, Systems of the Body

## 12 Mechanisms of the Body Affected by Stress

- Excretory system
  - Eliminates waste from body
  - Eliminates nitrogenous waste out of blood
  - Regulates electrolytes, fluid
  - Preserves pH balance

• Quizlet, Systems of the Body, What's Their Function  
• Wikipedia, Systems of the Body

## 12 Mechanisms of the Body Affected by Stress

- Reproductive system
  - Sex organs to produce offspring
  - Production of hormones

• Quizlet, Systems of the Body, What's Their Function  
• Wikipedia, Systems of the Body



## 12 Mechanisms of the Body Affected by Stress

- Digestive system
  - Mechanical and chemical processes to break down food
  - Provides nutrients via the mouth, esophagus, stomach and intestines

- Quizlet, Systems of the Body, What's Their Function
- Wikipedia, Systems of the Body

## 12 Mechanisms of the Body Affected by Stress

- Immune system
  - Defends against disease

- Quizlet, Systems of the Body, What's Their Function
- Wikipedia, Systems of the Body

## THEORIES OF STRESS

## Theories re Stress

- Adaptive versus Maladaptive
- Objective versus Transactional
- Attitude and Biology

## Adaptive v Maladaptive

- ▣ Adaptive
  - Not all stress is bad
  - Motivator to creativity\*
  - Triggers resourcefulness\*
  - Stimulates the growth of new neurons\*\*

• \*ABA Stress  
• \*\*Laurie Mischley, ND. Consultation 2016.

## Fight or Flight Present Threat

- Life threatened =>  
Automatic adaptive adjustments to ensure survival
- Sympathetic nervous system is activated
- Brain releases powerful stress hormones to blood
  - ▣ Epinephrine aka adrenaline => heart faster
  - ▣ Cortisol releases glucose for energy to run faster

• Kelly O., Coping with Stress and Avoiding Burnout  
• Prittle, J., Stressing Yourself Sick

## Fight or Flight Present Threat

- Physical changes to enhance survival increases
  - ▣ ↑ Blood pressure
  - ▣ ↑ Heart rate
  - ▣ ↑ Blood flow to muscles
  - ▣ => Release of adrenaline and cortisol from adrenals
  - ▣ => Evade or confront the threat

• Kelly O., Coping with Stress and Avoiding Burnout  
• Prittle, J., Stressing Yourself Sick

## Fight or Flight Present Threat

- Behavioral and emotional changes to enhance survival:
  - ▣ Reduced desire to eat
  - ▣ Reduced sexual activity
  - ▣ Problem focused strategies
  - ▣ Emotion focused strategies

• Kelly O., Coping with Stress and Avoiding Burnout  
• Prittle, J., Stressing Yourself Sick

## Fight or Flight Reduced Threat

- Parasympathetic nervous system activates
  - Triggers relaxation response
  - Returns hormones to normal levels

• Kelly O., Coping with Stress and Avoiding Burnout  
• Pirkle, J., Stressing Yourself Sick

## Fight or Flight Adaptive or Maladaptive?

- Adaptive?
  - Short lived stressful events
- Maladaptive?
  - Chronic, uncontrollable, unpredictable ubiquitous quotidian stressors

• Kelly O., Coping with Stress and Avoiding Burnout  
• Pirkle, J., Stressing Yourself Sick

## Theories of Stress Objective v Transactional

- Objective
  - Face to face with a wild animal?
  - Public speaking?
    - Americans' #1 fear
  - Death
    - Americans' #2 fear

## Theories of Stress Objective v Transactional

- Transactional
  - Interface of person and circumstances
  - Interpretation of situation
  - => Whether produces stress response

• Metchenbaum, D., Coping with Stress

## Objective v Transactional

- Transactional
  - Stress is relative
  - Abates through coping mechanisms
  - Resides neither in situation nor person

• Meichenbaum, D., Coping with Stress

## Attitude

- Kelly McGonigal, PhD
  - Stress is not objectively/inevitably harmful.
  - A person's attitude toward stress can determine outcomes.
  - "Chasing meaning is better for your health than trying to avoid discomfort.... Go after what it is that creates meaning in your life and then trust yourself to handle the stress that follows."

• McGonigal, Kelly. 2013. How to Make Stress Your Friend. TEDGlobal 2013.

## Attitude

- Work of Jamieson et al.
- Mind over matter hypothesis
  - Changing the way we think about our bodily responses to stress can improve our reactions to stressful events.
  - When a person reframes stress responses, s/he receives physiological and cognitive benefits.

• Jamieson et al., 2012. Mind over matter: reappraising arousal improves cardiovascular and cognitive responses to stress.

## Attitude

- Work of Jamieson et al.
- Mind over matter hypothesis
  - Suggests:
    - If you see stress as helpful, blood vessels constrict less and stay relaxed longer.
    - Resembles joy and courage.
    - Not to get rid of stress but to get better at it.

• Jamieson et al., 2012. Mind over matter: reappraising arousal improves cardiovascular and cognitive responses to stress.

## Attitude

- Work of Keller et al.
- Does the perception that stress affects health matter?
- Examines the relationship among
  - 1) the amount of stress a person experiences,
  - 2) the person's perception that stress affects health, and
  - 3) health and mortality outcomes in a nationally representative sample of U.S. adults.
- Keller et al. 2011. Does the perception that stress affects health matter? The association with health and mortality.

## Attitude

- Work of Keller et al.
- Individuals who reported a large amount of stress AND perceived that stress affects their health had an increased risk of premature death.
- Keller et al. 2011. Does the perception that stress affects health matter? The association with health and mortality.

## Attitude

- Work of Poulin et al.: Giving to Others and the Association Between Stress and Mortality.
- Providing help to others predicts a reduced association between stress and mortality.
- Stress did not predict mortality risk among people who provided help to others in the past year.
- Stress did predict mortality among those who did not provide help to others.
- Poulin et al. 2013. Giving to Others and the Association Between Stress and Mortality.

WHY SHOULD WE CARE?

## Lawyers' Vulnerabilities

We lawyers have (unique) vulnerabilities that require our attention.

## Attorney Vulnerabilities

- Legal profession
  - Deadlines
  - Long hours
  - Billable hours
  - Client demands and expectations
  - High expectations personally
  - High expectations for outcomes
  - \*\*Inherent (?) adversarial nature of the work

• Pirtle, J., *Stressing Yourself Sick...*

## Attorney Vulnerabilities

- Major consequences:
- Cost of losing or even making a mistake
  - Loss of
    - Life
    - Life style
    - Liberty
    - Property / Money
    - Children

• Pirtle, J., *Stressing Yourself Sick...*

## Attorney Vulnerabilities

- Lawyer personalities
  - Perfectionistic
  - Gladiator mentality
  - Thinkers not feelers?
  - Suppress (conscious) physical and psychological responses
  - Repress (unconscious) responses

• Kelly, O., *Coping with Stress and Avoiding Burnout*

## Attorney Vulnerabilities

- Battle fatigue
  - War model of practice (some)
  - Belligerent opposing counsel
  - Client angry re results
- Lack of support
  - Skilled to listen
  - Experience to understand

• Kelly, O., Coping with Stress and Avoiding Burnout

## Attorney Vulnerabilities

- Compassion fatigue
  - Emotion of case
  - Empathy for client
  - Internalize client's anxiety

• Kelly, O., Coping with Stress and Avoiding Burnout

## MINIMIZING / MANAGING STRESS

## Coping with Stress

- Familiarity – What to expect
- Arm self with information
- Feeling of control

• Meichenbaum, Coping with Stress, p.88

## Coping with Stress

- Individual defense mechanisms
  - Repression (unconscious)
  - Suppression (conscious)
  - Denial
  - Distortion
  - Intellectualization
  - Humor

• Meichenbaum, Coping with Stress

## Coping with Stress

- Adaptive or Maladaptive?
  - Avoidance
  - Distortion
  - Denial (... river in Egypt...)

## Coping with Stress

- Neurotic worrying
  - Relives the stress over and over
  - Replays catastrophe
  - Evades mastery

• Meichenbaum, Coping with Stress

## Coping with Stress

- “Productive” worrying
  - Anticipatory preparation
  - Rehearse how to deal with realistic threats
  - Wards off anticipated trauma
  - Overcomes pain of past trauma

• Meichenbaum, Coping with Stress



## Stress Management Through Client Management

- ☐ Explain your style – whatever that is!
  - Engagement letter
- ☐ Manage expectations
- ☐ Cooperation and communication
- ☐ Enforce boundaries

## Stress Management Through Client Management

- ☐ Clients with mental health issues
  - Beware of stereotyping
  - Not one category
  - Accommodations?
- ☐ Angry clients
  - Situational
  - Free floating
- ☐ Manipulative clients
  - Set good boundaries
  - Reinforce boundaries with consequences

## Counseling for Clients?

- ☐ Effectiveness in suggesting counseling
  - Counseling and coaching
  - Set time aside to discuss benefits of counseling or coaching
  - Make a referral based on research
  - Follow up on the referral with counselor and/or client

• Stephen Feldman, JD, PhD in conference.

## Stress Management Through Client Management

- ☐ Emails and calls
  - Do answer
  - #1 complaint trigger

## Stress Management Through Client Management

- How to answer emails:

- BIFF
  - Brief
  - Informative
  - Friendly
  - Firm

• Kantzavelos, M. Attorney and Client: Handling Confrontational Clients  
• Eddy, B. BIFF: Quick Responses to High Conflict People

## Stress Management Through Client Management

- How to answer emails and call:

- EAR
  - Empathy
  - Attention
  - Respect

• Kantzavelos, M. Attorney and Client: Handling Confrontational Clients  
• Eddy, B. Managing High Conflict People in Court.

## Stress Management Through Management of HCP

- High conflict people
- Opposing counsel
- Courtroom bullying

## Controllable Stressors

- Food
  - Water
  - Rushed meals
  - Sugar
  - Caffeine
    - Coffee, soda, tea
    - Chocolate
  - Trans fats
  - Processed
- Alcohol and drugs/meds
- Smoking
- Lifestyle
- Realize limitations
- Prioritize
- Time management
- Delegate responsibility
- Thought awareness
- Improve communication

• Stress. (2014). American Bar Association Commission on Lawyer Assistance Program.

## Stress Mitigation

- ☐ Breathe
  - Oxygenate the body
- ☐ Hydrate
  - Eliminates cortisol
  - Enhances metabolism
- ☐ Exercise
  - Flushes cortisol metabolized through exercise
- ☐ Sleep
  - Lowers cortisol
  - Raises serotonin
  - Raises endorphins
- ☐ Food choices
  - Foods that exist in nature
  - Micronutrient rich

• Stress. (2014). American Bar Association Commission on Lawyer Assistance Program.

## Stress Mitigation

- ☐ Music
  - Produces endorphins
  - Slows heart rate
  - Gives pleasure
  - Enhances brain activity
- ☐ Dance
- ☐ Sing
- ☐ Meditate
- ☐ Become emotionally intelligent
- ☐ Positive attitude
- ☐ Reward yourself
- ☐ Massage
- ☐ Hot/cold showers
- ☐ Relax
- ☐ Positive social contact
  - Oxytocin
  - Lowers blood pressure

• Stress. (2014). American Bar Association Commission on Lawyer Assistance Program.  
• Pirle, Stressing Yourself Sick.  
• Goseland, N. 7 Stress Management for Busy Biglaw Attorneys.

## Seek Balance

- ☐ "Outside" outlets/interests
  - Sports
  - Friends
  - Relationships
  - Movies
  - Art
  - Social rituals
- ☐ "Inside" Self help
  - Know yourself
  - What stresses you?
  - Talk to someone
    - ☐ Don't internalize stress
    - ☐ Know your audience
    - ☐ Don't just vent to anyone
  - Join a group
  - See a coach
  - See a counselor

• Stress. (2014). American Bar Association Commission on Lawyer Assistance Program.  
• Pirle, Stressing Yourself Sick.

## What motivates us?

- Autonomy
- Mastery
- Purpose

• Pink, Drive: The Surprising Truth About What Motivates Us  
• Pink, A Whole New Mind

## What motivates us?

- Autonomy
- The desire to direct our own lives

• Pink, Drive: The Surprising Truth About What Motivates Us  
• Pink, A Whole New Mind

## What motivates us?

- Mastery
- The urge to improve at things that matter to us

• Pink, Drive: The Surprising Truth About What Motivates Us  
• Pink, A Whole New Mind

## What motivates us?

- Purpose
- The yearning to act in the service of something greater than ourselves

• Pink, Drive: The Surprising Truth About What Motivates Us  
• Pink, A Whole New Mind

## What motivates us?

- “Chasing meaning is better for your health than trying to avoid discomfort.... Go after what it is that creates meaning in your life and then trust yourself to handle the stress that follows.”

• McGeigal, Kelly. 2013. How to Make Stress Your Friend.

## What motivates you? Identify Values

- 1. On the left side of a paper, list values that are important to you. Examples might be:
  - Self care
  - Personal growth
  - Professional growth
  - Honesty
  - Integrity
  - Family
  - Intellectual pursuits
  - Spirituality
  - Friends
  - Sports

▪ Elwork, A. (2007). Stress management for lawyers: How to increase personal and professional satisfaction in the law.

## What motivates you? Identify Values

- 2. To the right of each category, write a number from 1-10 that indicates the importance of the value to you.
- 3. In a third column to the right, write a number from 1-10 that indicates how satisfied you are with how you are living up to each value.

▪ Elwork, A. (2007). Stress management for lawyers: How to increase personal and professional satisfaction in the law.

## What motivates you? Identify Values

- 4. In a fourth column on the far right, indicate ways you think you might satisfy your values.

▪ Author's adaptation of Elwork, A. (2007). Stress management for lawyers: How to increase personal and professional satisfaction in the law.

## What motivates you? Identify values.

- Observe whether the importance to you of your own values correlates with the attention you're giving the values.
- "Disconnects" will help draw a map for you of ways you can strengthen your sense of AMP.
- Stronger correlation is likely to increase motivation, which in turn may relieve stress, improve health, and concomitantly heighten effectiveness.

- Summary:

- 1. Identify stressors and your view of them;
- 2. Consider ways to re-frame stress;
- 3. Optimize work environment as best you can (workload, camaraderie, and civility);

□ Siwik, Stress Management for Lawyers, p.5.

- 4. Exercise client management (BIFF/EAR);
- 5. Improve balance: mitigate controllable stressors;
- 6. Identify values, motivators, and purpose; and
- 7. Ask whether you are satisfied with how you meet your values.

□ Siwik, Stress Management for Lawyers, p.5.

Thank you!

## CHAPTER TWELVE

**7 SECRETS TO RUNNING YOUR FIRM LIKE A BUSINESS**

July 2016

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**ANN GUINN**, success strategist to solo and small law firms, teaches attorneys what they didn't learn in law school about how to run a profitable and satisfying law practice. She helps her clients identify what's working and fix what's not working in their businesses, with a particular focus on firm finances, business development, staffing issues, and growth opportunities. Ann has served is on the Executive Committee of the WA State Bar's Solo & Small Practice Section since 1994, and is in her 11th year on the steering committee for the WA State Bar Association's Solo & Small Firm Conference. She is a member of the advisory board for the LexisNexis Firm Manager® program, and is a frequent speaker and author of white papers on behalf of LexisNexis. Ann has been a featured speaker at NY Legal Tech, ABA meetings and conferences, and solo/small firm conferences across the U.S. Her book entitled *Minding Your Own Business: The Solo and Small Firm Lawyer's Guide to a Profitable Practice* is available through the ABA webstore at [www.americanbar.org](http://www.americanbar.org). To receive her free management tips newsletter, please e-mail her at [ann@anguinnconsulting.com](mailto:ann@anguinnconsulting.com).

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## I. INTRODUCTION

*It was a dark and stormy night. Suddenly, a shot rang out! A door slammed. The maid screamed.*

*Suddenly, a pirate ship appeared on the horizon! While millions of people were starving, the king lived in luxury. Meanwhile, on a small farm in Kansas, a boy was growing up – to be a solo practitioner.*

Author – Snoopy  
(with a little help from Ann Guinn)

Oh, that nurturing mothers and wisdom-sharing fathers across the country were growing their children to be not just attorneys, but solo or small firm practitioners to boot. The sad truth of the matter is that nobody helps grow solo and small firm practitioners – not parents, not public school, not law school; yet, well over half the attorneys in this country practice in a solo or small firm (most without any real training in how to run a business).

When asked, few attorneys will say that they entered law school with the idea of one day running their own small practice; however, life happens, and now they find themselves trying to practice law and manage a business at the same time. Rather, they may have envisioned themselves defending the freedoms guaranteed in the U.S. Constitution, but not struggling to calculate overtime pay for staff. They may be committed to insuring that our legal system works, but not so interested in developing marketing strategies to attract new business. They may spend hours on pro bono work to help provide access to justice for all – and even more hours trying to analyze the firm's financial statements to spot ways to reduce overhead expenses. They may be comfortable arguing a case in court, but way out of their element coaching an employee.

As a practice management consultant to solo and small firms, I believe that the practice of law is a business and a profession – and small firm practitioners are, first, business managers, and second, attorneys. The business provides the framework and support necessary to enable the attorney to practice law. Through **good financial management**, the business makes sure the attorney gets paid. Through the implementation of various **marketing strategies**, the business brings in new clients for the attorney to serve. Through a steadfast **focus on the needs of the client**, the business insures that clients are well served and satisfied. By **providing the practitioner with trained staff**, and **technological aids** in the form of practice-specific

software, mobile devices, on-line research, and much more, the business helps the attorney be as productive and efficient as possible.\*

Okay, so law school didn't prepare you to be a business owner. C'est la vie. But, it's never too late to learn. Today, we're going to take a look at the "7 Secrets to Running Your Firm Like a Business." You'll learn the insider tips that guide successful business owners.

But, first you must decide . . .

## II. ARE YOU A MANAGER OR A LEADER?

According to Webster's Dictionary, "to manage" means to:

- handle or direct with a degree of skill
- make and keep submissive
- alter by manipulation
- direct or carry on business affairs

"To lead" means to:

- guide on a way by going in advance
- direct on a course or in a direction
- have charge of
- go to the head of
- be first in or among
- have a margin over your opponent

Now, tell me, how do you see yourself: as a manager (controlling the business and others), or a leader (forging the way, inspiring others to follow, being first over your competition)? Which makes most sense for your business? Which is more likely to get you to your goals?

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As a long-time law practice management consultant, I've helped solo and small firm attorneys learn to better control their businesses, but have found most are merely trying to survive, and they aren't particularly interested in leading anything. Law school trains attorneys to consider precedent in their work, and many attorneys have a tendency to let that pop up when it comes to running their businesses, as well.

Indeed, when asked how they set their billing rates, the first response from most attorneys is "I look at what the competition is charging and match that." Who's leading here?

When presented with a new and creative marketing idea, many attorneys will respond with "That's interesting. Who else is doing it and how it is working for them?" Who's leading here?

When the suggestion is made that the attorney needs to hire help for the non-revenue-producing tasks, many respond with either "I can't afford to hire help," or "It's just faster if I do it myself." Who's leading here?

The examples are endless, but the conclusions drawn are the same. I respectfully suggest that if you aren't leading, then you may be following – your competition, tradition, sentiment, your clients' demands, or the lead sled dog. What's wrong with this, especially if another firm seems to have some success with the idea. Well, it could be that the results you achieve may not be the results you want. If you're following your competition, chances are good that while you are trying to implement the same strategy, you have a different set of circumstances. Your practice is not identical to anyone else's – indeed, there are may be more dissimilarities than similarities. Thus, your outcome may not resemble your model's, and that could prove disastrous for your business.

Successful business owners are leaders – they see what could be and make it happen. They don't look at what others are doing, they look at what they aren't doing. They look for opportunity – an underserved segment of the market, a service in demand, but not available, a way to build a better mousetrap.

Business owners empower their people to take ownership in the outcome of their efforts. They plan for change – and change the plan, when necessary. They take well-calculated risks, learn from failure, and constantly raise the bar on their own successes. You will never hear a leader say, "But, this is the way we've always done things."

Above all, leaders are honest about their businesses. They face facts – the good, the bad, and the ugly. They put money where it will do the most good, tweak what can be tweaked and cut what can't, constantly scan the horizon for new opportunities, and always keep an eye on where it is they are going.

Does that sound like most small firm attorneys? Sadly, no. But, this is your chance to break from the pack – you can start the revolution by leading the field, rather than following along with the pack. Here’s where you can start in your quest to join the ranks of the highly successful . . .

### III. SECRET #1 – DEVELOP A STRATEGY AND STICK TO IT

Take a tip from Helmuth von Moltke, a 19<sup>th</sup>-century Prussian general who served as military advisor to the Ottoman court. In his writings, he stated that military strategies invariably were foiled by unexpected events once a battle began. He theorized that a strategy was “the evolution of a central idea through continually changing circumstances,” rather than a long-range action plan.

Keep von Moltke’s words in mind when you are developing your business strategy. Where do you want to go and how will you get there? Once crafted, let this strategy guide all of your decision-making. Never lose sight of it. Don’t get distracted by bright, shiny objects that send forth a tempting Siren’s call. Stay the course, leaping over barriers, and pushing obstacles aside to get there. Keep the vision clear – then, make it real.

And, now, a few words on “vision” from some of the world’s greatest philosophers:

*If you don’t know where you’re going, you might end up someplace else.*

Yogi Berra

*If you don’t know what you want, you end up with a lot you don’t.*

Chuck Palahniuk

*The only thing worse than being blind is having sight, but no vision.*

Helen Keller

*Good business leaders create a vision, articulate the vision, passionately own the vision, and relentlessly drive it to completion.*

Jack Welch

*The starting point of all achievement is desire.*

Napoleon Hill

Make sure that everyone in your organization knows your vision, and the part they will play in making that vision a reality. Incorporate your vision into the culture of your firm.

If your goals include an informal work environment, lack of bureaucratic hindrances, developing close relationships with your clients, and supporting each other in the spirit of a team, model that for your employees. Talk about it, put up signs stating your intent, explain your vision to your clients. Put it in writing so that you can refer back to it time and again – especially when an “idea du jour” pops into your head. You’ll be able to deal with those enticements much more easily if you ask, “Will this take me closer to my goals, or away from them?”

Take your strategy to lunch once a week and refresh your enthusiasm for your goals. Think about the current state of your business and what you need to change to move it forward. If you’ve got a weak spot, fix it. Keeping the wrong person in a job out of loyalty does a disservice to the employee, keeping the person from finding a job in which to excel and win acknowledgement for good work, and it holds the business back because you aren’t able to function at 100% capacity.

Hanging on to a practice area that doesn’t turn a profit is another example of staying too long at the dance. (We’ll talk more about that in Secret #6.) If you are doing too much non-billable work, make a list of the top 20 non-billable tasks that take up the most time for you, and then delegate 10 of those away. Your job is to move the firm forward in your strategy, as well as earn money – and photocopying or handling e-filings isn’t the best use of your time.

Make your strategy simple, clear, realistic and client-centered. You must be committed to your goals, and undaunted by whatever life happens to throw in your path. Expect the unexpected, but never lose sight of where you’re going. The old adage is true – a journey of 1,000 miles begins with a single step. Just keep moving forward (even if it’s at a snail’s pace) and one day you’ll reach your goal.

#### IV. SECRET #2 -- FORGET THE COMPETITION!

Huh? Really? I’m saying “yes, forget them!” If you want a successful business, you have two choices: either (1) work really, really hard to try to be #1, #2, or #3 in your field, or (2) find an empty field and be #1 with a lot less effort.

So, how would that translate to a law firm? Let’s take family law. No offense to the fine practitioners of family law, but these firms are like Starbucks anymore – one on every corner, and two in the block in between. Can you name the top family law firm in the county? State? Hard to tell one firm from the other, isn’t it? And, if it’s hard for you, as an attorney to tell the difference, how do you think John Q. Public will separate the field? Odds are, he/she can’t.

So, instead of handling typical run-of-the-mill divorce cases (and praying you’ll get paid in full!), how about creating a family law firm that deals only with divorces or custody issues involving non-U.S. residents? Or only fathers with children involved? Or only

parents of special-needs children? Or only battered spouses? Or only partners with pets?

How about a DUI practice that handles only cases for commercial drivers? Or childcare providers? Or home healthcare workers? Or King County Council members (sorry – cheap shot).

Estate planning for pet owners, parents of special needs children, business owners, inventors, military retirees.

Real estate law for house flippers, rental owners, owner-financers, first-time buyers, investors, and so on.

You see how quickly you can eliminate competition when you find your own niche – a place here you can be #1 – the “Go To Attorney” – without much effort. Smart business owners don’t try to beat the competition. If the competition is well-entrenched, the lagging business can spend tons of money and a whole lot of effort, and never achieve the success of which they dream. Don’t try to compete. Take the easy way out – find your own patch of ground and plant your flag.

#### V. SECRET #3 -- MAKE YOUR CLIENTS THE CENTER OF EVERYTHING

When I ask attorneys how they differ from their competition, they usually come back with “We really care about our clients.” I believe that’s true, but don’t most attorneys truly care about their clients? How do you care differently, and how can potential clients discern that? Do you greet them with a bear hug in the lobby? Invite them to your home for Thanksgiving? Okay, I’m being silly here, but if that’s what you’re banking on as a differentiator, I submit you have to find something that is more easily recognized by your potential client.

When I ask “If you were your competition, how would you beat you?” the answer is frequently “on customer service.” [See Attachment A for a look at the business model many law firms have traditionally employed, and then review the business model that smart (and highly profitable) law firms are following now.]

I’m going out on a limb here and saying that in 40 years in the legal industry, I have seen very few examples of great law firm customer service – and no examples of “WOW-ing” customer service. Even the firm that has its own barista and serves home-baked cookies could get better.

A simple test is this: what is your policy on returning phone calls? If your answer isn’t in minutes, but in hours, or days, your customer service is lacking. When you call a plumber, are you happy if he doesn’t call back until three days later – or never? When you call your doctor, aren’t you expecting her, or someone designated by her, to call you back promptly? Returning phone calls is the keystone of your customer service –

and the #1 reason unhappy clients call the Bar. If your return-call policy doesn't result in superior customer service, change it. You probably wouldn't be inclined to refer your friends to an insurance broker or a banker who wasn't prompt in responding to your calls; won't your clients feel the same? In fact, if any of your customer service policies don't result in superior service, change them now, before they do you any more damage.

Let's look beyond phone calls. To be truly client-centered, everything you do, every business decision you make, should take into account the ultimate impact on your clients. If updated technology would increase your turnaround time and productivity, that could have an immediate result for your clients in lowered legal fees. If that same technology could reduce your reliance on human resources, your costs would go down, and you could pass that savings along to your clients through your lower fees.

It goes without saying that your marketing needs to be client-centered, and yet I see so many firms wasting lots of money on ineffective marketing strategies – usually chosen because someone else is doing it, or else a fast-talking salesperson promised “thousands of views” on their attorney-promoting website. Your marketing message needs to connect with your potential clients in a very real way, and in language they use – not stilted, legal-industry verbiage. Same with a tag line; make it something to which your ideal client can relate.

Your website landing page should be about your target market and their needs, not about your educational history or the groups you belong to. It should tap into their pain, their interests, or the results they want to obtain, and not focus on how you won your law school moot court competition. That's being client-centered.

We've talked about returning phone calls, but let's expand that to include all communications with clients. It stands to reason that if poor communication is the #1 complaint of law firm clients, then improving in this area can only be a plus. Here are few tips to consider:

- Use detailed billing descriptions that clearly demonstrate both what you have done for the client during this billing period, and the value of your services to that client. Avoid cryptic abbreviations (e.g., T/C w/opp couns) in favor of descriptions the layperson can clearly understand. Help them remember why you are the best choice for the job – and impress them with the benefit to them of your work.
- Make it a policy that all phone calls are returned within 15 minutes. If you have any staff, you don't necessarily have to be the person returning the call. An employee can phone to give the client a status update on your availability to return the call, and to determine if someone else can handle the query in your place. If you have no staff, then make sure your clients understand right up front that if you are unable to take their call for some reason (e.g., you're in court, meeting with a client, etc.), you will return all calls before you leave the

office that night. It's good practice to state your return-call policy in your written fee agreement in case they should forget.

- You, of course, send your client copies of everything that comes into/goes out of the office on their matter. Borrowing an idea from the legendary Jay Foonberg, make up a file folder for every new client (complete with file label) and send them everything already two-hole punched to place in the folder. On the left inside cover, put a few sheets of blank paper and tell them they can write down any questions that come up, and then, when they next meet with you, or you speak on the phone, they can get those questions answered. Since we live in the age of digital documents, if your clients would prefer to have copies sent to them electronically, make sure that you do that. (Some clients, like my Mother, still want things in writing – so, always ask.)
- Pick up the phone and give your clients a call every once in awhile, but especially if nothing is happening in their matter. Clients start to feel forgotten, and/or anxious, when they don't hear from you, and you don't want that to happen. Schedule "client catch-up call" time on your daily calendar and do one or two calls a day. A good rule of thumb is that you should have some client touch at least once a week. One touch can be your monthly bill, another could be sending a copy of something, but nothing beats the personal touch of a phone call – or, better, still, lunch. You know technology is interfering with our personal relationships when you see two teenagers sitting side by side on a couch texting each other. Your clients still want – and deserve – a personal relationship with their attorney. See that they have it.

Do your clients, and yourself, a favor – develop an insatiable desire to make your clients love you! They'll notice it right away, and you'll notice it in increased referrals, prompt payment of client bills, and happy smiles on client faces (regardless of the outcome of their case).

#### VI. SECRET #4 -- IF IT AIN'T BROKE – BREAK IT!

Isn't that contrary to the mantra of many business owners? Why meddle with success? The truth of the matter is that nothing stays the same forever, and while it might not be broken now, one day it will be.

Take, for example, some of your office systems. When I was a legal secretary many years ago, our firm got one of the first fax machines in the San Francisco legal industry. It could send a single page in a dizzying six minutes flat! As you know, fax machines kept getting faster and faster and faster. It looked like they had a rock solid place in the modern business world because of the machine's ability to transmit a document around the world in a matter of seconds. No law firm was without its trusty fax. But, who knew? Who knew that something called "the Internet" was just around the corner? Who could have foreseen that you wouldn't even need paper anymore to transmit a document around the world if you have e-mail?



Did Eastman Kodak ever foresee people being able to take photos with their telephones? Did Safeway ever foresee a Costco? Did Ace Hardware ever expect Home Depot to show up? There are thousands of new attorneys coming into the field every year, and they are doing things in new and interesting ways. They are maximizing the use of technology, they aren't married to tradition, they are running lean and agile businesses – and they are appealing to a whole new generation of clients. There are valuable lessons to be learned from them, and their fearlessness in challenging the status quo. They are challenging the old ideas because they know there are better, faster, more efficient, cost-effective ways to do things. They look at the result they want to achieve and figure out how to get there, unfettered by tradition. Old school says “this is the way we've always done it, and this is the result we always get.” New schools says “How can I do this in the fastest and cheapest way possible, using the technology I've got available?”

Here's an example from a small 7-attorney law firm that has continued to operate in the same manner, with few updates, for the past 40 years. We'll look at just one function in that business: timekeeping. A year ago, the firm purchased the latest version of a popular timekeeping software program, and had it installed, but no one was ever properly trained in the use of the program. Consequently, all the attorneys profess to hate the software, and keep their time in a variety of ways – all completely inefficient. Most handwrite their time entries – when they think of it – and then type the details into an e-mail that they send to their legal assistants. The legal assistant then prints out the e-mail, and retypes the entries into the timekeeping software. Then, because they don't have a compatible accounting program, the bookkeeper has to transfer the time entries into an Excel spreadsheet format and prepares the client bills from that. Big weakness, and big impact on profitability when you consider all of the potentially billable time that is lost in this process – time that could be better spent advancing a client's matter. This is a system that definitely needs to be broken and fixed.

Teach yourself to reframe how you look at your business, and how you view your challenges. In other words, blot out “what is” and look at the business through someone else's eyes. That might be your clients' eyes, your banker's eyes, your malpractice insurer's eyes – anyone's eyes but yours. Look for new opportunities, ways to improve your business,

As an example, take the story of the little old barber. He'd been in the same little shop for 35 years, had an established clientele, and was coasting along, cutting hair and doing business the same way he had for most of those 35 years. One day he came to work and saw that a new shop had opened up next door with a big sign in the window – “Haircuts \$8.” Well, he was charging \$12, and that was a rock bottom price for him. He was in a panic. He knew he couldn't lower his price to compete. What to do, what to do? That's when he decided to invest in his business and hire a marketing consultant. A few days later, he set up a sandwich board on the sidewalk in front of his business that read “We fix \$8 haircuts.” The marketer had reframed the problem and turned it

into an opportunity. He was not trying to compete – he was building on the perceived weakness of the other business by presenting his strength.

Plan out “considering” time on your calendar. That’s time when you “consider” the effectiveness and efficiency of your various systems. With each function in your business, ask yourself “What do we want the outcome to be every time?” and then figure out how to make that happen – every time. Work with one function/system at a time – tear it apart and then put it back together in a new way. Look for ways to do things faster, more efficiently, or at a lower cost. There is room for improvement in any system, any procedure, any protocol. Keep raising the bar on yourself by challenging status quo.

## VII. SECRET #5 – CHANGE BEFORE YOU HAVE TO

Law firms have only to look to old-name businesses like Sears, Montgomery Ward, and Penney’s to understand the importance of change and adaptability in the business model. These once market-dominating businesses are currently struggling with, or have already lost the battle for, market share because they failed to adapt to changing consumer needs, interests, shopping patterns, and tastes. They underestimated the impact of the Internet on brick-and-mortar shops. They didn’t understand the power and appeal of the Big Box Stores. They didn’t get that the discretionary buying power in this country has shifted to the young – and they don’t want to shop in stores associated with Mom and Dad, or worse, Grandma and Grandpa. In other words, these companies stuck to the way they had always done things, seemingly oblivious to a changing world, a changing economy, a changing client base. Had they constantly challenged the status quo and adapted accordingly, they might still hold a decent market share (or, in the case of Wards, still exist).

Learn a lesson from these retail bastions of yesteryear and constantly challenge your opinions, and evaluate your procedures and systems, your marketing strategies, and your return on investment in the revenue-producing areas of your business so that you can keep adapting to the world around you.

Let’s take a little trip down Memory Lane – all the way back to 2008. Do you remember what happened to the U.S. when Wall Street crashed? The devastating impact on the economy? The ripple effect that turned into a tsunami in the legal industry? Many small firms didn’t survive, and of those that did, a lot of them were barely scraping by for the next several years. The legal industry is not known for adapting to change, and that trait resulted in cataclysmic fallout from which some never recovered.

The signs were there, but nobody was paying any attention. Even when the downslide started, many attorneys felt their practice areas were immune – after all, people would always divorce, as an example. Well, those very same family law attorneys had a rude awakening on several fronts. One, when people lost their jobs, they couldn’t afford to split up and support two households, so they continued to share a house for economics’

sake, and postpone the divorce. For many years, attorneys were able to count on getting paid in full when the family home sold, and the proceeds were split, after the divorce was finalized. But, guess what? When the economy tanked, it took the real estate market with it and thousands upon thousands of people were left with homes that were underwater. When a house went through a foreclosure or short-sale, the attorney was often left holding an unpaid bill.

One of my clients is a pretty sharp fellow. For several years, he had been exploring ways to diversify his family law practice. The firm had always enjoyed a nice steady stream of clients, but he just didn't like the idea of being so dependent on only one source of revenue. He was already toying with another idea when the economy went south – and that was the impetus he needed to move forward. He immediately started a marketing campaign to promote his unbundled divorce services for pro se clients. Folks who wanted to sever a marriage, but couldn't afford a full-service family law attorney, found their way to his firm, and he and his associates helped them prepare their documents and schooled them on how to present their case in court. Many of those folks ended up hiring him anyway, but those who didn't still helped pay the staff salaries and keep the lights on in the office through their more modest fees. This smart fellow had started to implement a change in his business model before he had to, and was ready with his new plan when the crash came.

One thing is certain in the legal industry – things are going to get tougher, competition stronger (especially from unexpected sources – does the name “Legal Zoom” ring a bell?), and clients' expectations will continue to climb. Be prepared. Develop your Plan B now because one day you will need it.

That said, the need to change isn't only driven by the economy, it's driven by clients, by competition, by changing laws and court requirements, and more. If you aren't driving the bus, something, or someone, else is. Smart business owners are always on the lookout for new business opportunities, changes in the economic climate, and trends in consumer buying patterns and legal needs. Their businesses keep evolving, and that helps them stay relevant and ready for changes in the market.

#### VIII. SECRET #6 – KNOW YOUR NUMBERS AND WHAT THEY MEAN

Business owners are devoted to their numbers; however, some of them are measuring, but never understanding what the numbers are telling them.

As an example, one of my clients recently bought a small law practice about an hour's drive from her office. She now maintains two offices 60 miles apart, both in rural communities. When she bought the other firm, she had to go through a major overhaul which involved firing a lot of people, trying to straighten out some grossly past-due accounts, and skin back on the practice areas the business had been handling. The result to date is that she's cut the deadwood and streamlined as much as she can, but she's still working for free (her words), and that's not her vision. Unfortunately, she

came to me after she had done all of this, or I would have helped her understand the numbers and she might have reconsidered her decision to buy a struggling firm.

Lesson #1 here – never buy a failing business. Most small law firms can't afford the time and money required to turn a bad practice around. What do you hope to gain from that? If you want the attorneys, wait until the firm folds and then hire them. If you want the office space, same thing – when they go under, the space will become available, or offer to take over the lease. But, don't take on someone else's problems – you'll run the risk of bringing your business down. That's a long upward climb that may never work out.

Let's take a look at the numbers you absolutely must know and understand. We'll begin with your overhead. Divide your total expenses for the year (minus your compensation and benefits) by your total revenue for the year. The goal here is no more than 40-45%. The lower the better. If your overhead comes in above 45%, then look at your revenues. In my experience, high overhead in a small firm is usually the result of not enough money coming in, and not excessive overhead. You may simply not be billing enough hours to support your business. Know what it costs to run your firm per day and that will help you determine how many billable hours you need to put in daily.

From there, check your realization rate (percent of fees billed that is actually collected). If your rate is less than 90%, there's a problem. Take a look at your past-due accounts. If you've got more than two months' worth of revenues tied up in accounts receivable, there's your culprit – you're leaving too much money on the table. Tighten up collections and that percentage will drop like a rock. Multiple your realization rate by your regular hourly rate and the resulting number tells you what you actually make per hour – your effective rate. Unless your realization rate is 100% or higher, you aren't making what you think you are per hour.

Calculate what you need to earn per hour to meet your financial goals. [See Attachment B for the formula to use in doing this.] You need to know how many revenue-producing hours you intend to work during the year (hourly-paid, flat fee, or contingent – doesn't matter), plus your realization rate, in order to know what you must charge. If you use only flat fees, those are based on your expectation that the work will take a certain amount of time, so you can still determine your expected utilization rate with this work, as well. For contingent cases, as with hourly work and flat fee work, you need to record all of the time worked. That will help you determine how much time you work per year, and whether or not the cases you're taking make financial sense. If you put in 120 hours and receive attorney's fees in the amount of \$7,500, you are making only a little over \$60.00 per hour. Is that your goal? Figure out what you need to earn per hour, and then judge your cases accordingly.

Look at your write-offs and write-downs. If you find that you are reducing your bills with some regularity, you need to ask "why?" Are your clients complaining about your bills? If so, then you need to listen carefully to their complaints to determine if something in

your service needs to be fixed. If you routinely write-down your bills, then, again, ask “why?” If your clients aren’t complaining about your fees, why do you feel compelled to lower them? Your own sense of your worth (or lack of) may be undercutting your ability to earn what you deserve. You have to change that before it kills your business.

Business owners regularly check their ROI (return on investment) in a number of areas to determine the effectiveness of such things as marketing strategies, practice areas, staff levels, case and client selection skills, and more. Knowing your ROI for your business functions is essential to making your business profitable, and to understanding the results you are achieving with your business.

There is a simple formula for calculating ROI:

$$(\text{Return} - \text{Cost}) \div \text{Cost} = \text{Percent of ROI}$$

As an example, if you hire a contract attorney at a cost of \$15,000, and that attorney generates \$40,000 in revenues for you, the formula would look like this:

$$(\$40,000 - \$15,000 = \$25,000) \div \$15,000 = 167\% \text{ ROI}$$

While it appears that this person is bringing in more than his/her cost, that may not be the case. The one thing that probably may not show in the \$15,000 cost is your time in directing, delegating to, supervising, and possibly strategizing with your contract hire, and probably not money spent on office space, internet access, and software licensing (if provided) or other support-type expenses for this practitioner. These more indirect costs rarely get figured in when you are calculating the ROI on an intangible product. In other words, when you calculate the ROI on, say, manufacturing a pair of pliers, you take into account the cost of materials, labor, machinery, utilities, marketing, distribution, and more. Usually, indirect costs are overlooked when calculating the ROI on something like doing legal research. There you’ve got labor, plus computer time, Westlaw costs, perhaps office space, attorney time in giving the assignment and explaining the issues involved, then monitoring along the way. So, you see, to determine your true ROI, you have to understand all (time and money) that goes into producing whatever you are examining. To be accurate, the investment calculation must include the value of all resources invested, and not just out-of-pocket expenses.

You need to track all of your time every day on everything – including non-billable time spent in managing others. If you look at the value of your time spent that goes unbilled over the course of this attorney’s tenure with you, along with your out-of-pocket expenses, the apparent ROI is not really accurate. A business owner looks deep into all aspects of production, and you must, too.

With accounts receivable, you never want to have more than about two months’ worth of revenues tied up in past-due accounts. When reviewing your aged accounts, you must ask yourself this: “If I never collected a penny of these past-due accounts, could

my business survive?” While losing out on, say, \$70,000 in unpaid fees would be a terrible blow to your business, never collecting a penny of \$250,000 in past-due accounts could likely destroy your small firm.

Follow the lead of other business owners in this area. If your payment to Macy’s is late, what happens? If you don’t pay your doctor’s bill for five months, what does that office do? If you are late with your insurance payment, what are the consequences? So, what’s your policy on past-due accounts? Are there repercussions for slow payment, or no payment? Do you charge interest in past-due accounts?

In my experience, the most effective way to reduce or eliminate the potential for past-due accounts is with the so-called “evergreen deposit account” (or “evergreen trust account”). This is the popular name for a replenishing deposit account. You take an advance fee deposit, then bill your clients on a regular basis for all work performed and expenses incurred on their behalf during that billing period. You give the client, say, 10 days to pay your bill. If you have not received payment by the due date, you pay yourself the monies due out of the client’s trust account. When the client’s check is finally received, you deposit that into the trust account to bring the client’s balance back to the original level. Bingo – you’re paid in full each month with no past-due accounts!

One other thing that business owners must know is their ability to handle financial emergencies, as well as meet their every day operating expenses. Two ratios, your quick ratio and your current ratio, provide this critical information. You’ll need a current balance sheet for this.

The first – the quick ratio – is an indicator of how quickly the firm can raise money. This is definitely something you’re going to want to know in times of crisis.

Your quick ratio is determined as follows:

$$\frac{\text{Most liquid assets}}{\text{Current liabilities}} = \text{Quick Ratio}$$

[NOTE: Your most liquid assets include cash, short-term investments, accounts receivable.]

A ratio of 1:1 is acceptable; but, 2:1 is better. If your liabilities are less than your current assets, then you have the ability to put your hands on money quickly in case of an emergency or an unexpected large expenditure.

The second liquidity ratio – the current ratio -- is an indicator of the firm’s ability to meet its immediate financial needs (short-term obligations). [NOTE: “Immediate needs” would include payroll, quarterly taxes, rent, insurance premiums, etc.] As an example, this might be a situation where you have a loan coming due. The current ratio is calculated as follows:

$$\frac{\text{Total current assets}}{\text{Current liabilities}} = \text{Current Ratio}$$

A ratio of 1:1 is acceptable. A ratio of 2:1 is considered strong. Again, your strength lies in having significantly more money available in assets than is tied up in liabilities.

If your ratios are not in the acceptable-to-strong range, you need to take action immediately to bring those around – and liabilities would be the place to start. Look for ways to reduce this number and increase your business' likelihood of survival in case of some unexpected catastrophe like my attorney friend Mark faced when his office was red-tagged following a major earthquake in his area. Luckily, his ratios were good in advance of this disaster so he could rent temporary office space, buy or lease new equipment, and get back to business in a remarkably short period of time without being dependent on receiving a check from his insurance company.

Forty percent of businesses do not reopen after a disaster and another 25 percent fail within one year according to the Federal Emergency Management Agency (FEMA). Similar statistics from the United States Small Business Administration indicate that over 90 percent of businesses fail within two years after being struck by a disaster.

It is a common misconception that insurance awards and aid from government agencies will allow merchants to pick up the pieces after a flood, major earthquake, or like disaster – and many types of disasters are not covered under normal insurance policies and aid from government. According to the Association of Small Business Development Centers, more than 1 in 4 businesses will experience a significant crisis in a given year, and too many of them will never recover.

The last thing we'll look at here is the Productivity Dashboard [See Attachment C]. This wonderful management tool will help you determine the contribution each timekeeper is making to the firm, and where there are problems. As the business owner, you will have billable goals for each timekeeper because you need to insure that you will have sufficient money coming in each month to cover your expenses and meet your other financial goals. This is the little gem that will help you understand where you are in this. Even if you are the only timekeeper, prepare a dashboard on yourself. It lays out productivity (billable hours, revenues billed, and revenues brought in, etc.) in black and white

Bottom line is this – know your bottom line. Spend significant time on a regular basis studying the financial health of your business. Poke around, ask questions, do the calculations, sit up and pay attention. This is your business – and your business, simply put, is absolutely your “business.”

## IX. SECRET #7 – INVEST IN YOUR BUSINESS

Business owners are continually investing in their businesses. They may buy new equipment to help speed up production. They may hire more employees so they can produce more, or add missing skills to their team, or better serve their clients. They may hire a marketing consultant to help them attract more business. The thing to agree on is that not all money out of pocket is an expense – sometimes it's an investment.

The rule of thumb is that if it helps make more money, it's an investment. If it doesn't, it's an expense. A high quality scanner that will enable you to go paperless is a definite investment (and a wise one, at that) because it will reduce the expenses associated with buying paper, ink cartridges for the printer, staff time in filing, and rent on storage space for the files. Thus, the scanner will actually add to the bottom line. A box of pencils is an expense. Outsourcing your bookkeeping is an investment because it frees you up to handle billable work. Office rent or your phone bill is an expense.

You cannot expect your business to return a high yield if it's hamstrung by a closed pocketbook. We've all heard the saying that you have to spend money to make money. It's true. Once you accept the idea of investing in your business, you'll start noticing opportunities to do just that. Remember, too, the concept of ROI – return on investment. An investment results in positive cash flow (first, money out; then, money in), and expense in negative cash flow (money out, but no money in).

## X. CONCLUSION

Going back to where we started – if you are in a solo or small practice, you are in business. You need to apply recognized business practices in your organization (no matter how big or small). Don't worry about how other attorneys are handling their practices; focus on your business and make decisions that are right for it. Copycat management isn't the answer because no two firms are alike.

Get familiar, and comfortable, with your numbers. Dig deep and pay close attention to what's happening in your business, in the industry, and in your community, in general. Always have a Plan B in your back pocket, if not on the front burner. Adaptability is your best guard against some dramatic change that impacts your business.

Give up the idea of competing, and forge your own path to success. Avis has made a business out of being #2 behind Hertz; but, was Avis ever really #2? Did Avis make itself #2 by declaring that it was, and having the world accept it? It certainly made for a catchy and memorable tag line. (Go on, can you tell me what Hertz' tag line is?) You need to decide if you want to be somewhere in the pack, or out in front in your own unique area?



Invest in the things that will benefit your client, and that will help you make more money. Get over the idea that any money spent is lost. As we learned earlier, an investment should come back to you – sometimes hundreds, if not thousands, of times over.

Nothing stays the same forever, and your business will change over time with or without your input. Far better to have it go in the direction of your choice, than trail along behind, trying to make something work that you didn't actually create.

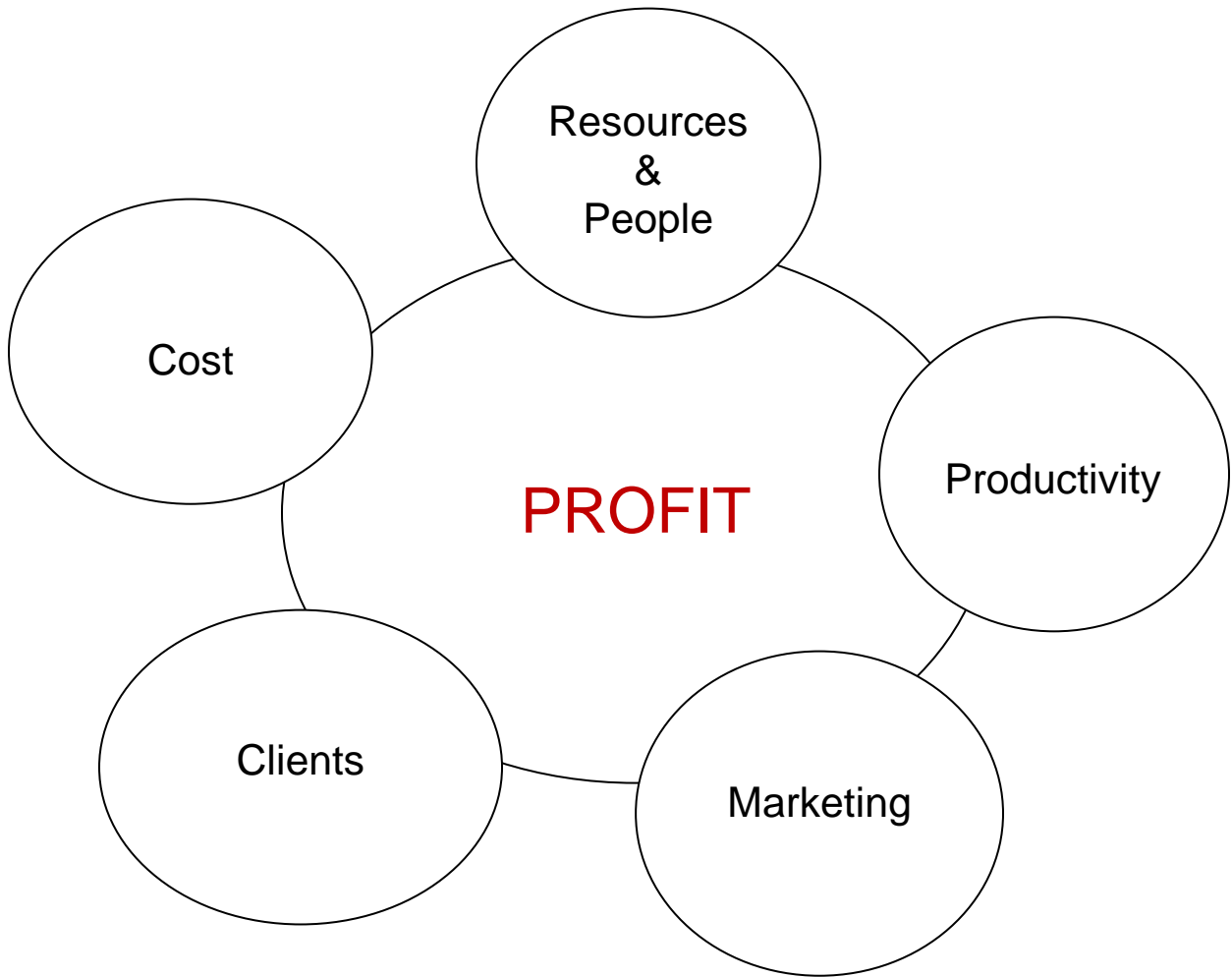
Now, you have tools to help you build a highly successful business. Go forth and prosper!

**ATTACHMENT A**

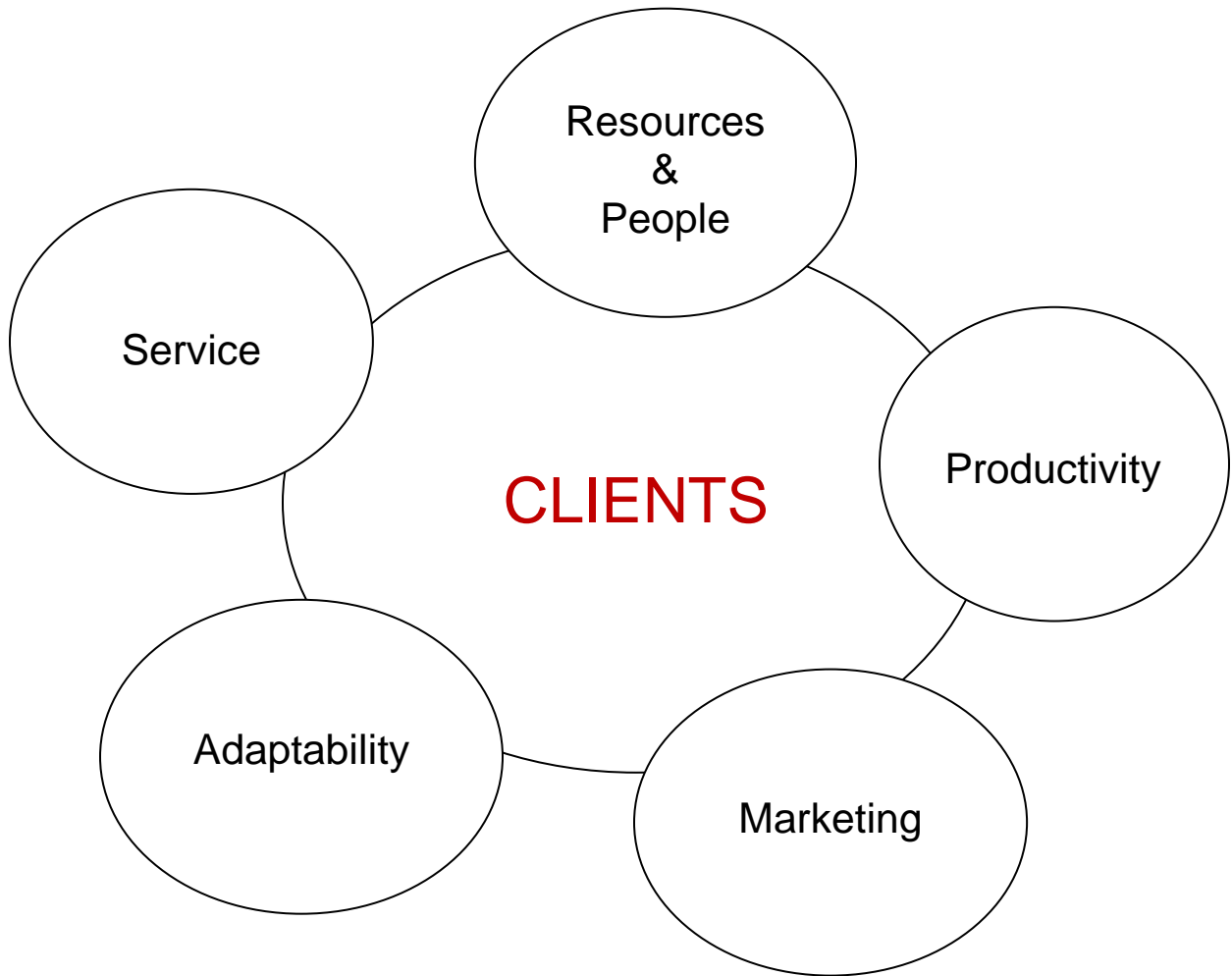
**TRADITIONAL AND MODERN LAW FIRM BUSINESS MODELS**

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## TRADITIONAL LAW FIRM MODEL



## MODERN LAW FIRM MODEL



**ATTACHMENT B**

**HOURLY RATE CALCULATION**

## HOW TO CALCULATE YOUR MINIMUM HOURLY RATE

There are at least a dozen different factors to be considered when setting your rates; but, perhaps none is as important as making sure your fees cover the cost of providing your legal services, as well as your desired compensation. There's a simple formula to follow that will take all the guesswork out of determining your minimum hourly rate and insure that your financial needs are met. It looks like this:

### Marvin Foster, solo practitioner with one full-time assistant

Marvin's compensation	\$ 100,000
Overhead expenses (or share of overhead)	\$ 128,500
Desired firm profit (at year end)	\$ 25,000
<b>TOTAL TARGET REVENUES</b>	<b>\$ 253,500</b>

Realization rate  
(divide gross fees collected by the total fees billed)

Marvin's gross fees collected	\$ 247,050
Total hours billed	1,311
Marvin's hourly rate	\$ 225

In this case, Marvin's realization rate is:

$$\frac{\$247,050}{(1,311 \times \$225 = \$294,974)} = 84\%$$

Expected utilization (billable hours goal)	1,300
Total target revenues	\$ 253,500

Target Revenues ÷ (Realization Rate X Expected Utilization) = Hourly Fee

or

$$\frac{\$ 253,500}{(0.84 \times 1,300 = 1,092)} = \$ 232 \text{ hourly fee}$$

This hourly fee is what you must charge to cover your expenses and compensation. Please review RPC 1.5 on fees for a list of some of the other factors you may consider in setting your fees. Above all else, your fee must not be "unreasonable," per RPC 1.5.

**ATTACHMENT C**

**PRODUCTIVITY DASHBOARD**

# PRODUCTIVITY DASHBOARD FOR DECEMBER 2015

Ferdie's Law Firm

Timekeeper	Billable Hours Budget	Billable Hours Worked	Total Hours Billed	Billing Rate	Budget Percent Billed	MTD Percent Billed	YTD Percent Billed
Ferdie	100	89.5	89	\$ 295.00	89%	99%	101%
Maggie	100	34.5	34.5	\$ 270.00	35%	100%	101%
Pinky	100	54.3	53.6	\$ 225.00	54%	99%	104%
Sally	10	0	0	\$ 75.00	0%	0%	100%
Timmy	10	13.3	13.3	\$ 75.00	133%	100%	100%
Contract Atty	10	80.9	74.3	\$ 150.00	743%	92%	103%
<b>TOTALS</b>	<b>330</b>	<b>272.5</b>	<b>264.7</b>				

Monthly Budget Revenue	MTD Billed Revenue	YTD Billed Revenue	MTD Difference	YTD Difference	MTD Fee Receipts	Realization Rate	Effective Rate
(F) \$ 29,500.00	\$ 26,402.50	\$ 317,382.74	(\$ 3,097.50)	(\$ 36,617.26)	\$ 23,957.10	91%	\$ 268.45
(M) \$ 27,000.00	\$ 9,315.00	\$ 313,433.00	(\$ 17,683.00)	(\$ 10,567.00)	\$ 53,554.44	438%	\$ 1,182.60
(P) \$ 22,500.00	\$ 12,217.50	\$ 182,735.75	(\$ 10,282.50)	(\$ 87,264.25)	\$ 11,477.15	95%	\$ 213.75
(S) \$ 750.00	\$ -0-	\$ 9,202.00	(\$ 750.00)	\$ 202.00	\$ 939.00	939%	\$ 704.25
(T) \$ 750.00	\$ 997.50	\$ 3,765.00	\$ 247.50	(\$ 5,235.00)	\$ 161.78	16%	\$ 12.00
(CA) \$ 1,500.00	\$ 12,135.00	\$ 47,846.50	\$ 10,635.00	\$ 41,846.50	\$ 18,601.66	153%	\$ 229.50
<b>\$ 82,000.00</b>	<b>\$ 61,067.50</b>	<b>\$ 874,364.99</b>	<b>(\$ 17,597.00)</b>	<b>(\$ 87,078.57)</b>	<b>\$108,691.13</b>		

## ACTIONS TO TAKE

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## 7 Secrets to Running Your Firm Like a Business

Presented by  
Ann M. Guinn  
G&P Associates

### What's Your Role?

Manager – one who handles or directs with a degree of skill; directs or carries on business affairs

Leader – one who guides by going in advance; is first in or among; has a margin over his/her opponent

## Successful Business Owners are Leaders

- See what can be and make it happen
- Look for opportunity
- Empower their people
- Plan for change
- Honest about their business

## #1 – Develop a Strategy and Stick to It

“A strategy is the evolution of a central idea through continually changing circumstances, rather than a long-range action plan.”

Helmuth von Moltke  
Military Advisor to the  
Ottoman Court

“Good business leaders create a vision, articulate the vision, passionately own the vision, and relentlessly drive it to completion.”

Jack Welch  
Former CEO of  
General Electric

**Get Clear on Your Vision**

## #2 – Forget the Competition!

Find Your Own Field

## #3 – Make Your Clients the Center of Everything

### Get Better at Everything You Do for Them

- Communication
- Client bills
- Website
- The overall client experience
- “WOW” them every chance you get
- Develop an insatiable desire to make your clients love you!

## #4 – If It Ain't Broke – Break It!

- Continue to raise your own bar
- Develop adaptability
- Constantly challenge your systems
- Reframe how you look at your business
- Plan time to work on your business

## #5– Change Before You Have To

Remembers the lessons of 2008

Wake up and smell the coffee --  
prepare Plan B now!

## #6 – Know Your Numbers and What They Mean

- Overhead to revenues
- Realization and effective rates
- Cost of doing business per hour
- Billable goals
- ROI

## To Calculate ROI

$(\text{Return} - \text{Cost}) \div \text{Cost} = \% \text{ of ROI}$

Ex.  $\frac{(\$40,000 - \$15,000 = \$25,000)}{\$15,000}$

=167% ROI

## More Numbers to Know

- Total accounts receivable over 30 days' old
- Quick ratio
- Current ratio
- Weekly cash flow
- Individual productivity

### PRODUCTIVITY DASHBOARD FOR DECEMBER 2015

Ferdie's Law Firm

Timekeeper	Billable Hours Budget	Billable Hours Worked	Total Hours Billed	Billing Rate	Budget Percent Billed	MTD Percent Billed	YTD Percent Billed
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Maggie	100	34.5	34.5	\$ 270.00	35%	100%	101%
Pinky	100	54.3	53.6	\$ 225.00	54%	99%	104%
Sally	10	0	0	\$ 75.00	0%	0%	100%
Timmy	10	13.3	13.3	\$ 75.00	133%	100%	100%
Contract Atty	10	80.9	74.3	\$ 150.00	743%	92%	103%
<b>TOTALS</b>	<b>330</b>	<b>272.5</b>	<b>264.7</b>				

Monthly Budget Revenue	MTD Billed Revenue	YTD Billed Revenue	MTD Difference	YTD Difference	MTD Fee Receipts	Realization Rate	Effective Rate
(F) \$ 29,500.00	\$ 26,402.50	\$ 317,382.74	(\$ 3,097.50)	(\$ 36,617.26)	\$ 23,957.10	91%	\$ 268.45
(M) \$ 27,000.00	\$ 9,315.00	\$ 313,433.00	(\$ 17,683.00)	(\$ 10,567.00)	\$ 53,554.44	438%	\$ 1,182.60
(P) \$ 22,500.00	\$ 12,217.50	\$ 182,735.75	(\$ 10,282.50)	(\$ 87,264.25)	\$ 11,477.15	95%	\$ 213.75
(S) \$ 750.00	\$ -0-	\$ 9,202.00	(\$ 750.00)	\$ 202.00	\$ 939.00	939%	\$ 704.25
(T) \$ 750.00	\$ 997.50	\$ 3,765.00	\$ 247.50	(\$ 5,235.00)	\$ 161.78	16%	\$ 12.00
(CA) \$ 1,500.00	\$ 12,135.00	\$ 47,846.50	\$ 10,635.00	\$ 41,846.50	\$ 18,601.66	153%	\$ 229.50
<b>\$ 82,000.00</b>	<b>\$ 61,067.50</b>	<b>\$ 874,364.99</b>	<b>(\$ 17,597.00)</b>	<b>(\$ 87,078.57)</b>	<b>\$108,691.13</b>		

#### ACTIONS TO TAKE

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_



## #7 – Invest in Your Business

If it helps you make more money,  
it's an investment.

If it doesn't, it's an expense.

## Take Care of Your Business So It Will Take Care of You

- Let go of tradition
- Focus on your business and make the decisions that are right for it
- Get comfortable with your numbers
- Forge your own path to success
- Invest!
- Don't fight change – it's inevitable!

# Thank you!

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## CHAPTER THIRTEEN

**WHEN WILL YOU STOP WORKING?**

July 2016

**Dana Twight  
Twight Financial Education**

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**DANA TWIGHT, M.ED.**, holds a CERTIFIED FINANCIAL PLANNER™ designation, granted by the College of Financial Planning in 1993. She founded Twight Financial Education, LLC in 2012, after working in Seattle financial services firms since 1984. Dana is a fee-only registered investment advisor, and does not sell financial products. Firms she has worked with include UBS Paine Webber, KMS Financial Services, and Metropolitan Federal Savings. She is also a frequent EAP presenter around King County. Twight Financial Education's most recent class was "Zombies and Zinfandel: Handling Your Financial Monsters."

## ~~When~~ Will You Retire Course Materials, Provided by Dana Twight, CFP®

After you have mastered your cash flow; then you can consider establishing a retirement plan. This class is designed to assist you in choosing a retirement plan for yourself or your small business. It will include a section on why to establish, fund and invest as early as possible, plus a brief review of asset allocation outcomes since 1926. Another objective will be to understand the role of a fiduciary vis-à-vis your retirement plans. Last, your brain on money, or getting out of your own way.

### TABLE OF CONTENTS

Introduction

What Does Retirement Mean to You (Financial Freedom, Travel, Encore Career, Family?)

~~When~~ Will You Retire

If no, the practice of law is certainly one that could be conducive to working past one's mid-sixties.

If yes, what will you retire from or to? Does retirement represent freedom or security?

Why Save Now (Time Value of Money)

Types of Plans Available in 2016

Choosing a Plan Which Fits Your Goals and Your Business

Create an Investment Policy, Contribute, and then Invest

Reducing Conflicts of Interest in Retirement Planning: Fiduciaries

A Short Introduction to Behavioral Finance, or Your Brain on Money

Conclusion

### RESOURCES

Attachment Number 1 Choosing a Retirement Solution for Your Small Business (Dept. of Labor via the EBSA) October 2015 (8pp)

Attachment Number 2 Investment Policy Worksheet via Morningstar.com (2pp)

Attachment Number 3 Market Risk and Reward via Vanguard (2pp)

## INTRODUCTION

Retirement planning used to be less formal, and accompanied by more privilege. If you had a certain amount of capital, you could live on your annual income from that capital. Example, in the Jane Austen novel *Pride and Prejudice*, Mr. Darcy has \$10,000 per year. According to a post from the Jane Austen Society of North America, (JASNA) that \$10,000 was equivalent to income of \$300,000 per year in 1988 dollars. Or, by using the inflation calculator from the Dept. of Labor, buying power of \$609,220 annually in 2016.

If you do not have enough capital to live on, then we support ourselves with annual income or wages, aka compensation. When you can set aside current income to accumulate for future use, one vehicle to do this with is a retirement plan. These plans are codified in statute, and they have tax benefits and restrictions. To fund one of these plans requires a balance between cash flow management, immediate needs and your vision of your future.

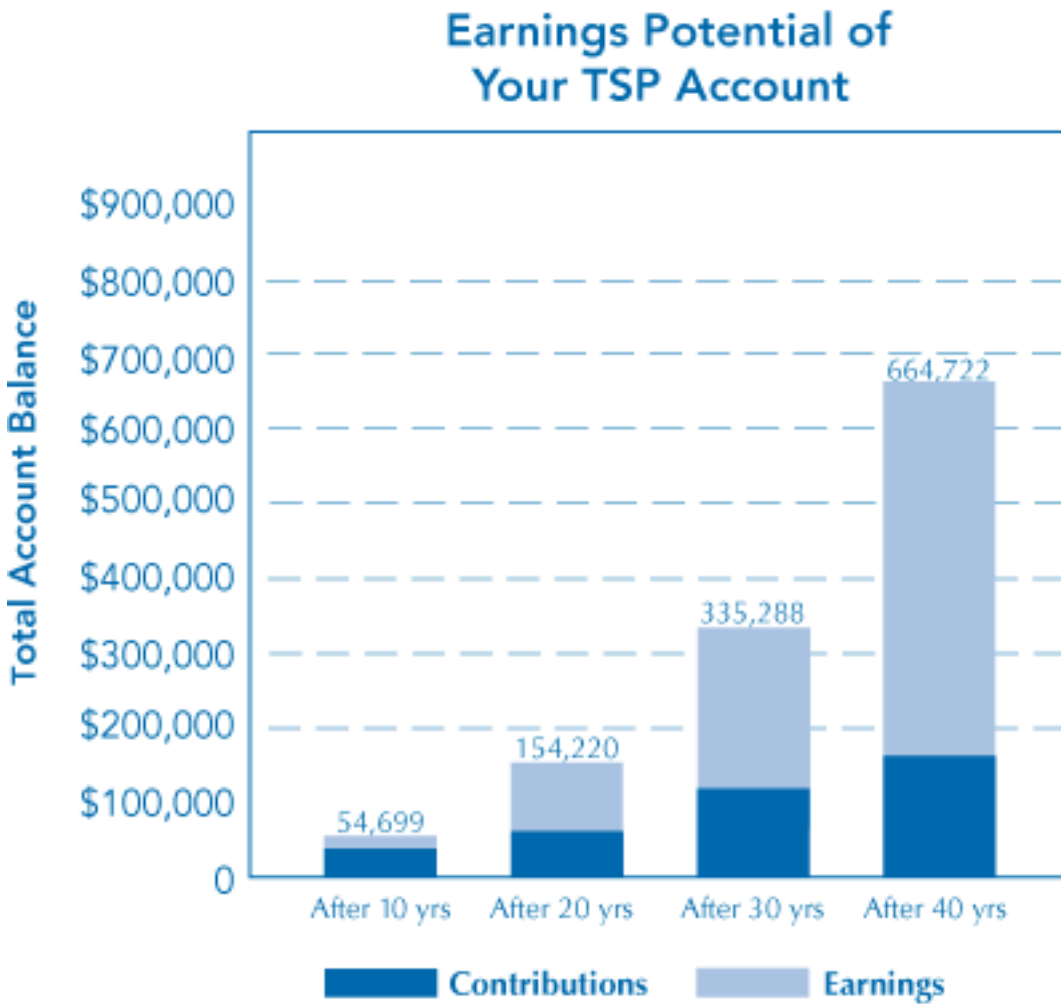
Assess your goals for a retirement plan (have a good idea of goals prior to meeting with service providers or consultants)

Your goals could include the following:

- Liquidity
- Growth
  - Includes specific types of investment types such as index or socially responsible funds
- Professional Management
- Tax Sheltering or Deferral (tax deferred growth of capital)
- Competitive Benefits Package for Employees

If you do not have employees now, little money for this goal, and prefer to begin saving for retirement without tying it to your business, select *myRA*, a traditional IRA or a Roth IRA in your own name. If you have a retirement plan from a previous employer (say, an old 401(k) plan), you may have established a Rollover IRA already. You can have an individual IRA plan in addition to the rollover.

## WHY SAVE NOW (TIME VALUE OF MONEY)



Source: (used with permission)

<https://www.tsp.gov/PlanParticipation/AboutTheTSP/benefits/earningsPotential.html>

Please note that after 20 years, more growth in the account is coming from the actual reinvestments, income and growth, as opposed to the contributions. This is why early funding, is so important. It is better to contribute modest amounts, then pause; than it is to wait until increased contributions are possible later “when you are more successful, profitable, or established.”

## RETIREMENT PLAN TYPES AND FEATURES

In the chart (Attachment 1) created by the US Dept. of Labor, the retirement plans are sorted by these categories:

1. IRA based plans

MyRA (a Roth IRA) from the US Treasury. <https://myra.gov/employers/>  
Traditional, Roth, SEP, SIMPLE

2. Defined Contribution Plans

Profit Sharing, Safe Harbor 401(k), Automatic Enrollment or Traditional 401(k) Plans

3. Defined Benefit Plans (like a traditional pension, where a fixed, pre-established benefit is provided for employees in the future)

Consult a financial and/or tax professional, or an employee benefits advisor or third party administrator for additional assistance and compliance requirements.

## CREATE AN INVESTMENT POLICY, CONTRIBUTE, AND THEN INVEST

When choosing to fund a retirement plan, regardless of which one was selected, many people would prefer to set up some rules ahead of time. Some of these are to combat the primitive part of our brains (to be covered in another section). For example, with a world event such as an interest rate increase, a Brexit, inflation, a regional recession, or even a presidential election, an investor may wish to commit to guidelines in advance around how they will or will not react to such an event.

Your policy worksheet (Attachment 2) can include the basics such as investment objective and the length of your investment accumulation; and also the more detailed questions such as what kind of a loss can I accept in a three-month period? Other high level questions to consider are:

Your philosophy of investment, diversification, taxes (solve for taxes above all else, or something different) risk and risk tolerance, costs of doing business etc.

How would you select an individual stock or a mutual fund to purchase and place inside your retirement account? For example, criteria for choosing a stock position might include length of time in business, do they pay a dividend, what environmental, social and governance (ESG) issues do they pay attention to. Sample criteria for choosing a mutual fund could include low annual expenses, no sales fees and being in business for more than twenty years.

## WHAT IS A FIDUCIARY AND NEW DEPT. OF LABOR REGULATION, FINAL RULE ANNOUNCED IN 2016, EFFECTIVE IN APRIL 2017.

This new rule, designed to minimize conflicts of interest in the retirement plan business was at least six years in the making, including public comment periods in 2010 and in 2015. According to the Dept. of Labor fact sheet, the Department issued a proposed rule and related exemptions that would require retirement advisers to abide by a "fiduciary" standard—putting their clients' best interest before their own profits. The rule is designed to update key provisions of Employee Retirement Income Security Act (ERISA). As of mid-2016, the US Chamber of Congress and at least eight other plaintiffs have sued to block implementation of the new rule, scheduled to take effect April of 2017.

It is said that the definition of a fiduciary originates with the 1726 case *Keech vs. Sandford*. A fiduciary cannot profit from their position, according to this English High Court ruling.

See also

<http://www.oxfordreference.com/view/10.1093/oi/authority.20110803100432995>

From Investopedia: A fiduciary is responsible for managing the assets of another person, or of a group of people. Asset managers, bankers, accountants, executors, board members, and corporate officers can all be considered fiduciaries when entrusted in good faith with the responsibility of managing another party's assets.

Read more: Fiduciary Definition | Investopedia

<http://www.investopedia.com/terms/f/fiduciary.asp - ixzz4CI7hW8CH>

Other types of relationships where fiduciary duties are involved include:

- Lawyers and clients
- Executors and legatees
- Trustees
- Guardian and ward
- Investment corporations and investors
- Promoters and stock subscribers

Fiduciaries in the retirement planning business have existed prior to this new regulation. Among them are holders of the CFP® designation and members of the National Association of Personal Financial Advisors (aka NAPFA).

CERTIFIED FINANCIAL PLANNER™ practitioners:

“Principle 1 – Integrity: Provide professional services with integrity. Integrity demands honesty and candor, which must not be subordinated to personal gain and advantage. Clients place certificant in positions of trust, and the ultimate source of that trust is the certificant’s personal integrity. Allowance



can be made for innocent error and legitimate differences of opinion, but integrity cannot co-exist with deceit or subordination of one's principles."

Members of the NAPFA complete this oath.

<https://www.napfa.org/about/FiduciaryOath.asp>

"The advisor shall exercise his/her best efforts to act in good faith and in the best interests of the client.

The advisor shall provide written disclosure to the client prior to the engagement of the advisor, and thereafter throughout the term of the engagement, of any conflicts of interest, which will or reasonably may compromise the impartiality or independence of the advisor.

The advisor, or any party in which the advisor has a financial interest, does not receive any compensation or other remuneration that is contingent on any client's purchase or sale of a financial product.

The advisor does not receive a fee or other compensation from another party based on the referral of a client or the client's business."

For a modern, humorous take on this rule, see HBO's John Oliver This Week Tonight episode <https://youtu.be/gvZSpET11ZY> aired 6/12/16 (warning: contains profanity)

## A SHORT INTRODUCTION TO BEHAVIORAL FINANCE, OR YOUR BRAIN ON MONEY

Leading authors in this field include Daniel Kahneman, Dan Ariely, Richard Thaler, Marianne Bertrand, Peter Diamond, Linda C. Babcock and Richard Schiller.

In short, we do not always behave rationally, as you may have learned in your Intro to Economics classes.

Thaler's mental accounting theory explains why we might drive across town to save money, but not go around the block to save the same amount of money. Ariely has written on our use of irrationality to make decisions and how we lie to ourselves.

Others in law, public policy and law have studied how humans act according to certain biases, especially around money and personal finance. Some of these decisions are ruled by our amygdala, our primitive brain (aka animal or lizard brain).

"Professor Daniel Kahneman describes two kinds of rationality in his authoritative book on cognition, *Thinking, Fast and Slow*. One makes rapid judgments based on learned patterns and sweeping assumptions. The other is intentional, slow, and difficult.

Productive financial decisions require the second kind, but regrettably, humans avoid hard thinking. We much prefer to make quick, easy judgments, but this quick intuitive thinking is filled with biases we don't recognize." Retrieved from

<https://www.onefpa.org/journal/Pages/JUN16-From-Irrational-to-Rational-6-Steps-to-Guide-Clients-to-Productive-Decisions.aspx>

This list includes pain avoidance, loss aversion, and appeal and accuracy biases.

## CONCLUSION

### Retirement Planning: Barriers to Success or (Financial Zombies)

- Opportunity Cost For Your Funds
- Operating your business, living expenses
- Debt repayment, student loans or other
- Contract staff compensation
- Taxes, compliance etc.

### Making Everything Happen

- Create your Investment Policy
- Make initial contributions small and automatic, e.g. \$100 per month sent to the investment custodian. (the firm who holds your plan)
- Monitor your cash flow (see presentation by Ann Guinn)
- If your plan provides tax advantages, then try to estimate the impact of contributions on your quarterly tax burden, in order to coordinate for maximum efficiency.
- Read your statements as they arrive
- During extreme market volatility or other world events, refer back to your Investment Policy

### Make Your Own Checklist for Creating a Business Retirement Plan:

1. Set a retirement vision and intent
2. Choose to save for the tax year 20xx
3. Review types of plans and choose one to begin
4. Create an investment policy statement
5. Review asset allocation history (Attachment 3 Market Risk and Reward)
6. Establish a plan with a custodian (financial institution)
7. Choose an Investment (note minimum investment thresholds)
8. Set investment contribution schedule (annual, quarterly, monthly)
9. Contribute and Invest
10. Congratulate yourself for thinking ahead about your financial future.

## RESOURCES

### Government Agencies

Social Security <http://www.ssa.gov> (check your benefits online)

Federal Trade Commission <https://www.identitytheft.gov/>

Internal Revenue Service <https://www.irs.gov/pub/irs-pdf/p560.pdf>

Plans for Small Businesses Publication 560

401(k) Plans for Small Businesses <https://www.irs.gov/pub/irs-pdf/p4222.pdf>

Publication 4222 <https://www.irs.gov/retirement-plans/one-participant-401-k-plans>

Interactive site created by DOL and AICPA (American Institute of Certified Public Accountants) <http://www.choosingaretirementsolution.org/PlanSelector/Select.aspx>

Consumer Financial Protection Bureau <http://www.consumerfinance.gov/>

### LINKS (Valid in July 2016)

Nine compelling reasons to have a Roth IRA, from Fidelity. <http://bit.ly/Y8ypPu>

From solo 401(k's) to SEP IRA's, a self employed retirement guide

<http://usat.ly/21cTrH7>

Last Week Tonight with John Oliver, Retirement Plans 6/12/16

<https://youtu.be/gvZSpET11ZY>

Do you need a target number for retirement? Via USA Today <http://usat.ly/1hpGcU6>

For women, risk is something to embrace <http://bit.ly/1U6v90h> Morningstar video

Why you are not saving for retirement, via Money magazine <http://ti.me/1TVSQKD>

Nine excuses you're making to avoid saving for retirement via Time

<http://vgi.vg/1pNp2DX>

<http://vanguardblog.com/2015/12/09/retirement-fomo-5-things-young-investors-can-should-do-to-save-for-retirement/> Fear of Missing Out (FOMO)

<https://www.dol.gov/ebsa/newsroom/fsconflictofinterest.html> Fiduciary Duties



CHOOSING A  
**RETIREMENT SOLUTION**  
FOR YOUR SMALL BUSINESS



**EMPLOYEE BENEFITS SECURITY ADMINISTRATION**  
UNITED STATES DEPARTMENT OF LABOR

*Choosing a Retirement Solution for Your Small Business* is a joint project of the U.S. Department of Labor's Employee Benefits Security Administration (EBSA) and the Internal Revenue Service.

To view this and other EBSA publications, visit the agency's website at:

**dol.gov/ebsa.**

To order publications or request assistance from a benefits advisor, contact EBSA electronically at:

**askebsa.dol.gov.**

Or call toll free:

**866-444-3272.**

This publication will be made available in alternative format to persons with disabilities upon request.

Voice Phone: **(202) 693-8664**

TDD\* phone: **(202) 501-3911**

**Starting a retirement savings plan can be easier than most business owners think. What's more, there are a number of retirement programs that provide tax advantages to both employers and employees.**

## Why Save?

Experts estimate that Americans will need 70 to 90 percent of their preretirement income to maintain their current standard of living when they stop working. So now is the time to look into retirement plan programs. As an employer, you have an important role in helping America's workers save.

By starting a retirement savings plan, you will help your employees save for the future. Retirement plans may also help you attract and retain qualified employees, and they offer tax savings to your business. You will help secure your own retirement as well. You can establish a plan even if you are self-employed.

## Any Tax Advantages?

A retirement plan has significant tax advantages:

- ❑ Employer contributions are deductible from the employer's income,
- ❑ Employee contributions (other than Roth contributions) are not taxed until distributed to the employee, and
- ❑ Money in the plan grows tax-free.

## Any Other Incentives?

In addition to helping your business, your employees, and yourself, it's easy to establish a retirement plan, and there are additional reasons for doing so:

- ❑ High contribution limits so you and your employees can set aside large amounts for retirement;
- ❑ "Catch-up" rules that allow employees age 50 and over to set aside additional contributions. The "catch up" amount varies, depending on the type of plan;
- ❑ A tax credit for small employers that enables them to claim a credit for part of the ordinary and necessary costs of starting a SEP, SIMPLE, or certain other types of retirement plans (more on these later). The credit equals 50 percent of the cost to set up and administer the plan, up to a maximum of \$500 per year for each of the first 3 years of the plan;
- ❑ A tax credit for certain low- and moderate-income individuals (including self-employed) who make contributions to their plans ("Saver's Credit").

The amount of the credit is based on the contributions participants make and their credit rate. The maximum contribution eligible for the credit is \$2,000. The credit rate can be as low as 10 percent or as high as 50 percent, depending on the participant's adjusted gross income; and

- ❑ A Roth program that can be added to a 401(k) plan to allow participants to make after-tax contributions into separate accounts, providing an additional way to save for retirement. Distributions upon death or disability or after age 59 1/2 from Roth accounts held for 5 years, including earnings, are generally tax-free.

## A Few Retirement Facts

Most private-sector retirement vehicles are either Individual Retirement Arrangements (IRAs), defined contribution plans, or defined benefit plans.

People tend to think of an IRA as something that individuals establish on their own, **but** an employer can help its employees set up and fund their IRAs. With an IRA, the amount that an individual receives at retirement depends on the funding of the IRA and the earnings (or losses) on those funds.

Defined contribution plans are employer-established plans that do not promise a specific amount of benefit at retirement. Instead, employees or their employer (or both) contribute to employees' individual accounts under the plan, sometimes at a set rate (such as 5 percent of salary annually). At retirement, an employee receives the accumulated contributions plus earnings (or minus losses) on the invested contributions.

Defined benefit plans, on the other hand, promise a specified benefit at retirement; for example, \$1,000 a month. The amount of the benefit is often based on a set percentage of pay multiplied by the number of years the employee worked for the employer offering the plan. Employer contributions must be sufficient to fund promised benefits.

Small businesses may choose to offer IRAs, defined contribution plans, or defined benefit plans. Many financial institutions and retirement plan practitioners make available one or more of these retirement plans that have been pre-approved by the IRS.

*On the following two pages you will find a chart outlining the advantages of each of the most popular types of IRA-based and defined contribution plans and an overview of a defined benefit plan. Note: there is a new option – myRA, a retirement account from the U.S. Department of the Treasury – that is not discussed in this publication. For more information, visit [myra.gov](http://myra.gov).*

## IRA-BASED PLANS

	<b>Payroll Deduction IRA</b>	<b>SEP</b>	<b>SIMPLE IRA Plan</b>	<b>Profit Sharing</b>
<b>Key Advantage</b>	Easy to set up and maintain.	Easy to set up and maintain.	Salary reduction plan with little administrative paperwork.	Permits employer to make large contributions for employees.
<b>Employer Eligibility</b>	Any employer with one or more employees.	Any employer with one or more employees.	Any employer with 100 or fewer employees that does not currently maintain another retirement plan.	Any employer with one or more employees.
<b>Employer's Role</b>	Arrange for employees to make payroll deduction contributions. Transmit contributions for employees to IRA. No annual filing requirement for employer.	May use IRS Form 5305-SEP to set up the plan. No annual filing requirement for employer.	May use IRS Form 5304-SIMPLE or 5305-SIMPLE to set up the plan. No annual filing requirement for employer. Bank or financial institution handles most of the paperwork.	No model form to establish this plan. May need advice from a financial institution or employee benefit adviser. Must file annual Form 5500.
<b>Contributors To The Plan</b>	Employee contributions remitted through payroll deduction.	Employer contributions only.	Employee salary reduction contributions and employer contributions.	Annual employer contribution is discretionary.
<b>Maximum Annual Contribution (per participant)</b>  <i>See <a href="http://irs.gov/retirement">irs.gov/retirement</a> for annual updates</i>	\$5,500 for 2015 and for 2016. Participants age 50 or over can make additional contributions up to \$1,000.	Up to 25% of compensation <sup>1</sup> but no more than \$53,000 for 2015 and for 2016.	<b>Employee:</b> \$12,500 in 2015 and in 2016. Participants age 50 or over can make additional contributions up to \$3,000 for 2015 and for 2016.  <b>Employer:</b> Either match employee contributions 100% of first 3% of compensation (can be reduced to as low as 1% in any 2 out of 5 yrs.); or contribute 2% of each eligible employee's compensation <sup>2</sup> .	Up to the lesser of 100% of compensation <sup>1</sup> or \$53,000 for 2015 and for 2016. Employer can deduct amounts that do not exceed 25% of aggregate compensation for all participants.
<b>Contributor's Options</b>	Employee can decide how much to contribute at any time.	Employer can decide whether to make contributions year-to-year.	Employee can decide how much to contribute. Employer must make matching contributions or contribute 2% of each employee's compensation.	Employer makes contribution as set by plan terms.
<b>Minimum Employee Coverage Requirements</b>	There is no requirement. Can be made available to any employee.	Must be offered to all employees who are at least 21 years old, employed by the employer for 3 of the last 5 years and had compensation of \$600 for 2015 and for 2016.	Must be offered to all employees who have compensation of at least \$5,000 in any prior 2 years, and are reasonably expected to earn at least \$5,000 in the current year.	Generally, must be offered to all employees at least 21 years old who worked at least 1,000 hours in a previous year.
<b>Withdrawals, Loans &amp; Payments</b>	Withdrawals permitted anytime subject to federal income taxes; early withdrawals subject to an additional tax (special rules apply to Roth IRAs). Participant loans are not permitted.	Withdrawals permitted anytime subject to federal income taxes; early withdrawals subject to an additional tax. Participants cannot take loans from their SEP-IRAs.	Withdrawals permitted anytime subject to federal income taxes; early withdrawals subject to an additional tax. Participants cannot take loans from their SIMPLE IRAs.	Withdrawals permitted after a specified event occurs (retirement, plan termination, etc.) subject to federal income taxes. Plan may permit loans and hardship withdrawals; early withdrawals subject to an additional tax.
<b>Vesting</b>	Contributions are immediately 100% vested.	Contributions are immediately 100% vested.	All contributions are immediately 100% vested.	May vest over time according to plan terms.

<sup>1</sup> Maximum compensation on which 2015 contributions can be based is \$265,000 (\$2XX,000 for 2016).

<sup>2</sup> Maximum compensation on which 2015 employer 2% contributions can be based is \$265,000 (\$2XX,000 for 2016).

## DEFINED CONTRIBUTION PLANS

## DEFINED BENEFIT PLANS

### Safe Harbor 401(k)

### Automatic Enrollment 401(k)

### Traditional 401(k)

Permits high level of salary deferrals by employees without annual nondiscrimination testing.

Provides high level of participation and permits high level of salary deferrals by employees. Also safe harbor relief for default investments.

Permits high level of salary deferrals by employees.

Provides a fixed, pre-established benefit for employees.

Any employer with one or more employees.

Any employer with one or more employees.

Any employer with one or more employees.

Any employer with one or more employees.

No model form to establish this plan. May need advice from a financial institution or employee benefit adviser. A minimum amount of employer contributions is required. Must file annual Form 5500.

No model form to establish this plan. May need advice from a financial institution or employee benefit adviser. May require annual nondiscrimination testing to ensure that plan does not discriminate in favor of highly compensated employees. Must file annual Form 5500.

No model form to establish this plan. May need advice from a financial institution or employee benefit adviser. Requires annual nondiscrimination testing to ensure that plan does not discriminate in favor of highly compensated employees. Must file annual Form 5500.

No model form to establish this plan. Advice from a financial institution or employee benefit adviser would be necessary. Must file annual Form 5500. An actuary must determine annual contributions.

Employee salary reduction contributions and employer contributions.

Employee salary reduction contributions and maybe employer contributions.

Employee salary reduction contributions and maybe employer contributions.

Primarily funded by employer.

**Employee:** \$18,000 in 2015 and in 2016. Participants age 50 or over can make additional contributions up to \$6,000 in 2015 and in 2016.

**Employee:** \$18,000 in 2015 and in 2016. Participants age 50 or over can make additional contributions up to \$6,000 in 2015 and in 2016.

**Employee:** \$18,000 in 2015 and in 2016. Participants age 50 or over can make additional contributions up to \$6,000 in 2015 and in 2016.

Annually determined contribution.

**Employer/Employee Combined:** Up to the lesser of 100% of compensation<sup>1</sup> or \$53,000 for 2015 and for 2016. Employer can deduct (1) amounts that do not exceed 25% of aggregate compensation for all participants and (2) all salary reduction contributions.

**Employer/Employee Combined:** Up to the lesser of 100% of compensation<sup>1</sup> or \$53,000 for 2015 and for 2016. Employer can deduct (1) amounts that do not exceed 25% of aggregate compensation for all participants and (2) all salary reduction contributions.

**Employer/Employee Combined:** Up to the lesser of 100% of compensation<sup>1</sup> or \$53,000 for 2015 and for 2016. Employer can deduct (1) amounts that do not exceed 25% of aggregate compensation for all participants and (2) all salary reduction contributions.

Employee can decide how much to contribute based on a salary reduction agreement. The employer must make either specified matching contributions or a 3% contribution to all participants.

Employees, unless they opt otherwise, must make salary reduction contributions specified by the employer. The employer can make additional contributions, including matching contributions as set by plan terms.

Employee can decide how much to contribute based on a salary reduction agreement. The employer can make additional contributions, including matching contributions as set by plan terms.

Employer generally required to make contribution as set by plan terms.

Generally, must be offered to all employees at least 21 years old who worked at least 1,000 hours in a previous year.

Generally, must be offered to all employees at least 21 years old who worked at least 1,000 hours in a previous year.

Generally, must be offered to all employees at least 21 years old who worked at least 1,000 hours in a previous year.

Generally, must be offered to all employees at least 21 years old who worked at least 1,000 hours in a previous year.

Withdrawals permitted after a specified event occurs (retirement, plan termination, etc.) subject to federal income taxes. Plan may permit loans and hardship withdrawals; early withdrawals subject to an additional tax.

Withdrawals permitted after a specified event occurs (retirement, plan termination, etc.) subject to federal income taxes. Plan may permit loans and hardship withdrawals; early withdrawals subject to an additional tax.

Withdrawals permitted after a specified event occurs (retirement, plan termination, etc.) subject to federal income taxes. Plan may permit loans and hardship withdrawals; early withdrawals subject to an additional tax.

Payment of benefits after a specified event occurs (retirement, plan termination, etc.). Plan may permit loans; early withdrawals subject to an additional tax.

Employee salary reduction contributions and all safe harbor employer contributions are immediately 100% vested. Some employer contributions may vest over time according to plan terms.

Employee salary reduction contributions are immediately 100% vested. Employer contributions may vest over time according to plan terms.

Employee salary reduction contributions are immediately 100% vested. Employer contributions may vest over time according to plan terms.

May vest over time according to plan terms.



## Payroll Deduction IRAs

Even if an employer doesn't want to adopt a retirement plan, the employer can allow its employees to contribute to an IRA through payroll deductions, providing a simple and direct way for employees to save. In this type of arrangement, the employee always makes the decisions about whether, when, and how much to contribute to the IRA (up to \$5,500 for 2015 and for 2016 and \$6,500 for 2015 and for 2016 if age 50 or older, increasing thereafter).

Some individuals eligible to contribute to an IRA wait until the end of the year to set aside the money and then find that they don't have sufficient funds to do so. Payroll deductions allow employees to plan ahead and save smaller amounts each pay period. Payroll deduction contributions are tax-deductible by the employee, to the same extent as other IRA contributions.

## Simplified Employee Pensions (SEPs)

A SEP plan allows employers to set up SEP IRAs for themselves and each of their employees. Employers generally must contribute a uniform percentage of pay for each employee, although they do not have to make contributions every year. Employer contributions are limited to the lesser of 25 percent of pay or \$53,000 for 2015 and for 2016. (Note: the dollar amount is indexed for inflation and may increase.) Most employers, including those who are self-employed, can establish a SEP.

SEPs have low start-up and operating costs and can be established using a two-page form. And you can decide how much to put into a SEP each year – offering you some flexibility when business conditions vary.

## SIMPLE IRA Plans

A SIMPLE IRA plan is a savings option for employers with 100 or fewer employees.

This plan allows employees to contribute a percentage of their salary each paycheck and requires employer contributions. Under SIMPLE IRA plans, employees can set aside up to \$12,500 in 2015 and in 2016 (\$15,500 in 2015 and in 2016 if age 50 or older) by payroll deduction (subject to cost-of-living adjustment in later years). Employers must either match employee contributions dollar for dollar – up to 3 percent of an employee's compensation – or make a fixed contribution of 2 percent of compensation for all eligible employees, even if the employees choose not to contribute.

If your plan provides for it, you can choose to automatically enroll employees in SIMPLE IRA plans as long as the employees are allowed to choose not to have salary reduction contributions made to their SIMPLE IRAs or to have salary reduction contributions made in a different amount.

SIMPLE IRA plans are easy to set up. You fill out a short form to establish a plan and ensure that SIMPLE IRAs (to hold contributions made under the SIMPLE IRA plan) are established for each employee. A financial institution can do much of the paperwork. Additionally, administrative costs are low.

You may have your employees set up their own SIMPLE IRAs at a financial institution of their choice or have all SIMPLE IRAs maintained at one financial institution you choose.

Employees can decide how and where the money will be invested, and keep their SIMPLE IRAs even when they change jobs.

## Profit Sharing Plans

Employer contributions to a profit sharing plan can be discretionary. Depending on the plan terms, there is often no set amount that an employer needs to contribute each year.

If you do make contributions, you will need to have a set formula for determining how the contributions are allocated among plan participants. The funds are accounted separately for each employee.

Profit sharing plans can vary greatly in their complexity. Many financial institutions offer prototype profit sharing plans that can reduce the administrative burden on individual employers.

## 401(k) Plans

401(k) plans have become a widely accepted retirement savings vehicle for small businesses. An estimated 53 million U.S. workers participate in 401(k) plans that have total assets of about \$4 trillion.

With a 401(k) plan, employees can choose to defer a portion of their salary. So instead of receiving that amount in their paycheck today, the employees can contribute the amount into a 401(k) plan sponsored by their employer. These deferrals are accounted separately for each employee. Deferrals are made on a pretax basis but, if the plan allows, the employee can choose to make them on an after-tax (Roth) basis. Many 401(k) plans provide for employer matching or other contributions. The Federal Government and most state governments do not tax employer contributions and pretax deferrals (plus earnings) until distributed.

Like most profit sharing plans, 401(k) plans can vary significantly in their complexity. However, many financial institutions and other organizations offer prototype 401(k) plans, which can greatly lessen the administrative burden of establishing and maintaining these plans.

## Safe Harbor 401(k) Plans

A safe harbor 401(k) plan is intended to encourage plan participation among rank-and-file employees and to ease the administrative burden by eliminating the tests ordinarily applied under a traditional 401(k) plan. This plan is ideal for businesses with highly compensated employees whose contributions would be limited in a traditional 401(k) plan.

A safe harbor 401(k) plan allows employees to contribute a percentage of their salary each paycheck and requires employer contributions. In a safe harbor 401(k) plan, the mandatory employer contribution is always 100 percent vested.

## Automatic Enrollment 401(k) Plans

Automatic enrollment 401(k) plans can increase plan participation among rank-and-file employees and make it more likely that the plan will pass the tests ordinarily required under a traditional 401(k) plan. Some automatic enrollment 401(k) plans are exempt from the testing. This type of plan is for employers who want a high level of participation, and who have highly compensated employees whose contributions might be limited under a traditional 401(k) plan.

Employees are automatically enrolled in the plan and contributions are deducted from their paychecks, unless they opt out of contributing after receiving notice from the plan. There are default employee contribution rates, which may rise incrementally over the first few years, although the employee can choose different amounts.

## Defined Benefit Plans

Some employers find that defined benefit plans offer business advantages. For instance, businesses can generally contribute (and therefore deduct) more each year than in defined contribution plans. In addition, employees often value the fixed benefit provided by this type of plan and can often receive a greater benefit at retirement than under any other type of retirement plan. However, defined benefit plans are often more complex and, likely, more expensive to establish and maintain than other types of plans.

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## To Find Out More...

The following jointly developed publications are available for small businesses on the DOL and IRS websites and through DOL's toll-free number listed below:

- ❑ *401(k) Plans for Small Businesses* (Publication 4222)
- ❑ *Automatic Enrollment 401(k) Plans for Small Businesses* (Publication 4674)
- ❑ *Payroll Deduction IRAs for Small Businesses* (Publication 4587)
- ❑ *Profit Sharing Plans for Small Businesses* (Publication 4806)
- ❑ *SEP Retirement Plans for Small Businesses* (Publication 4333)
- ❑ *SIMPLE IRA Plans for Small Businesses* (Publication 4334)

For business owners with a plan:

- ❑ *Adding Automatic Enrollment to Your 401(k) Plan* (Publication 4721)
- ❑ *Retirement Plan Correction Programs* (Publication 4224)

DOL website: **dol.gov**

Publications request number: **866-444-3272**

IRS website: **irs.gov/retirement**

## Also available from the U.S. Department of Labor:

DOL sponsors an interactive website – the Small Business Retirement Savings Advisor, available at <http://webapps.dol.gov/elaws/ebsaplan.htm> – that encourages small business owners to choose the appropriate retirement plan for their business and provides resources on maintaining plans.

Publications for plan officials:

- ❑ *Meeting Your Fiduciary Responsibilities*
- ❑ *Understanding Retirement Plan Fees and Expenses*
- ❑ *Selecting an Auditor for Your Employee Benefit Plan*
- ❑ *Selecting and Monitoring Pension Consultants – Tips for Plan Fiduciaries*
- ❑ *Tips for Selecting and Monitoring Service Providers for Your Employee Benefit Plan*

## Also available from the Internal Revenue Service:

- ❑ *Retirement Plans for Small Business (SEP, SIMPLE, and Qualified Plans)*, (Publication 560)
- ❑ *Contributions to Individual Retirement Arrangements (IRAs)*, (Publication 590-A)
- ❑ *Distributions from Individual Retirement Arrangements (IRAs)*, (Publication 590-B)
- ❑ *Designated Roth Accounts Under 401(k), 403(b), or Governmental 457(b) Plans*, (Publication 4530)



Publication 3998 (Rev. 10-2015) Catalog Number 34066S  
Department of the Treasury **Internal Revenue Service**  
[www.irs.gov](http://www.irs.gov)

13-17



U.S. Department of Labor

October 2015

# Morningstar's Investment Policy Worksheet

An Investment Policy Statement forces you to put your investment strategy in writing and commit to a disciplined investment plan. Here are just a few of the issues and concepts you should clarify before you put together your IPS.

<b>1 Executive Summary</b>	<b>What are the current assets of my portfolio today?</b>	\$ _____
	<b>How much do I plan to invest each month?</b>	\$ _____
	<b>How many years will I be investing?</b>	Years _____
	<b>How much do I expect my portfolio to return each year over inflation?</b>	% _____
	<b>How much of a loss can I accept over:</b>	
	a three-month period?	% _____
	a one-year period?	% _____
	a five-year period?	% _____
	<b>What is my target asset allocation?</b>	
	Cash	% _____
Bonds	% _____	
Large-company stocks	% _____	
Small-company stocks	% _____	
Foreign stocks	% _____	
<b>What are the benchmarks for my portfolio?</b>	_____	

<b>2 Investment Objectives</b>	<b>What is my financial goal?</b>	_____
	<b>How long will I need to be funding this goal?</b>	Years _____
	<b>How much will this goal cost every year?</b>	\$ _____

<b>3 Investment Philosophy</b>	<b>What's important to me as an investor?</b>	_____ _____ _____
	<b>What's my philosophy about risk?</b>	_____ _____ _____
	<b>What's my philosophy about core versus noncore investments?</b>	_____ _____ _____
	<b>What's my philosophy about diversification?</b>	_____ _____ _____
	<b>What's my philosophy about trading?</b>	_____ _____ _____
	<b>What's my philosophy about costs?</b>	_____ _____ _____

**3 Investment Philosophy Continued**

**What's my philosophy about taxes?**

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**4 Investment Selection Criteria**

**What are the investment selection criteria for my mutual funds?**

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**What are the investment selection criteria for my stocks?**

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**5 Monitoring Procedures**

**How often will I monitor my portfolio?**

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**How will I determine how well my individual investments are doing?**

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**How will I determine how well my overall portfolio is doing?**

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**How will I determine if my portfolio is meeting my expected return?**

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**How will I determine whether losses fall within my accepted range?**

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# Market risk and reward

Investor education

It's important to have realistic expectations about the trade-offs between risk and reward. A balanced, diversified portfolio can help reduce portfolio volatility. This table shows long-term average annual returns for various asset allocations between U.S. stocks and bonds, and the performance of those allocations during select equity bear and bull markets.

Asset allocation	Average annual return (1926–2015)	Inflation-adjusted average annual return (1926–2015)	Number of years with a loss	Cumulative return 1973–1974 ▼	Cumulative return 3/31/2000–9/30/2002 ▼	Cumulative return 9/30/2002–12/31/2007 ▲	Cumulative return 12/31/2007–3/31/2009 ▼	Cumulative return 3/31/2009–12/31/2015 ▲
 100% bonds	5.40%	2.42%	14 of 90	–4.82%	28.56%	26.12%	5.36%	32.32%
 20% stocks and 80% bonds	6.70	3.68	12 of 90	–11.85	10.61	40.04	–6.18	58.39
 30% stocks and 70% bonds	7.28	4.25	13 of 90	–15.25	2.32	47.41	–11.60	72.78
 40% stocks and 60% bonds	7.82	4.77	14 of 90	–18.58	–5.52	55.06	–16.81	88.10
 50% stocks and 50% bonds	8.32	5.25	17 of 90	–21.84	–12.93	63.00	–21.81	104.37
 60% stocks and 40% bonds	8.77	5.69	20 of 90	–25.04	–19.92	71.23	–26.59	121.61
 70% stocks and 30% bonds	9.18	6.09	21 of 90	–28.16	–26.50	79.76	–31.18	139.83
 80% stocks and 20% bonds	9.54	6.44	23 of 90	–31.21	–32.69	88.60	–35.57	159.03
 100% stocks	10.13	7.02	25 of 90	–37.12	–43.92	107.20	–43.77	200.36
 100% cash	3.48	0.55	1 of 90	15.49	10.25	16.08	1.84	0.50

Source: Vanguard, as of December 31, 2015.

▲ Bull market ▼ Bear market

Past performance is no guarantee of future returns. The performance of an index is not an exact representation of any particular investment, as you cannot invest directly in an index.

There is no guarantee that any particular asset allocation or mix of funds will meet your investment objectives or provide you with a given level of income.

When determining which index to use and for what period, we selected the index that we deemed to be a fair representation of the characteristics of the referenced market, given the information currently available. For U.S. stock market returns, we used the Standard & Poor's 90 Index from 1926 to March 3, 1957; the S&P 500 Index from March 4, 1957, through 1974; the Dow Jones Wilshire 5000 Index from 1975 to April 22, 2005; the MSCI US Broad Market Index from April 23, 2005, to June 2, 2013; and the CRSP US Total Market Index thereafter. For U.S. bond market returns, we used the S&P High Grade Corporate Index from 1926 through 1968, the Citigroup High Grade Index from 1969 through 1972, the Lehman Brothers U.S. Long Credit AA Index from 1973 through 1975, the Barclays U.S. Aggregate Bond Index from 1976 through 2009, and the Barclays U.S. Aggregate Float Adjusted Index thereafter. For U.S. short-term returns, we used the Ibbotson U.S. 30-Day Treasury Bill Index from 1926 through 1977 and the Citigroup 3-Month U.S. Treasury Bill Index thereafter.

All investing is subject to risk, including the possible loss of the money you invest.  
Diversification does not ensure a profit or protect against a loss.

Investment Products: Not FDIC Insured • No Bank Guarantee • May Lose Value



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Advisor Services™

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Valley Forge, PA 19482-2900

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## ~~WHEN~~ WILL YOU RETIRE?

**By Dana Twight, CFP®  
Founder**

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**Seattle, WA**

Twight Financial for WSBA July 2016

## COURSE OBJECTIVES

Why to establish, fund and invest a plan as early as possible. Next, the role of a fiduciary vis-à-vis your retirement plans. Last, your brain on money, or getting out of your own way.

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## SET A RETIREMENT VISION AND INTENT

I think I'd like to work until age 70

I want to work until I am 65 and then teach skiing in Sun Valley, buy a Harley, be an organic farmer, run a hardware store etc.

They'll have to carry me out of my office by my heels.

My family and I want to sail around the world.

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## MORE MONEY, LESS GOVERNMENT

**Retirement planning was less formal, in the past, and accompanied by more privilege. If you had a certain amount of capital, you could live on your annual income from that capital.**

**Remember Mr. Darcy with \$10,000 per year?**

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## WHAT DOES RETIREMENT MEAN TO YOU?

**Financial Freedom**

**Travel**

**Encore Career**

**Family**

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## BARRIERS TO ESTABLISHING A PLAN

**Cost of Business Operations**

**Living Expenses**

**Debt Repayment (Student Loans etc.)**

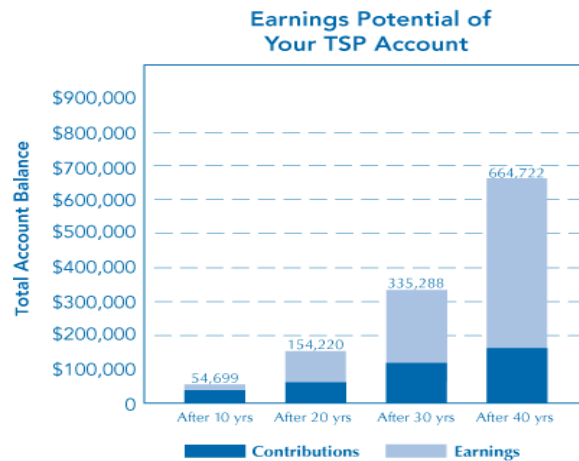
**Contract Staff Compensation**

**Taxes**

**Compliance**

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## WHY SAVE NOW (TIME VALUE OF MONEY)



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## DO THIS!

**Assess your goals for a retirement plan**

**Have a good idea of goals prior to meeting with service providers or consultants**

**What goals might you have?**

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## YOUR GOALS COULD INCLUDE:

**Liquidity**

**Growth**

**Income**

**Tax Sheltered (Tax Free, Tax Deferral)**

**Socially Responsible Investing (aka  
SRI)**

**Professional Management**

**Provide Competitive Benefits Package**

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## TYPES OF PLANS AVAILABLE IN 2016

### **IRA Based Plans**

- Includes *myIRA*

### **Defined Contribution Plans**

- Includes Solo 401(k)

### **Defined Benefit Plans**

- Includes pensions

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## INVESTMENT POLICY

**Time**

**Allocation**

**Risk**

**Diversification**

**Gains and Losses-Your Parameters**

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## CONTRIBUTIONS

**Set investment contribution schedule  
(annual, quarterly, monthly)**

**Make initial contributions small and  
automatic, e.g. \$100 per month sent to  
the investment custodian, e.g. the firm  
who holds your plan.**

**Coordinate with Tax Planning**

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# WHAT'S A FIDUCIARY

**Definition**

**Purpose**

**Legislation**

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# AN INTRODUCTION TO BEHAVIORAL FINANCE, OR YOUR BRAIN ON MONEY

**Did You Know About These Biases?**

- Pain Avoidance
- Appeal
- Accuracy

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CONCLUSION

Q AND A

THANK YOU

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Financial Education 

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## CHAPTER FOURTEEN - A

**COCKTAIL LAW**

July 2016

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**RAJEEV D. MAJUMDAR** is a partner in a small town general practice, focusing on transactional work and serving as general counsel for businesses, as well as criminal defense. He also serves as Prosecutor for the Nooksack Indian Nation, Prosecutor for the City of Blaine and Prosecutor for the City of Bellingham's Mental Health Diversion Court. He speaks regularly on issues of diversity in the legal profession and teaches 'Rights, Liberties and Justice in America' at Western Washington University. The WSBA awarded him a Local Hero Award for his work supporting non-profits serving the indigent. When not working, he loves spending time in the great outdoors with his wife and newborn daughter. He was admitted to the Washington State Bar in 2007, and was recently elected to the WSBA's Board of Governors to represent District #2 starting in October.

## A Little Bit about Myself and the Importance of Criminal Law

- I perceive myself as a civil litigator, or more ideally a transactional attorney.
- I tell people I am a scientist.
- In actuality, about 50% of my practice involves criminal litigation or policy.

### Small Town/Rural Law

You are going to encounter criminal law.

- The People's only choice.
- You want to eat.

### Family Law/Probate Law

You are going to encounter criminal law.

- It's called "**VNCO** (violation of no contact order)" and "**MM** (malicious mischief)."

### Contract Law/Immigration Law

You are *probably* going to encounter criminal law.

- White collar crime/disgruntled business partners.
- Immigration regulations/exclusion/*prurient* interests.

### Tax Law/Regulatory Law

You probably are a criminal, or at least aiding and abetting one!<sup>1</sup>

---

<sup>1</sup> SUPERLATIVE DISCLAIMER for lawyers: **That was a joke.**

## **In a bar...**

You are *definitely* going to encounter criminal law.

Often the best answer to a criminal law question is this one, given by a civil procedure expert and litigator extraordinaire:

**“I don’t know *anything* about Criminal Law!”**

~Anonymous

### **1.Context: What is civil law?**

- a. Criminal law is real law. Criminal Law is the reason for humanity’s legal systems. Civil law is an afterthought. Civil law is merely:
  - i. A means of weaseling our clients out from the liability and risk of sanctioned trial by combat (*never outlawed in the USA*);
  - ii. Minimizing self-help, and thus avoiding the criminal justice system; or
  - iii. Lowering the transaction costs for money changers and merchants driven by money, which as noble professional legal practitioners, we know little about as we are not ever driven by such crass materialism.<sup>2</sup>

---

<sup>2</sup> *Id.* (JOKE)1

## 2. What is Criminal Law?

a. It is what keeps this crowd from pillaging and looting each other

b. The first legal codes.

i. The code of Urukagina of Lagash (~2380 BCE). It took measures against usury, hunger, theft, murder, and seizure (of people's property and persons); poems of praise for his code stated: "The widow and the orphan were no longer at the mercy of the powerful man."<sup>3</sup>

ii. Indian codes, Greco-Roman codes, Chinese codes all conflated criminal and civil law.

iii. Christian/Islamic ideas of *extra* punishment for guilty acts and the subsequent idea that the State was a tool of divine justice, began to divide civil/criminal law.

1. In our tradition, that process started in 1066, when William crossed the Channel. From there forward, our procedures began to differentiate. Incidentally, at that point civil law was mostly *weregild* and trial by combat, which petered out in the 16<sup>th</sup> century, but not ended or outlawed until the 19th.

---

<sup>3</sup> <http://www.humanistictexts.org/sumer.htm#4%20Praise%20of%20Urukagina>

### **c. Really, what is it?**

- i. It's one of the ways that society regulates social conduct.
  - 1. Criminal Law is traditionally the way of punishment/confinement.
- ii. It's also a demonstration of the government's monopoly of the use of force to achieve goals.
- iii. Modern Objectives?
  - 1. Retribution.
  - 2. Deterrence.
  - 3. Incapacitation/Removal.
  - 4. Rehabilitation.
  - 5. Restoration for Victims.

### **d. Sources of Criminal Law.**

- i. Municipal / County Ordinances
  - 1. Inherent sovereign authority – exclusive original jurisdiction [*RCW 3.50.020*]
- ii. The Revised Code of Washington
  - 1. Must be adopted by municipalities
- iii. Indian Nation laws
  - 1. Sovereign, inherent and original criminal authority over Native Americans
- iv. Federal laws
- v. Internati...
  - 1. Ha ha ha...

### **3. Enough about that! What do I need to know when I am minding my own business at a cocktail party?**

#### Scenario 1:

**Q:** *“Oh, you’re a lawyer? I got this ticket on the way over here, what should I do?”*

First, is it really a **“crime”** or an **“infraction”**?

#### **Crime:**

1. Has a penalty of jail time attached to it;
2. A warrant will be issued for your arrest if you do not appear in court on the date of the ticket; and
3. Has crazy concepts like the right not to “incriminate” yourself.

#### **Civil Infraction:**

1. Has only a monetary penalty;
2. A warrant will not be issued for your arrest; and
3. In Washington, hearsay and absent witnesses will be used against you at a hearing.
4. That being said... if you do not show up, and do not pay your fine... you will have your license suspended, and will soon become a criminal.

## Scenario 2:

Q: *“I got this Driving with License Suspended Ticket, but I missed my hearing and it doesn’t say where I am supposed to pay the fine?”*

A: **“Now is the time to panic!!!! That’s not a ‘ticket’ you’ve been charged with a crime and there is likely a warrant for your arrest out right now!”**

## Scenario 3:

Q: *“Should I really panic?”*

A: **“No, but you really need an attorney now. Or, you at *least* need to call the court and find out what you need to do to Quash (not squash) your warrant. Or you can choose to live a romantic life ‘on the *lam*’<sup>4</sup> and hope you never encounter law enforcement.”**

---

<sup>4</sup> Old Norse – to run/leave

#### Scenario 4:

Q: *“It’s only a misdemeanor. Can’t you take the case?”*

A: **“You do know that a misdemeanor can have up to a year in jail, a \$5,000 fine, jail costs, probation costs and treatment program costs, restitution and local fines and assessments?”**

**You wouldn’t use a speeding ticket attorney to structure your inverted stock split resulting from your reverse acquisition of a Fortune 500 company would you? Maybe think about hiring a criminal defense attorney.”**

#### Scenario 5:

Q: “I’ve been charged with a misdemeanor, Assault. Should I hire the attorney in the office next to mine? He is always on the front page for winning murder, grand theft auto and vehicular assault cases.”

A: **“Sometimes, a felony attorney is not the best for a misdemeanor. It’s a matter of scale, sometimes someone whose clients are looking at**



**multiple life sentences and \$100,000 fines, may not be as tuned into to your concerns about spending a week in jail.”**

## **5. Personal Observations**

- a. Criminal law is often more civil than civil law... but not always, and when it isn't that is very bad.
  - i. Prosecuting is like playing poker with three aces up your sleeve to start with.
  - ii. The defendant has already been adjudged by both a professional investigator/witness and a learned judicial official to have committed the crime, more probably than not.
  
- b. In my experience as a prosecutor, it really usually is better to have an attorney who specializes in misdemeanors rather than a famous felony attorney. Misdemeanor attorneys seem to fight harder, whereas felony attorneys have often lost the scale of perspective.

- c. If someone is charging your otherwise non-criminal clients anything over \$500 for a DWLS3 (Driving w/ License Suspended in the 3<sup>rd</sup> degree), your client is probably overpaying for what will likely (but not always) be a 5 minute phone call on the part of the defense attorney. Most of the time, if your clients get re-licensed these types of crimes can be resolved as a civil infraction.
  
- d. If your client is not a US Citizen, they *definitely* need a criminal defense attorney. It is malpractice for criminal defense attorneys to practice without knowing the immigration consequences- that is part of their job.
  
- e. I like to think about civil law as about getting to the factual truth and not hiding anything. Criminal law is a bit more about procedural truth, and sometimes also about factual truth. The burden wholly rests on the government not to violate our rights and to prove their case. So sometimes, your client is

not guilty, and even when they *are* guilty,  
they are not guilty.

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## CHAPTER FOURTEEN - B

**COCKTAIL LAW**

July 2016

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**JESSICA L. BECK** graduated from the University of Washington in 2006 and Seattle University School of Law in 2011 with a focus in estate planning. She is a partner at Krueger Beck, PLLC located in Kirkland, Washington. Her practice emphasizes estate planning for individual and small business clients and probate administration. She is a member of the Real Estate, Probate and Trust section of the Washington State Bar Association and King County Bar Association. She is also a member of the American Bar Association Business Law section, and a member of the East King County Estate Planning Council.

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### I. ESTATE PLANNING AND PROBATE

#### A. WHAT IS ESTATE PLANNING?

Estate Planning is the process of organizing & arranging for the orderly management & disposition of your affairs & assets during your life and after your death, to minimize:

1. Legal & Financial Complications.
2. Fees & Expenses.
3. Taxes.

#### B. PROBATE

##### 1. Defined:

Probate is the administration of the deceased's estate by a court pursuant to the terms of the will or, if there is no will, according to the laws of intestate descent and distribution. Probate involves the inventory and appraisal of assets, the payment of creditors' claims and taxes, and the distribution of assets in accordance with the will provisions or under the laws of intestate descent and distribution.

##### 2. Advantages:

- a. If the estate is solvent, the executor is granted powers to settle the case without further court involvement. In Washington State this generally results in an inexpensive probate.
- b. Executor can have court supervise and approve executor's actions, if needed.
- c. Creditors' claims generally cut off after four months.
- d. The increase in the family award to \$125,000 permits small estates for spouses and dependent children to be protected

from creditors.

3. Disadvantages:

- a. Public proceeding; however, an inventory is not filed in court, but must be provided to beneficiaries.
- b. Delays. Many estates can be closed within five to six months. A will may be challenged within four months of filing and notice.
- c. Expense of attorney's and executor's fees.

C. INTESTATE DESCENT AND DISTRIBUTION

A person who dies without a will dies "intestate." Without a will, the deceased's property may be subject to probate, and the property will pass to those heirs listed in the laws of the state in which the deceased resided. The state's will does not consider the actual intent of the deceased. The administrator will need to apply for a bond, or, if not bondable, must post other security.

D. THE WILL

1. Advantages:

- a. Avoids distribution under the laws of intestacy.
- b. Low establishment cost for simple will.
- c. Simplicity during lifetime.
- d. Reasonable probate fees in the State of Washington.
- e. Credibility of the process.
- f. Names who you want to be Executor and helps prevent heirs from fighting.

2. Disadvantages:

- a. Requires probate.
- b. Potential time delays.
- c. Potential will contest, but proof must be clear and convincing to overcome the presumption of capacity once the will is admitted to probate.

3. Capacity:

- a. Does the Testator know the nature and extent of his or her property?
  - b. Does the Testator know the natural objects of his or her bounty?
  - c. Does the Testator know he or she is signing a will?
  - d. Two witnesses in Washington and the testimony should be certified at time of witnessing.
4. Undue Influence:
- a. Was the Testator under undue influence such that the will was not his or her intent, but the intent of another?
5. Executor and Trustee Skills:
- a. Honest as the day is long.
  - b. Good business judgment.
  - c. Common sense.
  - d. Ability to communicate with all beneficiaries.
  - e. Professional executor will cost less in long run if sibling communication is dysfunctional.
6. Executor Qualifications:
- a. No corporation, minor, or persons of unsound mind, persons convicted of a felony or of a misdemeanor involving moral turpitude.
  - b. Trust companies organized under Washington law or authorized national banks.
  - c. Non-resident if he or she appoints an agent on whom service of all papers may be made. Agent must be a resident of county where estate is probated or attorney of record of estate.

## E. COMMUNITY PROPERTY AGREEMENT

- 1. Advantages:



- a. Avoids probate.
- b. Minimal delay to transfer.
- c. Low cost to create and transfer.
- d. Creditor claim process available.

2. Disadvantages:

- a. Limited to property in the State of Washington.
- b. Limited to transfers between husband and wife.
- c. Creates unintended gift and limits tax planning if agreement provides that all property is community property whether owned now or in the future.
- d. Backup wills needed if both die.
- e. If community estate is \$2,000,000 or more, Washington estate taxes may be payable on the survivor's death.
- f. Not appropriate if marriage is unstable or if there are children from a prior marriage and the parent wants to provide for them.

F. COMMON METHODS OF AVOIDING PROBATE

1. Gifts during lifetime.
2. Contracts:
  - a. Life insurance beneficiary designation.
  - b. Retirement plan and IRA beneficiary designation.
3. Small estates - personal property valued under \$100,000 can be transferred by an affidavit of successor in lieu of probate. See [www.washingtonlawhelp.org](http://www.washingtonlawhelp.org) for forms.
4. Title Arrangements:
  - a. Joint tenancy property (JTWROS).
  - b. Bank "Totten" Trusts (In X's name in trust for Y).
  - c. Community property.
5. Revocable living trust.
6. Real Property Title Arrangements.
  - a. In name of owner or owners (recommended).
  - b. Joint Tenancy with Right of Survivorship (JTWROS).

- c. Life Estate with remainder to beneficiaries.
- d. Transfer on Death Deed ( TOD new as of June 12, 2014)
  - 1. Any real property title change should be considered as part of an overall estate plan, not an ad hoc decision advocated by a beneficiary who wants the property.
  - 2. TOD is recorded and is public record.
  - 3. Although TOD is revocable, the safeguards of a Will or Trust are not present, meaning Grantor may be subjected to undue influence or fraud.
  - 4. Upon death of Grantor the death certificate must be recorded as public record that is available to all, including identity thieves.
  - 5. Beneficiary takes real property subject to any debts.

#### G. PLANNING FOR CHILDREN

- 1. Simple Will - nominate guardians for person and estate of minor children (Age of majority is 18 in Washington):
  - a. Advantages - court supervision and bonding requirements.
  - b. Disadvantages - children receive the entire estate at age 18 and may not have the wisdom and maturity to preserve it. The cost of the guardianship is deducted from the estate.
- 2. Will with Contingent Trust for Children:
  - a. Advantages - trustee can hold the property beyond age 18. For example, the trustee can pay educational expenses until the child reaches age 24, and then pay  $\frac{1}{3}$  of the trust principal to the child. At age 28 the trustee can distribute  $\frac{1}{2}$  and the balance at age 31, or any percentages and ages you select.
  - b. Disadvantages - No bond or court supervision, so select responsible trustee who is able to pay for his or her mistakes.
  - c. A "special needs trust" should be considered to maintain

eligibility for children or others who will be receiving governmental resources, such as SSI, COPES and Medicaid.

## **II. REVOCABLE LIVING TRUST**

### **A. DEFINED**

A living trust is a trust you create while you are living, as contrasted with a testamentary trust which is created after your death by the terms of your will.

A revocable trust can be altered, amended, or revoked; an irrevocable trust is not meant to be changed, but the law will permit modifications if all interested parties can agree.

Thus, a revocable living trust is a trust you create and can alter, revoke or amend at any time during your life.

### **B. ADVANTAGES**

1. Avoids probate, costs, delay, and publicity.
2. Avoids court appointed guardian.
3. Will substitute.
4. Successor trustee can act immediately, but must comply with institutional requirements (e.g., bank, brokerage firm) to prove change of trustee, such as by certification of trust.
5. Creditor claim process available.

### **C. DISADVANTAGES**

1. Costs more to set up than simple will.
2. Nuisance of transferring property to trust and record keeping during lifetime.
3. More difficult to understand.
4. Possible mismanagement and lack of credibility in transfer from trustee to ultimate beneficiaries.

### **D. ESTABLISHING THE TRUST**

1. Definitions:
  - a. Trustor - the creator of the trust (also referred to as grantor or settlor).
  - b. Trustee - the person or entity who holds title to the trust assets has a fiduciary duty to preserve and invest the assets for the benefit of the trust beneficiaries.
  - c. Beneficiary - the person or persons for whose benefit the trust was established and to whom the trustee owes a duty to prudently preserve and invest the trust assets.
  
2. The Trust Agreement:
  - a. Beneficiary Designation. Generally, the trustor(s), the person or husband and wife creating the trust, are also the beneficiaries while alive. Upon the death of a spouse, the surviving spouse usually continues to receive all trust income. After the death of the second spouse, the children or other designated beneficiaries receive the property, either in trust or outright when they reach a specified age, for example, one-half at age 25 and the balance at age 30.
  - b. Trustee and Successor Trustee Designation. Generally, the trustor will also serve as trustee until he or she is unable to serve either because of disability or death, and the successor trustee will then serve as trustee. A husband and wife who create the trust can serve as co-trustees. Upon the death of one spouse, the surviving spouse can continue to act as trustee until his or her disability or death, when the successor trustee will serve. Adult children may be competent to serve as successor trustees. For minor children, a person with good character and business judgment or a trust entity can be named to serve as successor trustee.

#### E. FUNDING THE TRUST

1. Probate and guardianship avoided only on property transferred to the trust (exception: Affidavit of Successor for estates involving personal property of less than \$100,000).
2. Lifetime transfers to the trust.

3. If trustor is incapacitated, an attorney-in-fact under a durable power of attorney can transfer property to the trust.
4. Pour-over wills to transfer property to the trust at death.

**F. WHERE RECOMMENDED**

1. Avoids multiple probates when real property is located in more than one state.
2. Best tool for preserving privacy to keep the world from knowing the contents of your estate plan. A will is a public document. Normally the trust is only seen by the beneficiaries.
3. Protection from being taken advantage of by unscrupulous persons if the trustee is someone other than the Trustor or if a co-trustee serves with the trustor/trustee.

**III. ESTATE AND GIFT TAXES**

**A. WASHINGTON STATE ESTATE TAX**

1. Washington State has been imposing estate tax on estates larger than \$2 million since 2006. The current estate tax is imposed on estates larger than \$2,079,000.00
2. There is an unlimited marital deduction for transfers between spouses and a Qualified Terminable Interest Property (QTIP) deduction can be different on the state return than on the federal return.
3. The Washington taxable estate is the federal gross estate without federal deductions for state estate taxes less \$2,079,000.00 and less the amount of tangible personal or real property used for farming purposes that qualifies for the farm deduction.
4. A Washington State estate tax return must be filed within nine months of death on all estates whose gross value exceeds \$2,000,000.00.
5. Because the state exemption of \$2,079,000.00 is lower than the federal exemption of \$5.45 million in 2016, special planning is required to minimize the state estate tax.

B. FEDERAL TAXES

1. Gift Taxes. No gift tax return must be filed if the gift is less than \$14,000 per donee in 2016. In a single year husband and wife can gift \$28,000 to one donee. There is no gift tax if you give more than \$14,000 in one year, but less than \$5.45 million in lifetime gifts in 2016. You must file a gift tax return if you gift more than \$14,000 in one year, (\$28,000 by husband and wife). Gifts between spouses are unlimited because of the marital deduction. The annual exclusion for gifts to a non-citizen spouse is \$148,000 in 2016.
2. Tuition/Medical Care. The gift tax exclusion is unlimited for amounts paid for tuition on behalf of a donee directly to an educational organization. Medical costs of a donee which are not reimbursed by insurance and essential transportation related to medical care are also excluded if paid directly to the providers.
3. Advantages of gifting.
  - a. Gifts of \$14,000 or less (present interest).
    1. No gift tax return.
    2. Decrease estate without using up unified credit.
    3. Avoid generation skipping tax of 40%.
  - b. Gifts of more than \$14,000.
    1. Satisfaction of seeing gift used while alive.
    2. Appreciation is removed from the estate.
4. Disadvantages of Gifting.
  - a. Loss of control.
  - b. Loss of resources which may be needed for your own care later.
  - c. Donee receives Donor's tax basis in the property gifted and loses free step-up in basis (fair market value) upon death.
5. What is gross taxable estate?  
  
NET WORTH + LIFE INSURANCE  
\_\_\_\_\_ + \_\_\_\_\_
6. Applicable Exclusion Amount. If the value of your estate is less

than \$5,450,000, the exemption amount, and if you die in 2016, there is no federal estate tax liability.

7. Portability (DSUE). Any unused portion of the applicable exclusion of a first spouse to die can be available to the surviving spouse provided the first decedent's executor elects on a timely filed Form 706. This can protect up to \$10,900,000 in 2015 for the surviving spouse.
8. The rates in 2016:

<b>Taxable Estate</b>	<b>Federal Estate Tax</b>	<b>Rate on Excess</b>
\$5,450,000	0	40%

The \$14,000 per person annual exclusion for gifts is indexed for inflation, but is rounded down to the lowest \$1,000.00.

9. Unlimited Marital Deduction.

There is an unlimited marital deduction for gift and estate transfers between spouses, if the following qualifications are met:

- a. Decedent is a US citizen or resident;
- b. The interest is included in the decedent's estate;
- c. Surviving spouse is a citizen of the United States;
- d. Interest passes to surviving spouse; and
- e. Interest is a deductible one (not a nondeductible terminable interest).

On the death of the second spouse and transfer of the property to the children, to the extent the net estate exceeds the applicable exclusion and DSUEA, a federal estate tax is payable.

10. Charitable Gifting.

Help society and reduce your income taxes during life and income and estate taxes at death. During life you can gift an unlimited amount to 501(c)(3) non-profit corporations to reduce your estate tax. There are limitations, however, on the income tax deductibility of gifts during your lifetime. Donate low basis, high fair market value property, e.g., real estate, stocks. The charity sells the property free of any capital gains tax you would have had to pay if

you had sold it. IRA's and retirement plans are great to give at death because you remove your income tax obligation, called "income in respect of a decedent," and reduce your estate for estate taxes, a savings of up to seventy plus percent.

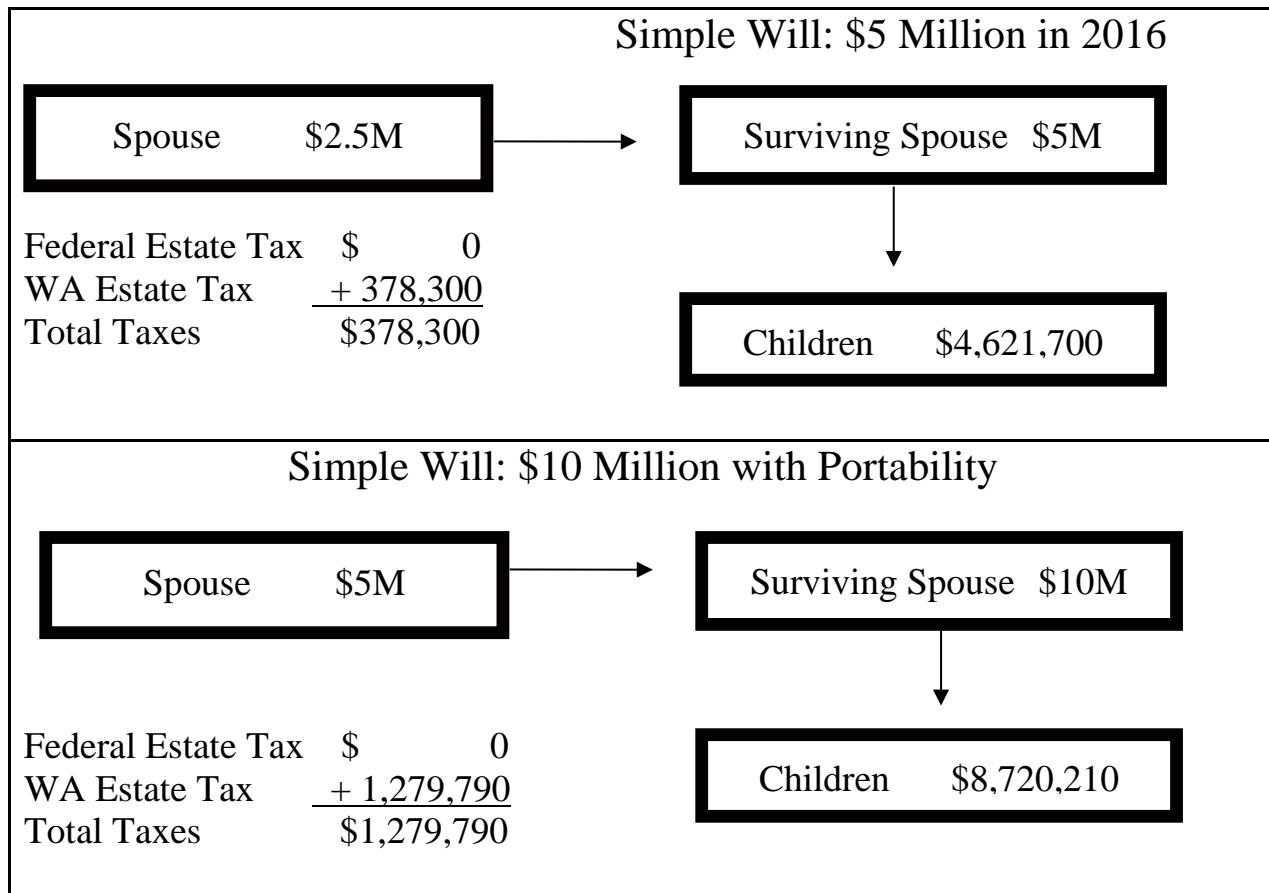
#### 11. Carryover Basis at Death

The basis of stocks and real estate is often the price you paid for them. Real estate basis may be increased by improvements (a new addition or new roof), not repairs. Currently, at death a decedent's property (except income in respect of a decedent, such as IRA's) receives a free step up in basis to the fair market value on the date of death or, if estate tax is payable and the election is made by the executor, six months after death. No basis increase is available for gifts made within three years of death of the donor (except from a spouse), income in respect of a decedent, and stock of certain foreign entities. Keep records of improvements, gifts, and inheritances to prove the value of your basis. For community property, both halves receive a step-up in basis on the death of one spouse. The best evidence of basis is an appraisal by a qualified appraiser.

#### C. THE PROBLEM WITH AN "ALL TO SPOUSE" WILL.

If the first spouse to die leaves all his or her property to the survivor, the decedent's state exemption of \$2,079,000.00 is wasted.



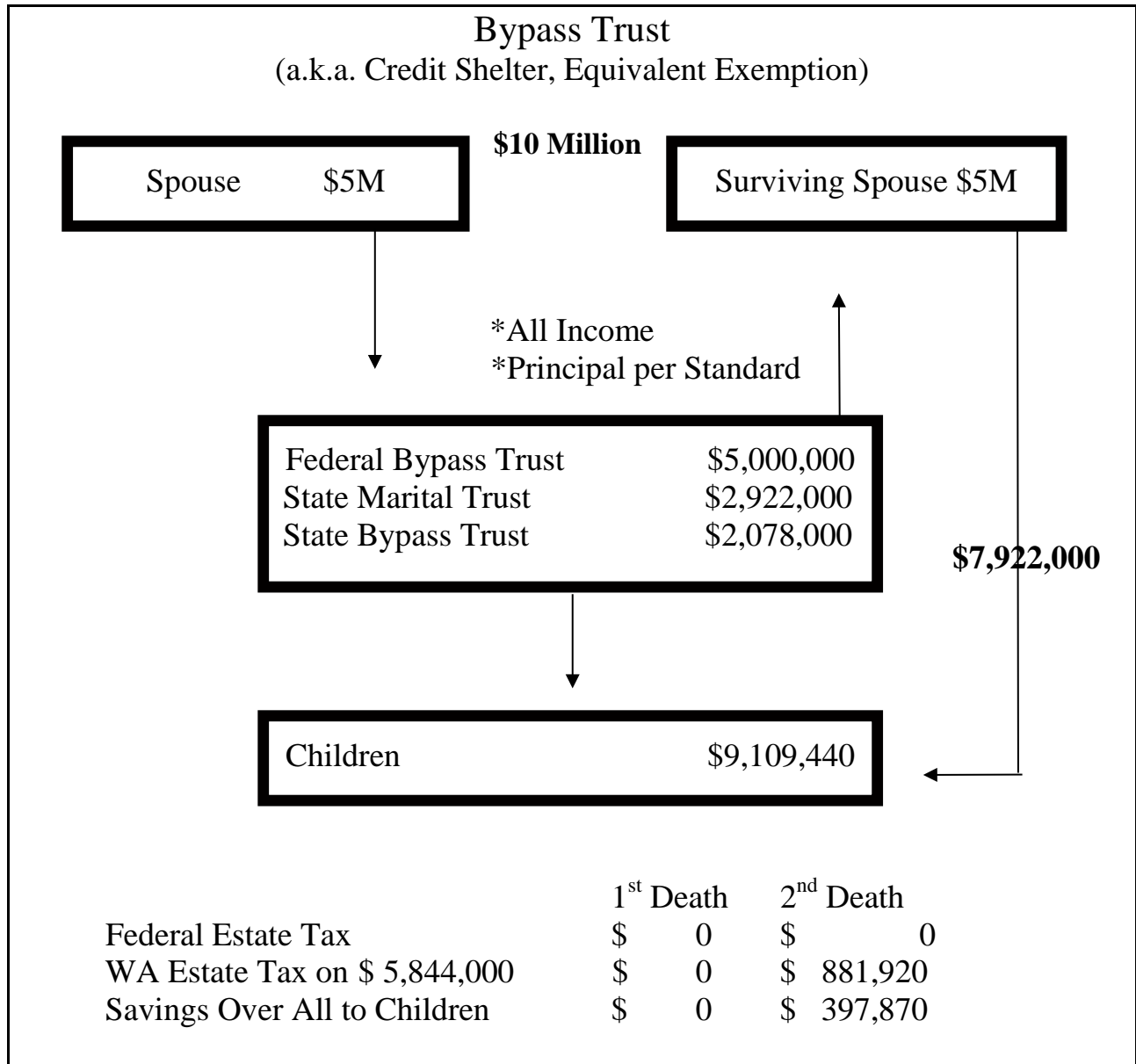


**D. THE SOLUTION - BYPASS TRUST.**

**1. Bypass Trust.**

A spouse's will or a living trust can provide for the establishment of a trust to benefit either spouse during her or his lifetime with the

remainder to pass to the children upon the survivor's death - the Bypass trust. (aka Credit Shelter Trust)



You save taxes by creating a bypass trust in your will or in a living trust which is funded after your death. The income can be paid to your surviving spouse. The principal generally is not paid to your spouse, but if your spouse's other resources are insufficient to provide your spouse reasonable maintenance, education, support and health, the trustee can distribute the principal to the trustee.

By establishing a bypass trust versus a simple will, the combined estate taxes on the two estates is reduced by \$397,870 in 2016.

2. Disclaimer Bypass Trust.

The disclaimer bypass trust gives flexibility in planning for community estates, especially with the changing applicable credit and the uncertainty of future legislation. A disclaimer bypass trust permits the survivor to determine if the bypass trust will be funded to save taxes and by how much.

A disclaimer is a refusal by a recipient to accept an inheritance or gift. A valid disclaimer of an interest passing at death must be in writing within nine months of the date of death, and before the recipient has accepted the benefit of the particular assets. Proper estate planning results in lower taxes, or none at all.

#### IV. PLANNING FOR DISABILITY

A. DURABLE POWER OF ATTORNEY FOR FINANCIAL MANAGEMENT (DPOA)

1. Specific powers must be listed, e.g., gifts, rescind community property agreement, transfer stocks, file tax returns, disclaim the receipt of property under JTWRORS, community property agreement, and wills, and transfer property to trust for benefit of principal. You should address the authority of your attorney-in-fact to qualify you for Medicaid by spending or gifting down your estate. You may grant the authority or deny the authority.
2. Contingent DPOA, one that becomes effective upon disability of incompetency, is less acceptable to transfer agents.
3. Name spouse or all of the children as attorneys-in-fact and can state who cannot challenge the attorney-in-fact's actions.
4. Advantages:
  - a. No guardianship.
  - b. Lower cost.
5. Disadvantages:
  - a. Greater potential for misuse of funds by attorney-in-fact.

- b. If transfer agent, brokerage, or other institution will not accept Durable Power of Attorney, a guardianship or court action will be needed. Ask your broker or banker what the institution requires when drafting the power of attorney.
- c. No protection for vulnerable adult. A living trust with a trustee or co-trustee other than the vulnerable adult is better protection.

**B. DURABLE POWER OF ATTORNEY FOR HEALTH CARE AND HEALTH CARE DIRECTIVE**

1. A Washington state statute states who can make health care decisions in your best interest if you are unable to. However, the health-workers' eyes glaze over when you explain the law to them. The list is in order of priority and if more than one person has authority, they must be unanimous: First, guardian. If none, then second, attorney-in-fact; third, spouse; fourth, children. Because a decision must be unanimous under the statute, a power of attorney is recommended a). if you have children who are not easily gathered locally to make a group decision; b). if you want your intent in writing so that the decision will be easier for your attorney-in-fact; c). if you are concerned the health workers only expect powers of attorney; or d). if you want a friend or family member to participate in medical decisions and/or access your medical records.
2. An attorney-in-fact, that is, your spouse or child or friend, can make decisions based on known medical facts, if you cannot give informed consent.
3. Withdrawal can be conditioned, for example, upon concurrence of spouse and one or two doctors.
4. You can express your intentions in writing regarding withdrawal of artificial nutrition and hydration should you enter a persistent vegetative state with no reasonable possibility of recovery. Writing may help your spouse or children make this difficult decision in keeping with your wishes.
5. The Power of Attorney for health care can be notarized and witnessed with the same formality of a Health Care Directive.
6. Give written authority to make burial/cremation decisions in the power of attorney to avoid family disputes, especially in a second

marriage.

7. In lieu of a Durable Power of Attorney for Health Care, the Health Care Directive can be coupled with a durable power of attorney for financial management provided the power of attorney states it encompasses the power to make health care decisions.
8. Mental Health Directives are also authorized, but are quite complex. A person with a history of mental health problems should consider one.
9. Physicians Orders of Life Sustaining Treatment (POLST) are recommended if you have serious medical conditions. The POLST is the only document that emergency medical technicians will honor. Speak to your doctor who can make orders which all medical personnel will follow.
10. Donate Life Today: If you have a heart on your driver's license, you are an organ donor. If you want to be, sign up at [www.donatelifetoday.com](http://www.donatelifetoday.com). Anyone, regardless of age or health, can register.

#### C. END OF LIFE DECISIONS

1. The Washington legislature enacted the Death with Dignity Act in 2009 to legalize physician-assisted dying, which permits terminally ill patients to determine the time of their own death in certain circumstances.
2. The law permits terminally ill, competent, adult Washington residents medically predicted to die within six months the ability to request and self-administer lethal medication prescribed by a physician.
3. The law requires two oral and one written request from the patient, two physicians to diagnose the patient and determine the patient is competent, a waiting period, and physician verification of an informed patient decision.
4. Physicians, patients and others acting in good faith compliance with the law are given criminal and civil immunity.
5. To learn more about death with dignity in Washington, please visit Compassion & Choices of Washington at [www.compassionwa.org/dwd](http://www.compassionwa.org/dwd) .

## V. FUNERAL PLANNING

Some people plan, some leave it to their survivors. A conversation with a trusted family member or close friend about your wishes for burial or cremation may suffice, so long as that person will be able to carry out your intentions after you are gone. In many cases, creating some sort of written prearrangement is preferred. At a minimum, your wishes for burial or cremation should be documented. There are also many options available for prepayment for desired burial or funeral services.

### A. Prearranging Burial, Funeral and Memorial Services:

1. Under state law a person has the right to control the disposition of his or her remains. A written document expressing the decedent's wishes regarding the place or method of disposition that is signed by the decedent and witnessed by one person is sufficient legal authorization for the procedures described to be carried out.
2. Example: a simple written document indicating where a person would like to be buried/cremated with some mention of the desired funeral or memorial service can be signed by that person and one witness, making it legally binding on the survivors.
  - a. Advantages include piece of mind for you and your loved ones that your wishes are documented and will be carried out, and reduction of possible conflicts between family members after your death.
3. Full burial or cremation instructions can be drafted by an attorney to insure documents are in compliance with all laws.

### B. Prepayment of Funeral Expenses:

1. Lump sum payment or installment payment into a trust or life insurance policy arranged through a funeral home.
  - a. Risk of insolvency and fraud.
  - b. Have contract reviewed by an attorney before signing.
2. Questions to ask regarding a prepayment plan:
  - a. Where is the money being invested?
  - b. What occurs if you die before the payment plan is finished?
  - c. What happens if you decide to cancel the plan?

- d. Will the plan cover cost increases caused by inflation?
  - e. How stable is the funeral home and what happens if the funeral home goes out of business?
  - f. Do the funds earn interest and, if so, at what rate?
3. Best option: Open a joint savings account with a trusted survivor with sufficient funds to cover expected costs.
- a. Caveat: There is a presumption that joint tenant with right of survivorship receives the funds free and clear, so use only with a survivor who will use the funds for your funeral expenses. You can also write that intent in your will.

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## CHAPTER FOURTEEN - C

**COCKTAIL LAW**

July 2016

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**JANET L. SMITH** founder of NORTHWEST ELDER LAW GROUP PLLC is an attorney providing services in elder law, estate planning, estate administration, guardianship, and elder mediation. She has been an attorney in good standing, licensed in the State of Washington, since 1983. She received her law degree from the University Of Washington School Of Law in 1983, and received a Certificate in Gerontology from the University of Washington in 2000. She completed the Professional Mediation Skills Training Program through the University Of Washington School Of Law in 2008. In 1997, she was a founder of Elder Care Solutions, Inc., providing geriatric care management, consulting, and certified professional guardian-ship services through 2005, during which time she was a member of the National Association of Professional Geriatric Care Managers, serving on their Western Chapter Board. She has been appointed as a Guardian ad Litem numerous times in both King and Snohomish Counties, and has served as a trained facilitator for an Alzheimer's disease caregivers' support group. She is a member of the National Academy of Elder Law Attorneys (NAELA) and the Washington Chapter of NAELA, the Washington State Bar Association Elder Law Section, the Washington State Bar Association Alternative Dispute Resolution Section, the King County Bar Association Guardianship and Elder Law Section. She is a frequent speaker on elder law topics.

## **WHAT IS ELDER LAW?**

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“Elder Law” is the legal practice of counseling and representing elders and vulnerable adults, their family members and fiduciaries on the key legal issues of financial well-being, housing, health and long term care, and maximizing autonomy and quality of life. Elder Law attorneys use a holistic approach to consider not just legal issues, but social and medical concerns. Practice areas can include estate planning, planning for incapacity or long term care, probate and estate administration, guardianship, and protection against elder abuse, and mediating or litigating family disputes. An Elder Law attorney’s central focus is ensuring that the elder or vulnerable adult is protected and is able to maintain the maximum degree of autonomy and independence, while achieving the highest possible quality of life.

## **ELDER LAW AND ESTATE PLANNING**

An Elder Law attorney will approach estate planning for an older client with special concern for issues of capacity to execute documents, signs of financial exploitation or undue influence, issues related to complicated family dynamics, and planning for long term care. For example, a matter that would raise red flags for the Elder Law attorney would be the family member who tries to make the appointment with the attorney, completes the intake questionnaire for the elder, brings the elder to the appointment, or wants to sit in on the appointment. An Elder Law attorney will

make sure to meet independently with the older client, make an assessment of capacity or refer the client for a capacity evaluation, to ensure that the client is capable of making and communicating his or her own decisions without undue influence from others. The Elder Law attorney will pay special attention if a client suddenly wishes to change fiduciaries, change an estate plan in a way that is markedly inconsistent with prior planning, or appears to be overly dependent upon a child or caregiver.

The Elder Law attorney will also be knowledgeable about resources and public benefits in order to assist the client in planning for long term care or incapacity, and avoid unintended legal consequences. The Elder Law attorney may discuss the use of a durable power of attorney or trust to plan for incapacity, help the client create an estate plan that meets the needs of an incapacitated spouse or child, assess eligibility for Veteran's benefits, or counsel the client regarding potential costs and options to pay for long term care that might include private payment, continuing care retirement communities, long term care insurance, or Medicaid/COPIES. Some Elder Law attorneys help clients preserve assets while becoming eligible for Medicaid or VA benefits.

## **PROBATE AND TRUST OR ESTATE ADMINISTRATION**

Probate is the legal process by which a person's debts are paid and assets are distributed upon her or his death. Estate Administration includes the probate process as well as non-probate transfers of the deceased's assets. In an Elder Law practice, probate or estate administration matters may involve intense or complicated family conflict. The Elder Law attorney may represent the Personal Representative or Trustee who needs to negotiate and resolve the conflict in order to administer and close the estate. The client may be an elder or incapacitated spouse who is the beneficiary of the estate or a marital trust, and there may be conflict over issues of paying for the spouse's long term care from a trust or other assets. The estate administration may involve allegations that one

or more of the beneficiaries financial exploited the decedent. Estate or Trust administration may involve heated disputes about the distribution of tangible personal property, or the repayment of loans.

## **ELDER MEDIATION**

An Elder Law attorney may serve as a mediator in high conflict matters, or may represent and assist a client in the mediation process. Elder Law disputes may include how family members will divide responsibility for the elder's financial or personal care needs, where the elder will live, or how care will be provided. Mediation may be helpful in avoiding legal action to determine the validity of a Durable Power of Attorney, whether an elder has capacity to execute legal documents, whether guardianship is needed, or whether there is a basis for a restraining order to protect a vulnerable adult. When mediation is used to resolve a legal proceeding, the solution may be more durable and long-lasting. If litigation is necessary, it often occurs under the Trust and Estate Dispute Resolution Act (TEDRA).

## **GUARDIANSHIP AND PROTECTION AGAINST ELDER ABUSE**

A guardian is a person or agency appointed by the court who is designated to act for someone who has been declared incapacitated. Limited Guardianships are established for people who retain the ability to make some decisions for themselves, but need assistance in one or more areas. A person may need a guardian if they are determined to be incapacitated as to their person or estate, and if no alternatives to guardianship exist. A determination of incapacity is a legal determination, made by the court. An Elder Law attorney may represent an interested party in petitioning for guardianship, may be appointed by the court as a Guardian ad Litem or attorney for the alleged incapacitated person, or may represent another family member who objects to the petition. After the guardianship has been established, the elder law attorney may

represent the professional or lay guardian, assisting with the annual reports to the court, and advising on the role of a guardian.

In cases where an elder or incapacitated person is being abused, a petition for a protection order can be filed under RCW 74.34, the Vulnerable Adult Protection Act. An Elder Law attorney can assist a party in bringing an action under VAPA for a restraining order or other relief on behalf of the vulnerable adult, or may represent the respondent who is accused of abuse or exploitation.

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## CHAPTER FIFTEEN

## WHAT I WISH I HAD KNOWN IN MY FIRST 5 YEARS OF PRACTICE

July 2016

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**JULIE K. FOWLER** is admitted to practice in Washington State and the United States District Court for the Western District of Washington. She received her BA in Law & Justice and German from Central Washington University and her law degree from New England Law.

Ms. Fowler opened her solo law practice in 2000 after passing the bar exam. Ms. Fowler's primary practice areas are family law, estate planning and business transactions. Her office is located in Bellevue, WA where she has the privilege of sharing office space with her dad and brother, neither of whom are attorneys. Ms. Fowler is a member of the Washington State Bar Association (past Chair and Trustee of the Solo and Small Practice Section) and American Bar Association. Ms. Fowler is past President of the East King County Bar Association, and past Trustee of the King County Bar Association YLD.

Ms. Fowler has published articles in the ABA's GPSolo Magazine and the King County Bar Bulletin. Ms. Fowler has presented CLE's for the Washington State Bar Association and Wyoming State Bar Association and other local bar associations. Ms. Fowler has spoken on panels for Seattle University School of Law and University of Washington School of Law. Ms. Fowler has also presented CE for the National Association of Insurance and Financial Advisors and has appeared on local radio programs.

Ms. Fowler received the Community Partner Award from Northwest Family Life for her work with domestic violence victims. In 2009 she received the King County Bar Association's Young Lawyers Division Outstanding Mentor Award.

**KRISTINA T. LARRY** is the managing attorney for Sassy Litigations, LLC and is also known as the PreNup Princess and The Seattle Wedding Lawyer. Kristina believes that a law firm doesn't have to be conventional to be successful. After practicing law with the government, in a law firm, and a nonprofit, Kristina decided to go solo and hasn't looked back. Kristina also runs the attorney lifestyle and fashion blog The Sassy Litigator. Kristina completed her undergraduate work at the University of Wyoming and is a graduate of Thurgood Marshall School of Law. She was admitted to the Washington State Bar in 2009.

**DAINEN PENTA** is an attorney with the Seattle law firm Leahy Fjelstad Peryea. His firm provides a full range of general counsel services for condominium and homeowner associations. Dainen's practice focuses primarily on collection of delinquent common expense assessments. He also handles contract review, enforcement, and general litigation matters. Until 2011, Dainen's practice focused on consumer bankruptcy, debt defense, and foreclosure defense. An experienced bar leader, he is the 2016 President of the Asian Bar Association of Washington (ABAW). Dainen also holds leadership positions in the American Bar Association and the National Asian Pacific American Bar Association (NAPABA). He holds a B.A. from Whitworth College, a J.D. from Lewis & Clark Law School, and an LL.M. in Taxation from the University of Washington School of Law.



What I Wish I Knew My First 5 Years of Practice will be a panel discussion of 3 attorneys who have been practicing for various number of years. The panel will discuss how to get started, gaining experience, what the panelist would have done differently, and finally the panelist will give some tips.

Getting Started will discuss choosing the right career path and practice area. In this section the panel will discuss the various sectors of law; Public service, government, or private practice. Choosing the way you want to practice law is just as important as your practice area. The panel will discuss the fact that attorneys do not have to take the first job they get, they can be a little more selective. There will also be discussion on how to choose the right first job. Important factors to consider include reputation of the firm, firm culture, and opportunities for advancement.

The Getting Started section will continue with how to choose the right practice area. Some ways to do that include choosing areas of interest and based on previous experience, whether through law school clinics, internships, or past work experience. An important take away from this section will be to not be afraid to try other areas or to leave an area if it is not a good fit.

Getting Started will then detail resources and tools. It is important to know what is available. Some of the resources and tools that will be discussed are: list serves, excel, payment processing software, practice management software and networking.

The Getting Started section will conclude with a discussion of mentorship. Having a mentor is vital resource. The discussion will focus on how to find mentor, the types of mentors, and even having more than one mentor.

The panel will then discuss how to gain experience. Often times experience is thought about as only work experience. This part of the discussion will speak to alternative ways to gain experience in your first 5 years. Some of these methods include pro bono or volunteer work and serving in bar associations. The goal of this section will be for attorneys to understand the importance of gaining experience but not having to gain that experience through traditional work experience. The panelist will also discuss how the gained experience and paths they chose.

Continuing, the panel will discuss what they would have done differently in their first 5 years. Each panelist will discuss things they would have done differently. They will discuss mistakes they made, lessons they learned, and their experience within the first 5 years.

Finally ending with tips for attorneys starting out, whether in their first 5 years of practice or starting out in small firm or solo. These will include practice tips, networking tips, and tips on what to avoid. Each panelist will share tips that have helped them or what they have learned.

The goal of the panel is to help attorneys beginning their career and as well as attorneys beginning their career as a solo or in a small firm. The panel will achieve this by sharing personal stories, resources that were beneficial to them, and giving tips that will help others. At the end, the audience should have a better idea of what it is like in the first 5 years based on the experiences of the panelist. The audience should also leave knowing of ways to gain experience and choose a practice area. The audience should also know of resources and tools that will be helpful to them. The audience will learn the importance of mentors and what to look for in a mentor and how to find one. The audience should have a comprehensive overview of the first 5 years.



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August 27, 2015

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## 4 Ways Lawyers Can Be Happier People



Attorney Kristina Larry offers up her top four secrets to happiness in the stressful legal profession.

A law school classmate of mine recently posted an article on Facebook titled "**5 High-Paying Jobs that Will Make You Miserable.**" In response, the lawyers in our circle discussed the stress, lack of free time, and overall unhappiness of being a lawyer. One comment read, "I wouldn't say I'm miserable, but I'm not

happy." This is nothing new, so why does it keep happening? Why are lawyers continuously miserable (or unhappy)?

The article mentions that lawyers are known for high suicide rates, have the highest rate of depression among 100 professions, and that "associate attorneys topped Forbes' 'Unhappiest Jobs' list." This was attributed to working long hours and the pressure of having to constantly bill clients. But this is a problem that can be fixed. You can be a lawyer and be happy.

### Do some good

I have heard colleagues say that they work long hours and don't actually feel like they are doing any good. So how do you change that? Well, you probably can't get out of working long hours as an associate, but how about volunteering? I know, I'm suggesting adding more work to your already weighed-down shoulders, but hear me out. Having associates who volunteer their time makes the firm look good, so some firms allow their associates to volunteer a few hours a month at a legal clinic or something similar — and count the time as normal work hours. Many firms also take pro bono cases; ask if you can work on one. Pro bono cases offer a chance to get away from what you normally do and you'll get the chance to truly help someone, which can be very rewarding.

### Rethink billing

Billing is another big issue that makes lawyers very unhappy — and who wouldn't be, valuing your whole existence down to six-minute increments? I'm not sure if the dreaded hourly billing will ever go away completely, but at least **lawyers are now exploring alternative billing methods.** This makes for less stress on the lawyer's part and you get happier clients who don't hate you for charging them for a three-minute phone call. If your firm is not already trying out a new billing method, tell them to get with the times; billable hours are so 1991.

### Strike out on your own

If you realize that law firm life is just not for you, you can always start your own firm. Being your own boss gives you the power and freedom to make your own choices, practice what you want, and decide your own schedule. All of that can definitely lead to happiness. The best part is you don't have to do it the same way everyone else has. Be creative, find a niche, and enjoy what you do.

### Care for yourself

Finally — and most importantly — let's talk about the tough issue of depression and suicide. No case, client, or partner track is worth your health or life. If you are feeling depressed, talk to someone; there is no shame in asking for help. I think many lawyers believe that they must figure it out themselves, but that is not true. You don't have to go it alone and you are not alone. If you are experiencing depression, many bar associations have lawyer assistance programs that promote self-care and attorney health (see the **WSBA's LAP program**). If you are having suicidal thoughts, contact the **National Suicide Prevention Lifeline** at 1-800-273-8255.

### About the Author



**Kristina Larry.** Kristina is the founder and managing attorney of Sassy Litigations LLC. She also operates The Sassy Litigator, providing consulting services to solos, small firms, and law students. Reach her at [kristina@thesassylitigator.com](mailto:kristina@thesassylitigator.com) or on Twitter [@SassyLitigator](https://twitter.com/SassyLitigator).

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Make a nomination for a Professionalism in Practice Award. Read more about the award and the process here: <http://ow.ly/qdF33024917>

### Categories



## Quick Tips for Seeking Mentors and Advisors

### Make a Plan

Before you start researching or contacting potential mentors and advisors, assess your goals and most critical needs.

Ask yourself:

1. What are my three most pressing questions or concerns? For example:
  - *Communicating with clients and opposing counsel?*
  - *Managing a solo practice?*
  - *Understanding court rules & procedures?*
  - *Questions about a specific area of law?*
2. What would be most helpful to *discuss* with a more experienced attorney vs. doing research to find some answers?
3. What am I going to ask for? For example:
  - *Ongoing email contact?*
  - *Coffee date(s)?*
  - *Skype phone call to bridge the miles?*
  - *One day of shadowing at office or court?*
4. Is my resume and short bio updated and ready to send?

### Do the Research

Once you have a clear idea of your goals, you can take the next step to researching potential mentors based on such criteria such as: geography, practice setting and area of law. In addition to reviewing the *WSBA Lawyer Directory* for updated information, strategies for locating potential mentors and advisors might include:

- Asking around! Someone in your current network might know someone and be able to make an introduction.
- Attending events put on by sections, minority bar associations, local bar associations, specialty bar associations, and/or law school alumni programs.
- Reviewing legal publications for article authors or references to specific individuals in your practice area.

### Take Action

Many potential mentors and advisors are happy to help, and just need to be asked! However, it's important that the mentee take the lead in reaching out and following-up, while being respectful of the mentor's time and schedule. Strategies might include:

- *Sending an initial letter or email:* who you are, what you want, why you're asking them, and how soon you're hoping to meet.
- *During meeting:* be specific on how they can help and find out what works for them.
- Clarify expectations about ongoing contact.
- Send thank you notes and stay in touch!

### Important Guidelines to Remember

Mentoring sessions may involve only generalized questions that do not involve the disclosure of details from a specific case or client. A mentor-mentee relationship does not create an attorney client relationship, and the discussions are not privileged or confidential. In other words, assume your conversations are completely public.

Consistent with R.P.C. 1.6, the mentee will not identify any client to the mentor or reveal to the mentor any information related to the representation of the client, nor will the mentee seek professional or legal advice from the mentor about specific legal matters or clients such that protected communications are revealed. Subject to the limits of the previous paragraph and pursuant to R.P.C. 1.6 (b)(4), a lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary to secure legal advice about the lawyer's compliance with the Rules of Professional Conduct. Discussions, if any, about substantive legal matters between the mentee and mentor will be limited to hypothetical situations.

### ADDITIONAL RESOURCES:

#### WSBA MentorLink Online Clearinghouse

Information on mentoring opportunities that currently exist across our state's legal community, in addition to other mentoring resources to support WSBA members. [www.wsba.org/Resources-and-Services/MentorLink](http://www.wsba.org/Resources-and-Services/MentorLink)

#### WSBA Ethics Line 800-945-WSBA, ext. 8284

Informal guidance as to an attorney's own prospective ethical conduct. Common ethical issues are: conflicts of interest, client communication, handling client money, fee arrangements, confidential information, and how to withdraw from a matter in an ethical manner. For more ethics-related resources visit the WSBA website at [www.wsba.org/Resources-and-Services/Ethics](http://www.wsba.org/Resources-and-Services/Ethics)

#### WSBA Law Office Management Assistance Program

Low-cost and confidential professional assistance with office administration, as well as print and web resources to assist with opening, closing, and managing your practice. For more LOMAP resources visit the WSBA website at <http://www.wsba.org/Resources-and-Services/LOMAP>

**Questions?** [mentorlink@wsba.org](mailto:mentorlink@wsba.org) | 1-800-945-9722

# CHECKLIST FOR STARTING A LAW PRACTICE

*This checklist is designed simply as a guideline to provoke thought when considering starting a law practice.  
It is not meant to be all inclusive.*

## I. PLANNING/BUDGETING

- Do self-assessment about starting a practice
  - Tolerance for Risk
  - Managerial Skills
  - Marketing Skills
  - Confidence Level in Legal Skills
- Write a Business and Marketing Plan
  - Projection of gross receipts
  - Projection of overhead and expenses
  - Projection of net receipts
  - Cash flow projections
  - Projection of hours worked
  - Marketable experience
  - Setting fees to make a profit
    - Written fee agreements

## II. MARKETING PLAN/PRACTICE DEVELOPMENT

- Potential Client Base
- Advertising
  - Yellow Page ad
  - Website
  - TV, radio, billboard
  - Office signage
  - Sign up for county Lawyer Referral Services
  - Sign up for lawyer search services
  - Firm brochure
  - Client newsletter
  - Join civic organizations
  - Produce community seminars
  - Announcements
  - Speak at CLE programs

## III. FORMS OF PRACTICE

- Considerations in Selecting Form of Practice
  - taxation
  - liability
  - succession/dissolution
- Solo Practice
- Partnership
- Professional Corporation
  - Articles of Incorporation
  - shareholders, officers, chief operating officer
  - Statement of Good Standing from Clerk of Supreme Court
- Limited Liability Company
  - Articles of Organization
  - members
- Limited Liability Partnership
- Consult with CPA

- Specialized/General Practice
- Partnership Agreement in writing
  - Capital/equity from partners
  - Withdrawal/retirement issues
  - Compensation and profit distribution
  - Each partner's role in the practice
    - Managing Partner
    - Rainmaker
    - Others

#### **IV. OFFICE SPACE/LOCATION CONSIDERATIONS**

- Office Building
  - Image, upscale, informal
  - Square footage
  - ADA considerations
  - Parking
  - Services, janitorial
  - Expansion Opportunities
  - Renovation Needs
- Location
- Office sharing
- Renting, leasing
- Purchasing/buy into a law practice
- Working from home

#### **V. ACCOUNTING NEEDS**

- Consult with CPA
  - set up accounting procedures
    - Chart of accounts
    - Profit and loss statements
    - Balance sheets
    - Cash Flow Statement
  - quarterly and annual tax returns
  - payroll services
  - bank and trust accounting systems/reconciliation procedures
  - software compatible with accountant

#### **VI. START UP COSTS/CREDIT SOURCES**

- Highly suggested that enough cash or a line of credit be available to cover start-up costs and at least the first 6 months to one year of operating expenses plus personal living expenses.
- Sources of credit
  - Local bank/Credit Union
    - personal, business loan
    - home equity, home refinance
    - line-of-credit to be drawn upon as needed
    - lease, equipment loans
    - family loans/private investor loans
  - Personal savings

**VII. BANK ACCOUNTS**

- Trust account (separate account)
  - IOLTA account, if applicable
- Business operating account for expenses/payroll
- Short term savings
- Safety deposit box
- Firm credit card
- Investments
- Checks, deposit slips, endorsement stamp
- Set up account to accept credit cards
- Retirement plan

**VIII. TECHNOLOGY**

- Software
  - Word processing
  - Time and billing/accounting
  - Calendaring and docketing
  - Conflicts checking
  - Case Management
  - Document assembly
  - Office Suite Software
    - Word processing
    - E-mail
    - Spreadsheet
    - Presentation Software (such as PowerPoint)
    - Others
  - Virus protection for computers
  - Voice Recognition
  - Other specialized or practice specific software
- Hardware
  - Computers
    - Operating system
    - Back-up system
    - Lease or purchase
  - Printers
  - Network/Firewall
  - Scanners
  - CD-ROM
  - Laptop Computer
  - Personal Digital Assistant (PDA)

**IX. OFFICE EQUIPMENT/SERVICES/SUPPLIES**

- Fax Machine
- Photocopier
- Scanner
- Shredder
- Dictation equipment/Voice Recognition Software
- Internet Service Provider
- Email address
- High speed Internet access or DSL line

- Telephone System
  - Equipment/answering machine
  - Voice mail/manual message system
  - Answering service
  - Local and long distance carrier
  - Conference calling
  - Music on hold
  - Cell phone/service
  - Pager
- Postage scale/mail equipment
  - Establish UPS and FedEx accounts
- Office furniture for lawyer(s), staff, reception area, file cabinets, conference, room furniture, carpeting and area rugs, book shelves, art work/office decorating needs
- Office supplies, paper, envelopes, pens, staplers, good quality file folders, etc.
- Business cards, announcements
- Order public information brochures from the Bar for clients

**X. LIBRARY/LEGAL RESEARCH**

- Online legal research provider
- Purchase new or used law books
- Local law library
- Law school library
- Courts library
- Internet research
- CD-ROM
- CLE Deskbooks

**XI. OFFICE SYSTEMS/PROCEDURES**

- Develop office manual/operating procedures manual
  - Standard procedures/policies for practice
  - Personnel issues/benefits
- Docketing, calendaring, tickler system
  - Computer (dual-system is highly recommended)
  - Manual
- File organization
  - Alpha/numeric
  - Centralized/decentralized
  - Opening file procedures
  - Closing file procedures/retention/storage/destruction
  - Document maintenance
    - Offsite - safety deposit box
    - Computer backup
    - Fireproof files
  - Forms used in practice
    - Client interview form
    - Engagement/non-engagement letters
    - Written fee agreements
    - Practice specific checklists
    - Billing Statement Form
    - General client correspondence, notices, etc.
    - Client survey form after conclusion of representation

- Client billing procedures
  - Regular monthly statements even if no amount due
  - Detailed billing statement
  - Expense billing
  - Costs to be billed
    - legal assistant time/paralegal time
    - telephone expenses
    - duplicating expenses
    - computerized legal research
    - mailing costs
    - others
  - Collection policy
  - Credit cards for payment
  
- Client Relations Policy
  - Setting appointments, introducing staff
  - Returning phone calls, e-mail messages
  - Client intake form/survey at conclusion of representation
  - Keeping clients informed
    - Send copies of work, documents
  - Communicating Fees
    - Clear discussion about fees
    - Written fee agreements/engagement letters
  
- Accounting Procedures
  - Bank account reconciliation
  - Cash Flow Statement
  - Accounts Receivables/Payables
    - aging review
  - Expense Approval System
  - Counter signature requirement on checks
  - Others

**XII. INSURANCE PROTECTION**

- Professional liability
- Workers' Compensation
- Health Plan
- Car Insurance for business use
- Property (liability, wind, fire, earthquake, etc.)
- Loss of valuable documents
- Life
- Disability
- Business Interruption

**XIII. PERSONNEL**

- Legal Assistant/Paralegal
  - Full-time
  - Part-time
  - Temporary
  - Hours, flex-time



- Sharing personnel with other professionals
- Training
- Employee benefits
  - Vacation, holidays
  - Sick leave
  - Overtime policy
  - Medical insurance
  - Retirement Plan
  - Others
- Secure I-9 forms, W-4 forms, confidentiality agreement, employment applications, etc

**XIV. MISCELLANEOUS**

- Call WSBA's Law Office Management Assistance Program [www.lomap.org](http://www.lomap.org)
  - Lending library
- Register d/b/a name (if applicable)
- Obtain city or county business licenses or permits
- Order Post Office Box (if needed)
- Build a forms file
- Become a notary or have someone on staff or close by that is available
- Develop a disaster recovery plan for your office, files, computer, etc.
- Develop a plan for your illness, incapacity or death.
- Attend law practice management CLEs such as LOMAP's Traveling Seminar.
- Join Solo and Small Firm Sections to network with other solo and small firm lawyers.
- Change address with your bar
- Call your bar's Ethics Counsel with prospective ethical questions 206-727-8284 or 800-945-WSBA.
- Join local bar associations
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## How To Choose Your Practice Area

- Do you even want to practice?
- Litigation?
- Transactional?
- Ask yourself what you enjoy doing not just what will pay you the most.
- Think about your biggest accomplishments and why they were your biggest accomplishments.
- How do you want to spend your days?
  - In court
  - On the phone
  - In front of computer
  - Talking to clients
  - Researching
  - Writing
  - Negotiating
  - Travelling for work
- Ask yourself and others what you are good at doing.
- How much free time do you desire?
- Do you want a niche practice?
- Are you thinking of where the future of law will be?
- Do you have non law related skills/talents that can translate to a legal practice area?
- Does your location support your practice area?

## Your Practice Area Means Everything...

Think about it. Your choice of area of practice determines all aspects of your daily work life as an attorney. The law is as varied as society itself. We think that it is worth spending time to think about who you are, what you like to do, your skills and what it takes to kindle the passion necessary to excel in your chosen practice area. Practice area often determines the following "working conditions" each day:

The clients are novices to the legal system or they are experienced users of legal services. The client's expectations of you and what you can do will vary based on her experience with lawyers in the past or lack thereof. Does the client understand his obligations and responsibilities to you and to the matter? Are you prepared to spend the time to educate the client about these concerns?

The practice area may demand travel that may disrupt your personal life.

How much paperwork the matter generates can be related to the type of practice area. Are you good with organizing paperwork and files?

There may be many meetings involved with certain practice areas, perhaps using your evenings.

Living in a particular geographical area may enhance your ability to generate work in your practice area. An example is agricultural law.

Certain practices are prone to interruptions by the telephone, walk-in clients and the need to be at the courthouse or jail on short notice.

What are the Choices?

Here is a listing of possible areas of practice. This is not an exhaustive list. Certain practice areas may be allied in some fashion or one practice area may provide clients to the other practice area. See also this article on choosing a practice area.

A

- Aboriginal Peoples
- Access to Justice
- Acting Law
- Addictions
- Administrative Law
- Admiralty Law
- Adoption Law
- A.D.R. Law
- Advertising Law
- Affirmative Action
- Aging
- Agency Law

Agriculture Law  
Air Quality  
Alternative Dispute Resolution  
Americans with Disabilities Act  
Animals/Wildlife Law  
Antitrust and Unfair Competition  
Antitrust & Trade Regulation  
Appeals Law  
Appellate  
Aquaculture  
Arbitration  
Art and Cultural Property Law  
Asset Protection  
Associations  
Automobile Law  
Aviation

## B

Banking Law  
Bankruptcy Law  
Benefits, Employee  
Bioethics  
Biotechnology  
Bonds - Municipal  
Business Law

## C

Charitable Organizations  
Child Abuse Law  
Child Custody Law  
Children  
Child Support Law  
Civil Procedure  
Civil Rights  
Class Action Law  
Clerks/Court Personnel  
Closely Held Business  
Coal  
Collection Law  
Commercial Law  
Commercial Transactions  
Commodities, Futures and Option Commodities  
Communication Law  
Comparative Law

Competition Law  
Computer Law  
Conciliation  
Condominium Law  
Confidentiality Agreements  
Conflicts of Interest  
Constitutional Law  
Construction Law  
Consumer Law  
Contract Law  
Controlled Substances  
Cooperatives  
Copyright Law  
Corporation & Partnership Law  
Corporate Governance  
Counterfeiting  
Credit  
Creditors - Rights  
Criminal Law  
Criminal Defense  
Customs  
Cyberspace Law

## D

Death Penalty Law  
Defamation  
Defense Industries  
Disability Law  
Discovery/Evidence  
Dispute Resolution  
Discrimination Law  
Distributorship  
Divestitures  
Divorce  
Drug Law  
Drug Testing - Employees  
Driving While Intoxicated

## E

E-Commerce  
Economics and Law  
Economic Deregulation  
Education Law

Elder Law  
Electricity Law  
Eminent Domain  
Employees Benefits  
Employment/Labor  
Energy Law and Natural Resources  
Enforcement of Judgments  
Entertainment Law  
Environmental Law  
Environment Law - U.S. Focused  
Equal Protection  
Equal Rights  
Equine  
Equipment Leasing  
ERISA  
Estate and Trust  
Estate and Gift Tax  
Ethics  
Exchange Controls  
Excise Taxes  
Executive Compensation  
Expropriation

## F

Factoring  
Family Law  
False Claim Act  
Federal Administration  
Federal Law  
Fidelity Law  
Financial Services  
Financing  
Firearms  
Food and Drug  
Foundations  
Foundations - Tax  
Franchising  
Fraud Law  
Free Speech

## G

Gambling Law  
Gaming

Gas Law  
General Practice  
Gifts  
Globalization  
Government Affairs  
Government Benefits  
Government (general)  
Government Contracts  
Government (Federal)  
Government (State)  
Government (Judicial)  
Gramm Leach Bliley  
Gun Law

## H

Health Care  
Homeland Security  
Hospitality Industry  
Hotel/Resorts Law  
Housing Law  
Human Resources  
Human Rights

## I

Identity Infringement  
Immigration Law  
Indian Law  
Indigenous Peoples  
Individual Tax  
Information Services  
Inheritance - Tax  
Injuries  
Insurance Law  
Insurance Defense  
Intellectual Property Law  
Intentional Torts  
International Law  
International Tax  
Internet Law / eCommerce  
Investments

## J

Job Safety

Joint Ventures  
Judge - Administration Law  
Judge - Appellate  
Judge - Federal Trial  
Judge - Special Court  
Judge - State Trial  
Judicial Administration  
Juvenile Law

## L

Labor & Employment Law  
Labor Law - Neutral/Public  
Labor Law - Union  
Land Transport  
Landlord and Tenant  
Land Use  
Law Practice Financial Management  
Law Practice Management  
Law Practice Marketing  
Law Practice Technology  
Leasing Personal Property  
Legal Education & Bar Admissions  
Legal Services - Civil  
Legal Theory  
Libel/Slander  
Licensing  
Limited Liability Companies  
Litigation - Civil  
Litigation - Commercial  
Lobbying

## M

Malpractice (Medical)  
Malpractice (Legal)  
Malpractice (Other)  
Managed Care  
Manufacturing  
Maritime  
Marriage  
Media  
Mediation  
Medicine and Law  
Mental Health Law  
Mergers/Acquisitions



Migration Law  
Military Law  
Minerals  
Mining Regulation  
Mortgage  
Movie Law  
Multimedia Law  
Municipal Administration  
Municipal Bond Practice  
Music Law  
Mutual Funds

## N

Nationality Law  
Native Peoples  
Native Americans' Law  
Natural Resources  
Negligence  
Negotiable Instruments  
News  
Newspapers  
Non-Profit Organizations  
Nuclear Law

## O

Oil/Gas  
Open Source Software  
Organizations, Business  
Organizations, Non-Profit  
OSHA

## P

Partnership  
Patents  
Pension  
Personal Injury & Tort Law  
Politics and Law  
Pornography Law  
Poverty Law  
Price Controls  
Printed Media  
Prisoner Law  
Privacy

Private International Law  
Privatization  
Procurement  
Probate  
Procurement by Government  
Products Liability & Safety  
Professional Liability  
Professional Responsibility/Ethics  
Profit Sharing  
Property, Personal  
Public Contract Law  
Public Employment  
Public Finance  
Public Utility  
Public Finance  
Public Health Care  
Public International Law  
Public Interest Law  
Public Utility Law & Regulated Industries  
Publishing Law

## R

Radio/TV  
Railroad  
Real Estate Development  
Real Estate - Commercial  
Real Estate - Tax  
Real Property  
Recreation/Leisure  
Refugees  
Regulatory Law  
Religious Freedom  
Remedies  
Renters Law  
Reorganization - Business  
Residential Real Estate  
RICO  
Right to Die Law  
Risk Analysis

## S

Safety, Job-related  
Safety, Non-Job-related  
Sales of Goods and Services

Sarbanes Oxley  
Science, Engineering & Technology Law  
Sea Law  
Secured Transactions  
Securities Law  
Sexual Harassment  
Shopping Centers  
Social Security Law  
Social Services  
Social Welfare  
Space Law  
Sports, Entertainment & the Arts  
State Administration  
State/Local Tax  
Surety Law  
Syndications

## T

Tax Exempt Associations  
Taxation  
Tax Law  
Technology and Law  
Telecommunications Law  
Title Insurance  
Torts  
Tourism  
Toxic Torts  
Trade & Professional Associations  
Trade Law  
Trade Regulation  
Trademarks  
Transportation Law  
Travel  
Trials - Civil  
Trucking  
Trusts, Probate and Estates  
Torts

## U

Unemployment Law  
U.C.C. Law  
University/School Law  
Urban Planning

Utilities (Public)

W

War & Peace

Warranty Law

Water Law

Welfare

Whistleblowers Law

White Collar Crime

Wills, Trusts & Estates

Women and the Law

Women's Rights

Worker Compensation

Z

Zoning Law

Zoo Liability

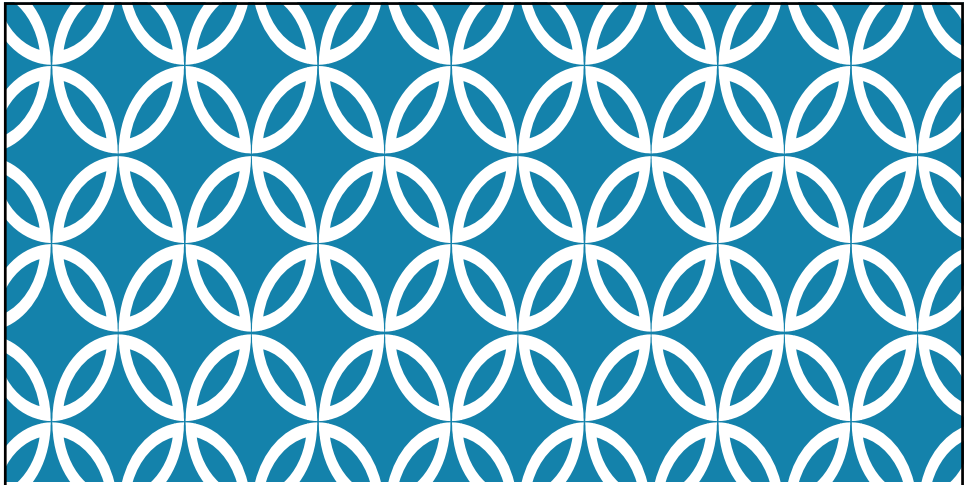
## New Lawyer Tips

- Free time? Go to court; sit in on different types of hearings/trials relating to your practice area. If you're bold enough speak with a few of the attorneys you watched.
- Make an outline of how you see each new case you get progressing. Fill in with anything unexpected. Helps to manage expectations and time.
- Talk through cases with other attorneys. Find a few attorneys you trust to talk with on cases you may need additional input on.
- Budget – plan for costs of the case to make sure you and your client can afford it.
- Ask for help! Don't be afraid of what you don't know ask for help when you need it.
- Create a "pleadings bank" for your reference with samples of different motions and other pleadings.
- Learn to network effectively. There is more to networking than walking around handing out business cards.
- Don't be afraid to spend money to build your practice or brand. There are plenty of ways to get what you need for a low price, research your options.
- Get involved. The State Bar, County bars, and Minority bars all have ways to get involved. Find one that fits for you.
- Don't be afraid of change. If you realize something is not working--your practice area, your job, your methods—make a change.

Resource list:

MentorLink Library: <http://www.wsba.org/Resources-and-Services/MentorLink/MentorLink-Library>

Ebner, Dan, *Ethics Considerations for Attorneys Serving on Nonprofit Boards*, American Bar Association, available at <http://apps.americanbar.org/litigation/committees/ethics/articles/spring2015-0315-ethics-considerations-attorneys-serving-nonprofit-boards.html> (March, 31, 2015)



## What I Wish I Knew My First 5 Years of Practice

Julie K. Fowler  
Kristina T. Larry  
Dainen N. Penta

## GETTING STARTED

### **Choosing the right career path:** Public service, government, private practice

Looking for a good fit

- You don't have to take the first job available
- You can start solo practice straight out of law school

You don't have to stay in a bad situation

Employer's reputation

Employer's culture

Opportunities for advancement

### **Choosing the right practice area:**

Interest

Previous experience

CLE's

Pro bono with mentorship (i.e. protection order advocacy program)

Trying new practice areas

## GETTING STARTED CONT.

### **Practice resources:**

List serves  
Networking with non-attorneys  
Courts website for forms and published cases  
Casemaker – free legal research

### **Tools:**

Practice Management Software  
Bookkeeping software  
Payment software  
Excel – don't underestimate its uses  
Mobile tools

## GETTING STARTED CONT.

### **Mentors**

#### **Finding One:**

Finding one in your practice area, solo or small firms  
List serves provide mentors statewide  
Ask someone you respect and know  
Networking  
CLE's



## GETTING STARTED CONT.

### **Mentors cont.**

#### **Make it effective:**

- Finding one that is a phone call away for general legal advice
- Knowing what you hope to gain – don't be afraid to ask for what you need
- Make sure they are available
- Multiple mentors for multiple needs

#### **Benefits:**

- Increases self-confidence
- Learn to take better control of career path
- Peer support

## ALTERNATE WAYS TO GAIN EXPERIENCE

- Serving in bar associations-state, county, minority
- Pro bono & volunteer work to gain practical experience
- Co-chairing or sitting in on a trial, assisting with research or case analysis
- Become an unpaid intern-again

## WHAT I WOULD HAVE DONE DIFFERENTLY



- Ask for help!
- Talk through cases with other attorneys
- Budget
  - Become a subject matter expert - but don't limit yourself unnecessarily
  - Exercise, meditation, mindfulness regularly
- Create a "pleadings bank" for your reference with samples of different motions and other pleadings
- Get involved



QUESTIONS?

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## CHAPTER SIXTEEN

**ETHICS IN THE 21ST CENTURY PRACTICE**

July 2016

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**PROFESSOR BROOKS R. HOLLAND** is the Donald and Va Lena Scarpelli Curran Chair in Legal Ethics and Professionalism at Gonzaga University School of Law. Professor Holland graduated from Boston University Law School in 1994, after which he became a public defender in New York City, practicing in the Bronx and Manhattan. In late 2005, Professor Holland joined the faculty at at Gonzaga University School of Law, where he teaches and writes about legal ethics, criminal law and procedure, and constitutional law. Professor Holland also continues to practice law, handling criminal appeals in the U.S. Court of Appeals for the Ninth Circuit. He has authored over 40 legal articles in journals such as the Journal of Criminal Law & Criminology, the American Criminal Law Review, the Brooklyn Law Review, and the American Bar Association Supreme Court Preview Journal, and he is co-author of a professional responsibility textbook for West Publishing. Professor Holland additionally is Chair of the WSBA Council on Public Defense and a member of the Society of American Law Teachers Board of Governors.

*The opportunities and headaches of  
mobile technologies and social media*

## ETHICS IN THE 21st CENTURY PRACTICE

The ethical implications of technology on  
solo and small firm law practice

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### **Brooks Holland**

*Donald J. And Va Lena Scarpelli Curran*

*Chair in Legal Ethics & Professionalism*

**GONZAGA UNIVERSITY SCHOOL OF LAW**

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## **Introduction:**

The opportunities associated with mobile technologies and social media platforms have transformed the manner in which many lawyers build and maintain a practice, advocate for clients, and communicate with other persons. As these technologies and social media platforms grow more sophisticated and complex, so too do the ethical implications for lawyers. This presentation will address four ethics topics involving mobile technologies and social media that are important for solo and small-firm lawyers to appreciate in the 21<sup>st</sup> century.

## **Summary of Presentation Topics:**

- 1) *Running a “virtual” law practice.*
- 2) *Generating business through social media.*
- 3) *Managing your client’s social media presence.*
- 4) *Investigating third parties through social media.*



## SELECTED WASHINGTON RULES OF PROFESSIONAL CONDUCT

### 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 1.3. DILIGENCE

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

### 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 or the disclosure is permitted by paragraph (b).

**(b)** A lawyer to the extent the lawyer reasonably believes necessary:

(1) shall reveal information relating to the representation of a client to prevent reasonably certain death or substantial bodily harm;

(2) may reveal information relating to the representation of a client to prevent the client from committing a crime;

(3) may reveal information relating to the representation of a client to prevent, mitigate or rectify substantial injury to the financial interests or property of another that is reasonably certain to result or has resulted from the client's commission of a crime or fraud in furtherance of which the client has used the lawyer's services;

(4) may reveal information relating to the representation of a client to secure legal advice about the lawyer's compliance with these Rules;

(5) may reveal information relating to the representation of a client to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client;

(6) may reveal information relating to the representation of a client to comply with a court order; or

(7) may reveal information relating to the representation of a client to inform a tribunal about any client's breach of fiduciary responsibility when the client is serving as a court-appointed fiduciary such as a guardian, personal representative, or receiver.

### RULE 1.9. DUTIES TO FORMER CLIENTS

**(a)** A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client gives informed consent, confirmed in writing.

**(b)** A lawyer shall not knowingly represent a person in the same or a substantially related matter in which a firm with which the lawyer formerly was associated had previously represented a client

(1) whose interests are materially adverse to that person; and



(2) about whom the lawyer had acquired information protected by Rules 1.6 and 1.9(c) that is material to the matter; unless the former client gives informed consent, confirmed in writing.

(c) A lawyer who has formerly represented a client in a matter or whose present or former firm has formerly represented a client in a matter shall not thereafter:

(1) use information relating to the representation to the disadvantage of the former client except as these Rules would permit or require with respect to a client, or when the information has become generally known; or

(2) reveal information relating to the representation except as these Rules would permit or require with respect to a client.

#### RULE 3.4: FAIRNESS TO OPPOSING PARTY AND COUNSEL

A lawyer shall not:

(a) unlawfully obstruct another party's access to evidence or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value. A lawyer shall not counsel or assist another person to do any such act;

(b) falsify evidence, counsel or assist a witness to testify falsely, or offer an inducement to a witness that is prohibited by law;

(c) knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists;

(d) in pretrial procedure, make a frivolous discovery request or fail to make reasonably diligent effort to comply with a legally proper discovery request by an opposing party; or

(e) in trial, allude to any matter that the lawyer does not reasonably believe is relevant or that will not be supported by admissible evidence, assert personal knowledge of facts in issue except when testifying as a witness, or state a personal opinion as to the justness of a cause, the credibility of a witness, the culpability of a civil litigant or the guilt or innocence of an accused.

#### RULE 3.5. IMPARTIALITY AND DECORUM OF THE TRIBUNAL

A lawyer shall not:

(a) seek to influence a judge, juror, prospective juror or other official by means prohibited by law;

(b) communicate ex parte with such a person during the proceeding unless authorized to do so by law or court order;

(c) communicate with a juror or prospective juror after discharge of the jury if:

(1) the communication is prohibited by law or court order;

(2) the juror has made known to the lawyer a desire not to communicate; or

(3) the communication involves misrepresentation, coercion, duress or harassment; or

(d) engage in conduct intended to disrupt a tribunal.

#### RULE 4.1. TRUTHFULNESS IN STATEMENTS TO OTHERS

In the course of representing a client a lawyer shall not knowingly:

- (a) make a false statement of material fact or law to a third person; or
- (b) fail to disclose a material fact to a third person when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client, unless disclosure is prohibited by Rule 1.6.

#### RULE 4.2. COMMUNICATION WITH PERSON REPRESENTED BY COUNSEL

In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order.

#### RULE 4.3. DEALING WITH UNREPRESENTED PERSON

In dealing on behalf of a client with a person who is not represented by counsel, a lawyer shall not state or imply that the lawyer is disinterested. When the lawyer knows or reasonably should know that the unrepresented person misunderstands the lawyer's role in the matter, the lawyer shall make reasonable efforts to correct the misunderstanding. The lawyer shall not give legal advice to an unrepresented person, other than the advice to secure counsel, if the lawyer knows or reasonably should know that the interests of such a person are or have a reasonable possibility of being in conflict with the interests of the client.

#### RULE 4.4. RESPECT FOR RIGHTS OF THIRD PERSONS

- (a) In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person, or use methods of obtaining evidence that violate the legal rights of such a person.
- (b) A lawyer who receives a document relating to the representation of the lawyer's client and knows or reasonably should know that the document was inadvertently sent shall promptly notify the sender.

#### RULE 5.3. RESPONSIBILITIES REGARDING NONLAWYER ASSISTANTS

With respect to a nonlawyer employed or retained by or associated with a lawyer

- (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; and
- (c) a lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:
  - (1) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or
  - (2) the lawyer is a partner or has comparable managerial authority in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

#### RULE 7.1. COMMUNICATIONS CONCERNING A LAWYER'S SERVICES

A lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services. A communication is false or misleading if it contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading.

#### RULE 7.2. ADVERTISING

**(a)** Subject to the requirements of Rules 7.1 and 7.3, a lawyer may advertise services through written, recorded or electronic communication, including public media.

**(b)** A lawyer shall not give anything of value to a person for recommending the lawyer's services, except that a lawyer may

(1) pay the reasonable costs of advertisements or communications permitted by this Rule;

(2) pay the usual charges of a legal service plan or a not-for-profit lawyer referral service;

(3) pay for a law practice in accordance with Rule 1.17; and

(4) refer clients to another lawyer pursuant to an agreement not otherwise prohibited under these Rules that provides for the other person to refer clients or customers to the lawyer, if

(i) the reciprocal referral agreement is not exclusive, and

(ii) the client is informed of the existence and nature of the agreement.

**(c)** Any communication made pursuant to this Rule shall include the name and office address of at least one lawyer or law firm responsible for its content.

SELECTED WASHINGTON STATE BAR ASSOCIATION  
ADVISORY OPINIONS



**Advisory Opinion:** 201402

**Year Issued:** 2014

**RPC(s):** RPC 5.3(c)(1), 7.1, 7.2, 7.2(b), 7.2(b)(1), 7.4, 7.4(a), 8.4(a)

**Subject:** Participation in online social media profile websites

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**Facts:**

Lawyer claims her “profile” on a social media website that is designed to provide personal and professional information about lawyers to nonlawyers and other lawyers. The website permits lawyers to post, inter alia, their contact information, education, practice areas, experience, and articles. It is not possible for Lawyer to disclaim her profile after claiming it.

The website also generates a numeric and descriptive rating for each lawyer who claims his or her profile, as well as for some lawyers who have not claimed their profiles. The numeric and descriptive rating are affected, at least in part, by the amount of information that a lawyer provides and the lawyer’s participation on the website. The website does not disclose how it determines the numeric and descriptive rating. It is possible for a less experienced lawyer to obtain a much higher rating than a much more experienced lawyer by simply providing more information about the lawyer’s practice.

Enrolled lawyers can also attach specific “peer endorsements” to another lawyer’s profile. Visitors to the website can also attach publicly viewable “client ratings” to a lawyer’s profile. Peer endorsements affect the rating, but client ratings do not.

**Question:**

1. May Lawyer claim the profile and provide personal and professional information, knowing that the website will generate a publicly viewable numeric and descriptive rating that is, at least in part, influenced by the amount of information that Lawyer provides?
2. May Lawyer claim the profile and participate in the website if other users attach to Lawyer’s profile publicly viewable (1) client ratings or (2) peer endorsements about Lawyer’s services?

3. May Lawyer endorse another lawyer in exchange for a reciprocal endorsement?

**Conclusion:**

1. See discussion below.
2. See discussion below.
3. No.

**Discussion:**

1. Lawyers are permitted to publicly disseminate a variety of types of information, including but not limited to the following:

information concerning a lawyer's name or firm name, address and telephone number; the kinds of services the lawyer will undertake; the basis on which the lawyer's fees are determined, including prices for specific services and payment and credit arrangements; a lawyer's foreign language ability; names of references and, with their consent, names of clients regularly represented; and other information that might invite the attention of those seeking legal assistance.

RPC 7.2 cmt. 2; see also ABA Formal Op. 10-457 (2010). A lawyer may also pay the reasonable cost of advertisements or permitted communications. RPC 7.2(b)(1).[n.1] A lawyer must be accurate when communicating about his or her services:

A lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services. A communication is false or misleading if it contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading.

RPC 7.1. "A lawyer may communicate the fact that the lawyer does or does not practice in particular fields of law." RPC 7.4(a). But a lawyer shall not state or imply that the lawyer is a specialist in a particular field of law, except as provided by RPC 7.4.[n.2]

A lawyer cannot cause a nonlawyer to do that which the lawyer is ethically prohibited from doing. See RPC 5.3(c)(1);[n.3] RPC 8.4(a).[n.4] Therefore, Lawyer also must not cause the website to make false or misleading communications about Lawyer's practice.

Before claiming her profile, Lawyer should take reasonable steps to ascertain the extent to which the website will make representations about Lawyer's practice, including the numeric and descriptive rating, in order to determine whether any such representations will be inaccurate or misleading. If Lawyer determines that the website's numeric and/or descriptive ratings of lawyers are not based upon the lawyer's performance or merit and the website does not disclose how the ratings are calculated, then the lawyer must not

participate in the website. If after claiming her profile, Lawyer determines that the website's numeric and/or descriptive ratings of lawyers are not based upon the lawyer's performance or merit and the website does not disclose how the ratings are calculated, then the lawyer must limit participation to ensuring that information is accurate and should consider posting a disclaimer, if it is reasonably feasible to do so.[n.5]

A lawyer who claims, adopts, or endorses information on a website listing becomes responsible to ensure that the information in the listing conforms to the Rules for Professional Conduct.[n.6] If Lawyer claims her profile and inadvertently provides inaccurate information, then Lawyer must make a prompt correction. Lawyer must also update her information if it changes, in order to ensure that only accurate information is provided.

For example, if Lawyer posted her contact information but later moved to a different law firm, then Lawyer must update her contact information within a reasonable time. By way of further example, if Lawyer provided information about the kinds of services that she will undertake but later decided to narrow the kinds of services that she will undertake, then Lawyer must update that information within a reasonable time.

2. Accurate client ratings or peer endorsements may be attached to Lawyer's profile. If visitors or other lawyers attach to Lawyer's account client ratings or peer endorsements that are false or misleading, then Lawyer must delete or disclaim the false or misleading comments or endorsements, if it is reasonably feasible to do so.

If Lawyer chooses to participate in the website, then Lawyer must periodically monitor her profile to reasonably ensure that inaccurate client ratings or peer endorsements are deleted or disclaimed in a reasonably prompt manner, if it is reasonably feasible to do so.

3. Lawyer may only endorse another lawyer if the endorsement is accurate. RPC 8.4(c) (prohibiting deceptive conduct). Lawyer must not endorse another lawyer unless she has sufficient knowledge about the other lawyer to provide an accurate statement.

Lawyer must not provide an endorsement to another lawyer simply because that lawyer agreed to endorse Lawyer. Doing so would be giving something of value (i.e., an endorsement) for recommending the Lawyer's services. RPC 7.2(b).

### **Endnotes:**

1. "A lawyer shall not give anything of value to a person for recommending the lawyer's services..." RPC 7.2(b) (emphasis added). When a communication endorses or vouches for a lawyer's credentials, abilities, competence, character, or other professional qualities, such a communication is a recommendation of the kind contemplated by RPC 7.2(b). In this case, Lawyer's information might have value to the website, but the mere providing of information contemplated by RPC 7.2 cmt. 2 does not constitute the giving of a thing of value in exchange for recommending services, even if that information results in a

recommendation of the lawyer's services. However, answering legal questions might constitute the giving of a thing of a value and would be prohibited if given to a person for recommending the lawyer's service.

2. The Rule provides, inter alia, as follows:

(d) A lawyer shall not state or imply that a lawyer is a specialist in a particular field of law, except upon issuance of an identifying certificate, award, or recognition by a group, organization, or association, a lawyer may use the terms "certified", "specialist", "expert", or any other similar term to describe his or her qualifications as a lawyer or his or her qualifications in any subspecialty of the law. If the terms are used to identify any certificate, award, or recognition by any group, organization, or association, the reference must:

- (1) be truthful and verifiable and otherwise comply with Rule 7.1;
- (2) identify the certifying group, organization, or association; and
- (3) state that the Supreme Court of Washington does not recognize certification of specialties in the practice of law and that the certificate, award, or recognition is not a requirement to practice law in the state of Washington.

RPC 7.4(d).

3. Rule 5.3 provides as follows:

With respect to a nonlawyer employed or retained by or associated with a lawyer:

- (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 persons 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 persons conduct is compatible with the professional obligations of the lawyer; and
- (c) a lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:
  - (1) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or
  - (2) the lawyer is a partner or has comparable managerial authority in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

4. Rule 8.4(a) provides as follows:

It is professional misconduct for a lawyer to:

(a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;

RPC 8.4(a).

5. An express disclaimer should ordinarily be sufficient to notify users that the lawyer is no longer participating in the website.

6. See South Carolina Ethics Adv. Op. 09-10 (2009) (stating, inter alia, that “a lawyer who adopts or endorses information on any similar web site becomes responsible for conforming all information in the lawyer’s listing to the Rules of Professional Conduct” and also “[b]y claiming a website listing, a lawyer takes responsibility for its content and is then ethically required to conform the listing to all applicable rules”).



**Advisory Opinion:** 2215

**Year Issued:** 2012

**RPC(s):** RPC 1.1, 1.6, 1.15A

**Subject:** Cloud Computing

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This opinion addresses certain ethical obligations related to the use of online data storage managed by third party vendors to store confidential client documents.

**Illustrative Facts:**

Law Firm contracts with third-party vendor to store client files and documents online on remote server so that Lawyer and Client could access the documents over the Internet from any remote location.

Rules of Professional Conduct Implicated:

RPC 1.1, 1.6, 1.15A

**Analysis:**



Various service providers are offering data storage systems on remote servers that can be accessed by subscribers from any location over the Internet. This is one aspect of so-called “cloud computing,” and lawyers may be interested in using these services to store confidential client documents and other data. Use of these third party storage systems, however, means that confidential client information is outside of the direct control of the lawyer and raises particular ethical questions.

Under RPC 1.6, a lawyer owes a client the duty to keep all client information confidential, unless the information falls within a specified exception. The duty of confidentiality extends beyond deliberate revelations of client information and requires a lawyer to protect client information against all disclosure. Comment 16 to RPC 1.6 states: “A lawyer must act competently to safeguard information relating to the representation of a client against inadvertent or unauthorized disclosure by the lawyer or 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.” In order to use online data storage, a lawyer is under a duty to ensure that the confidentiality of all client data will be maintained.

In addition to client confidentiality, the lawyer is also under a duty to protect client property, under RPC 1.15A. A lawyer using online data storage of client documents is therefore under a duty to ensure that the documents will not be lost.

It is impossible to give specific guidelines as to what security measures should be in place with a third party service provider of online data storage in order to provide adequate protection of client material, because the technology is changing too rapidly and any such advice would be quickly out of date. It is also impractical to expect every lawyer who uses such services to be able to understand the technology sufficiently in order to evaluate a particular service provider’s security systems. A lawyer using such a service must, however, conduct a due diligence investigation of the provider and its services and cannot rely on lack of technological sophistication to excuse the failure to do so. While some lawyers may be able to do more thorough evaluations of the services available, best practices for a lawyer without advanced technological knowledge could include:

1. Familiarization with the potential risks of online data storage and review of available general audience literature and literature directed at the legal profession, on cloud computing industry standards and desirable features.
2. Evaluation of the provider’s practices, reputation and history.
3. Comparison of provisions in service provider agreements to the extent that the service provider recognizes the lawyer’s duty of confidentiality and agrees to handle the information accordingly.
4. Comparison of provisions in service provider agreements to the extent that the agreement gives the lawyer methods for retrieving the data if the agreement is terminated or the service provider goes out of business.

5. Confirming provisions in the agreement that will give the lawyer prompt notice of any nonauthorized access to the lawyer's stored data.

6. Ensure secure and tightly controlled access to the storage system maintained by the service provider.

7. Ensure reasonable measures for secure backup of the data that is maintained by the service provider.

A lawyer has a general duty of competence under RPC 1.1, which includes the duty "to keep abreast of changes in the law and its practice." RPC 1.1 Comment 6. To the extent that a lawyer uses technology in his or her practice, the lawyer has a duty to keep informed about the risks associated with that technology and to take reasonable precautions. The lawyer's duties discussed in this opinion do not rise to the level of a guarantee by the lawyer that the information is secure from all unauthorized access. Security breaches are possible even in the physical world, and a lawyer has always been under a duty to make reasonable judgments when protecting client property and information. Specific practices regarding protection of client property and information have always been left up to individual lawyers' judgment, and that same approach applies to the use of online data storage. The lawyer must take reasonable steps, however, to evaluate the risks involved with that practice and to ensure that steps taken to protect the information are up to a reasonable standard of care.

Because the technology changes rapidly, and the security threats evolve equally rapidly, a lawyer using online data storage must not only perform initial due diligence when selecting a provider and entering into an agreement, but must also monitor and regularly review the security measures of the provider. Over time, a particular provider's security may become obsolete or become substandard to systems developed by other providers.

**Conclusion:**

A lawyer may use online data storage systems to store and back up client confidential information as long as the lawyer takes reasonable care to ensure that the information will remain confidential and that the information is secure against risk of loss.

### **OTHER SUGGESTED AUTHORITIES**

- New York State Bar Association Social Media Ethics Guidelines (2015).
- ABA Formal Opinion 466 (2014).
- Laurel Rigertas, *How Do You Rate Your Lawyer? Lawyer Responses to Online Reviews of Their Services*, 4 ST. MARY'S J. ON LEGAL MALPRACTICE & ETHICS 242 (2014).
- Florida Proposed Advisory Opinion 14-1 (2015).

# ETHICS IN 21<sup>ST</sup> CENTURY PRACTICE






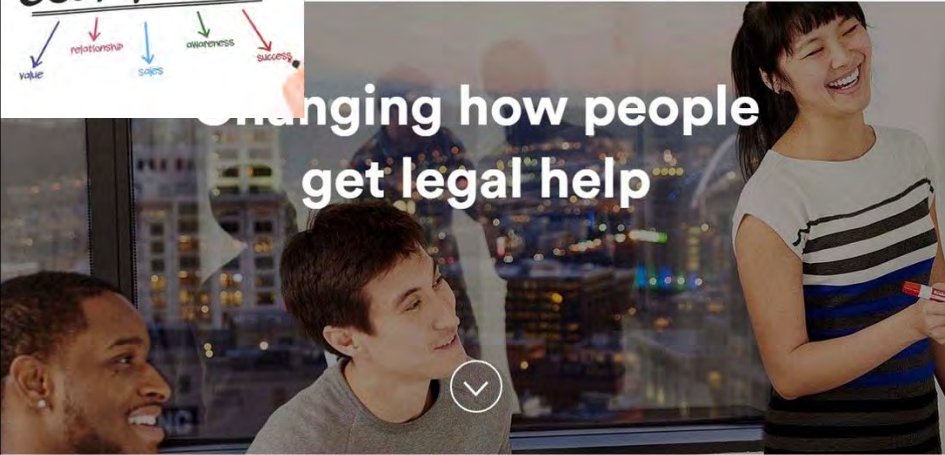


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# Changing how people get legal help



**Avvo: /Ah • voh/**

Avvo was founded in Seattle, Washington by tech-savvy lawyer Mark Britton to make legal easier and help people find a lawyer.



**WSBA**

**Advisory Opinion: 201402**  
**Year Issued: 2014**  
**RPC(s):** RPC 5.3(c)(1), 7.1, 7.2, 7.2(b), 7.2(b)(1), 7.4, 7.4(a), 8.4(a)  
**Subject:** Participation in online social media profile websites

**Question:**

1. May Lawyer claim the profile and provide personal and professional information, knowing that the website will generate a publicly viewable numeric and descriptive rating that is, at least in part, influenced by the amount of information that Lawyer provides?
2. May Lawyer claim the profile and participate in the website if other users attach to Lawyer's profile publicly viewable (1) client ratings or (2) peer endorsements about Lawyer's services?
3. May Lawyer endorse another lawyer in exchange for a reciprocal endorsement?

**Conclusion:**

1. See discussion below.
2. See discussion below.
3. No.

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## How Should Lawyers Respond To Negative Online Reviews?

BUSINESS, FAMILY & PERSONAL, LAWYERS / STAN SINBERG / 28 JUL 2014

**RPC 1.9:**  
*Loyalty & Confidentiality*


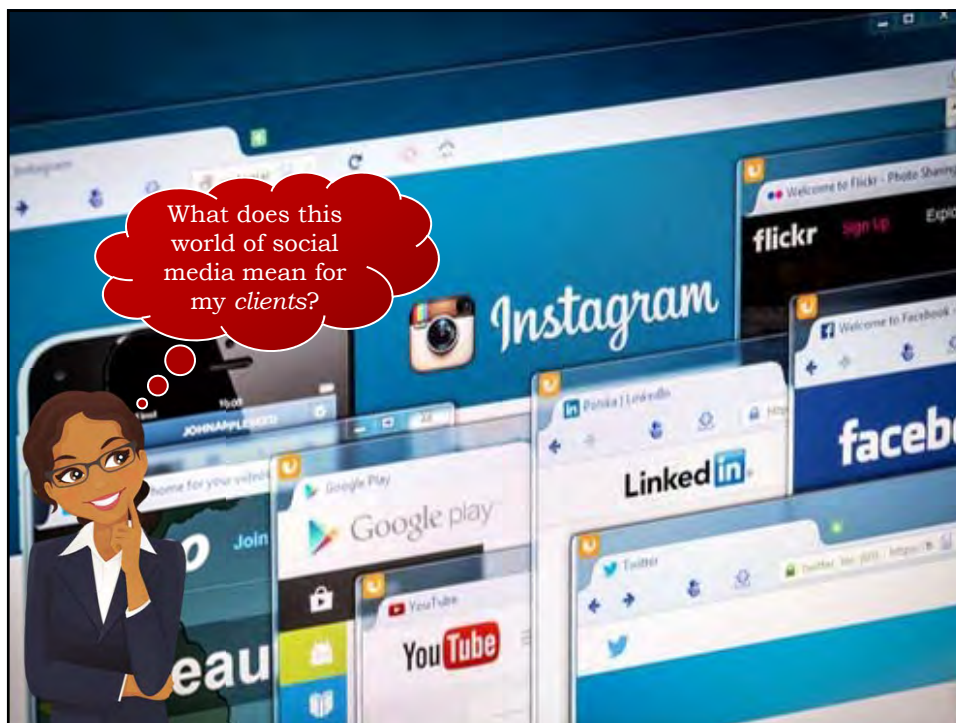
**RPC 7.1:**  
*Truthful & Not Misleading*

**Good Business:**  
*Use as an Opportunity*

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SOCIAL MEDIA ETHICS GUIDELINES  
OF THE  
COMMERCIAL AND FEDERAL LITIGATION SECTION  
OF THE  
NEW YORK STATE BAR ASSOCIATION

UPDATED JUNE 9, 2015



*Managing the client's social media*

*Investigating 3<sup>rd</sup> parties' social media*

**RPC 4.1, 4.2, 4.3 and 8.4**

**QUESTIONS?**

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CHAPTER SEVENTEEN  
**RULES OF PROFESSIONAL CONDUCT**

# WASHINGTON'S RULES OF PROFESSIONAL CONDUCT (RPC)

(with rule changes through April 14, 2015)

(Originally adopted effective 9/1/85. Substantially revised (with addition of comments) effective 9/1/06.)

Fundamental Principles of Professional Conduct

Preamble and Scope

1.0A Terminology

1.0B Additional Washington Terminology

## Title 1 Client-Lawyer Relationship

1.1 Competence

1.2 Scope of Representation and Allocation

1.3 Diligence

1.4 Communication

1.5 Fees

1.6 Confidentiality of Information

1.7 Conflict of Interest: Current Clients

1.8 Conflict of Interest: Current Clients: Specific Rules

1.9 Duties to Former Clients

1.10 Imputation of Conflicts of Interest: General Rule

1.11 Special Conflicts of Interest for Former and Current Government Officers and Employees

1.12 Former Judge, Arbitrator, Mediator or Other Third-Party Neutral

1.13 Organization as Client

1.14 Client with Diminished Capacity

1.15A Safeguarding Property

1.15B Required Trust Account Records

1.16 Declining or Terminating Representation

1.17 Sale of Law Practice

1.18 Duties to Prospective Client

## Title 2 Counselor

2.1 Advisor

2.2 (Deleted)

2.3 Evaluation for Use by Third Persons

2.4 Lawyer Serving as Third-Party Neutral

## Title 3 Advocate

3.1 Meritorious Claims and Contentions

3.2 Expediting Litigation

3.3 Candor Toward the Tribunal

3.4 Fairness to Opposing Party

3.5 Impartiality and Decorum of the Tribunal

3.6 Trial Publicity

3.7 Lawyer as Witness

3.8 Special Responsibilities of a Prosecutor

3.9 Advocate in Nonadjudicative Proceedings

## Title 4 Transactions With Persons Other Than Clients

4.1 Truthfulness in Statements to Others

4.2 Communication With Person Represented by a Lawyer

4.3 Dealing With Person Not Represented by a Lawyer

4.4 Respect for Rights of Third Person

## Title 5 Law Firms and Associations

5.1 Responsibilities of Partners, Managers, and Supervisory Lawyers

5.2 Responsibilities of a Subordinate Lawyer

5.3 Responsibilities Regarding Nonlawyer Assistants

5.4 Professional Independence of a Lawyer

5.5 Unauthorized Practice of Law; Multijurisdictional Practice of Law

5.6 Restrictions on Right to Practice

5.7 Responsibilities Regarding Law-Related Services

5.8 Misconduct Involving Lawyers and LLLTs Not Actively Licensed to Practice Law

5.9 Business Structures Involving LLLT and Lawyer Ownership

5.10 Responsibilities Regarding Other Legal Practitioners

## Title 6 Public Service

6.1 Pro Bono Publico Service

6.2 Accepting Appointments

6.3 Membership in Legal Services Organization

6.4 Law Reform Activities Affecting Client Interests

6.5 Nonprofit and Court-Annexed Limited Legal Service Programs

## Title 7 Information About Legal Services

7.1 Communications Concerning a Lawyers Services

7.2 Advertising

7.3 Direct Contact with Prospective Clients

7.4 Communication of Fields of Practice and Specialization

7.5 Firm Names and Letterheads

7.6 Political Contributions to Obtain Government Legal Engagements or Appointments by Judges

## Title 8 Maintaining the Integrity of the Profession

8.1 Bar Admission and Disciplinary Matters

8.2 Judicial and Legal Officials

8.3 Reporting Professional Misconduct

8.4 Misconduct

8.5 Disciplinary Authority; Choice of Law

**Appendix** Guidelines for Applying Rule of Professional Conduct 3.6